

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**LETTERS PATENT APPEAL NO.12 OF 2007
IN
WRIT PETITION NO.7471 OF 2006**

Shri Ramchandra Jyoti Patil,
Aged 53 years, Occupation :
Residing at Chandre Post, Walve,
Taluka -Radhanagari,
District :Kolhapur.

... Appellant
(Orig. Petitioner)

V/s.

The Managing Director,
Kolhapur Zilha Sahakari
Doodh Utpadak Sangh Ltd.
MIDC-Gokul Shirgaon.

... Respondent
(Orig. Respondent)

Mr.S.K.More, Advocate for the Appellant.
None for the Respondent.

**CORAM : V.M. KANADE &
MRS. SWAPNA S. JOSHI, JJ.
DATE : 3rd OCTOBER, 2016**

JUDGMENT: (PER MRS. SWAPNA S. JOSHI, J.)

1. The appellant has challenged the judgment and order dated 20th November, 2006 passed by the learned Single Judge of this Court in writ petition No.7471 of 2006, by preferring the present Letters Patent Appeal.
2. The brief facts of the case are that the petitioner joined the service of the respondent Sangha, as a clerk in the year 1977.

On 8th April, 1996, the respondent issued charge-sheet to the petitioner on the ground of misconduct of unauthorized absentism from duty. During the pendency of the inquiry the petitioner sought adjournments on the medical ground, however, the Inquiry Officer proceeded ex-parte against the petitioner and concluded the inquiry as ex-parte. The report was submitted by the Inquiry Officer on 14th February, 1997 stating that the misconduct of the petitioner stands proved. A show cause notice was issued on 15th March, 1997 by the respondent alongwith the copy of the inquiry report to the petitioner, to submit his reply. The petitioner submitted his detailed reply. The respondent terminated the services of the petitioner on 24th June, 1997 on the ground that the misconduct is proved. The petitioner raised an Industrial dispute before the Industrial Court, Kolhapur. The petitioner approached to the Conciliation Authority, Pune. The Additional Commissioner of Labour Court, Pune Division, Pune, referred the matter to the learned Labour Court, Solapur, for adjudication. The learned Presiding Officer of Labour Court, Solapur, Camping at Kolhapur dismissed the reference. He however directed that it would be open for the respondent to appoint petitioner in its employment as a fresh clerk on the basis of his undertaking, not to repeat the misconduct again. Against the said order of the Labour Court, the petitioner preferred the writ petition bearing No.7471 of 2006 before the learned Single Judge of this Court. The learned Single Judge dismissed the petition filed by the petitioner. Being aggrieved by the order passed by the learned Single Judge, the petitioner has filed the

present appeal.

3. Heard the learned Counsel appearing on behalf of the appellant. The respondent and his Counsel remained absent. The learned Counsel for the appellant vehemently argued that the respondent conducted the Inquiry against the petitioner mainly on the ground that he was unauthorizedly absent during the period from September, 1995 to February, 1996, without seeking permission from the authority. The learned Counsel submitted that it was not considered that the petitioner was suffering from serious illness of kidney and he was bed-ridden. The learned Counsel contended that the principle of natural justice has not been followed in the inquiry made by the respondent.
4. After hearing the learned Counsel for the appellant and on careful scrutiny of the judgment passed by the learned Single Judge and the material placed on record, it is noticed that the learned Single Judge did not find any fault in the order passed by the learned Labour Court. The learned Single Judge opined that the petitioner did not bother to obtain leave to remain absent and even during the course of inquiry, the petitioner did not establish that he was sick during the relevant period and therefore, he could not attend his duties. It was held that the absentism without leave itself is a misconduct sufficient to invite the order of dismissal from services. The petitioner was offered opportunity to establish his contention about the sickness during the relevant period, however, he failed to

establish the same. It is the case of the appellant that the medical certificate produced by him was actually not disputed, however, the said fact was not considered by the learned Labour Court and it was held that the said medical certificate was not proved by the petitioner, as the contents therein were not proved by examining the Medical Officer. The learned Single Judge has considered the said aspect and has opined that the petitioner ought to have made efforts to establish the truthfulness of the contents of the medical certificate.

5. In our view the petitioner ought to have proved the medical certificate by examining the concerned doctor. The appellant has not proved the contents of the said medical certificate in order to show that he was not well during the period of his absentism from September, 1995 to February, 1996. Since the appellant has failed to prove his sickness or ailment from which he was suffering, and the reason for his absentism, the charge against the petitioner of misconduct stands proved.
6. Thus order passed by the learned Single Judge need not be interfered with. The learned Single Judge has passed the reasoned order and has given cogent reasons for rejecting the contentions of the appellant. We concur with the findings given by the learned Single Judge and we do not find the infirmity in the said findings. Hence, Letters Patent Appeal stands dismissed.

(MRS. SWAPNA S. JOSHI, J.)

(V.M. KANADE, J.)