IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1667 OF 2013

Shri R. S. Vasaikar ... Petitioner

Vs

1. Bank of Maharashtra & Ors. ... Respondents

Mr. Omkar Chandurkar i/b Mr. Nachiket V. Khaladkar for the Petitioner.

Mr. Dhananjay J. Bhanage with Mr. Mayur D. Joglekar for the Respondents.

CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

WEDNESDAY, 16TH NOVEMBER, 2016

P.C. :

1 By this writ petition under Article 226 of the Constitution of India, the petitioner challenges an order, copy of which is Annexure-J to the writ petition. The petitioner challenges a further order, copy of which is at Annexure-L.

2 By the first order, the petitioner was visited with penalty of dismissal from service and other penalties which are set out charge-wise from page 161 of the paper-book.

3 This order has been modified by the Appellate Authority and instead of the punishment of dismissal from service, the Appellate Authority thought it fit to impose a penalty of compulsory retirement with superannuation benefits as would be due under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment. The petitioner has been exonerated from some other charges and particularly charge Nos.6, 9 and 10. As far as charge Nos.11 to 13 are concerned, there as well, the punishment has been modified.

4 The petitioner does not dispute that he was employed with the first respondent-bank and at the relevant time, posted at Pune and particularly at a Branch in Pune District. The petitioner was served with a show cause notice alleging that the petitioner entered the cabin of the Branch Manager to make a phone call. The Branch Manager requested the petitioner to make the call after some time. The petitioner shouted at the Branch Manager and abused him. The second instance was that the normal banking operations at Male Branch could not take place due to system failure. That failure occurred from 3rd to 5th

February, 2009. The reports received revealed that there were viruses on the personal computer in the system. These viruses entered the system due to the petitioner's act of copying audio/video files from his pen drive. Thus, on the personal computer provided by the office, the petitioner loaded certain pictures which were obscene, vulgar and could be safely termed as pornographic material. As per the Information System Security Policy circulated by the bank, no user is allowed to install any software without prior approval of the competent authority. Thus, these acts were alleged to be violating the bipartite settlement. The clauses of the bipartite settlement, which are stated to be violated, are mentioned in the show cause notice. Thus, the petitioner was charged with gross misconduct. The petitioner was called upon to give an explanation/reply within ten days from the date of receipt of the show cause notice dated 24th February, 2009.

5 The petitioner did furnish a reply, but it was not found to be satisfactory and by a communication dated 21st March, 2009, the petitioner was informed that the bank has decided to hold a Disciplinary Enquiry. This was also in terms of the

bipartite settlement. The Disciplinary Authority appointed the Enquiry Officer and informed the petitioner that he would be entitled to defend himself in terms of the Rules and by availing of the facility of engaging a defence representative.

6 Thereafter, a regular charge-sheet was drawn up and the petitioner was served with a copy of the same. The charge-sheet, copy of which is to be found at page 25 of the paper-book, contains as many as 13 charges and with the particulars thereof. The petitioner was informed that he can also inspect all the relevant documents and records and thereafter avail of all the opportunities to defend himself at this Enquiry.

7 The petitioner was allowed to cross-examine the Management representatives and lead his own evidence as well. The petitioner's representative in defence undertook this task for and on behalf of the petitioner and not only the written arguments from the Management's side but also that of the petitioner were taken on record. After appreciation of all this material, the Enquiry Officer submitted his report. That report was duly considered and the Disciplinary Authority passed a

detailed order of dismissal and in the manner noted above. Against this order, an appeal was preferred and the petitioner was duly given an opportunity to assail the findings in the Enquiry Report and the order of the Disciplinary Authority. It is material to note that prior to the imposition of penalty, the petitioner was given an opportunity by the Disciplinary Authority. Thus, on merits of the charges and the proposed penalty, the opportunities envisaged by the Rules were duly extended and given.

8 It is on an appreciation and appraisal of all the material that the Appellate Authority interfered with the order of the Disciplinary Authority and modified the punishments / penalties.

9 Mr. Chandurkar appearing on behalf of the petitioner would submit that the petitioner was proceeded against only because he was independent and at times outspoken. He pin pointed certain lapses on the part of not only his peers, but equally superiors. This nature of the petitioner was not acceptable to some employees and equally the superiors. That is

why the Management was prejudiced and biased and in the show cause notice itself revealed its intent of punishing the petitioner. The enquiry was, therefore, a complete farce and completion of a formality. The petitioner was not allowed to defend himself and the opportunities in that regard were never granted. The Management held back vital and relevant documents and though requested, never supplied copies of them.

10 For instance, it could be revealed according to Mr. Chandurkar that if the allegation is of illegal or unauthorised closure of an account, then, the details in that regard and as to how the petitioner did not follow the instructions or Manual should have been provided. The petitioner cannot be held guilty unless he has violated any of these instructions or the clauses or paragraphs of the Manual. If the systems within the bank were not proper or did not meet any contingency of a closure of account, then, the petitioner cannot be blamed. The petitioner pointed out that the account was closed with due intimation to the superiors.

11 Even on the charge that the petitioner had accessed vulgar, obscene and indecent or pornographic material on the computer provided by the office, it is evident that the relevant documents were not provided. The Enquiry Officer has accepted that the relevant documents were not provided and yet proceeded to hold the petitioner guilty.

12 The essential argument, therefore, is that the enquiry was concluded with a pre-determined mind and was already decided the petitioner's services would be done away with. In these circumstances, there is grave loss and serious prejudice caused to the petitioner. The Enquiry Officer's finding should never have been accepted and the acceptance of the same amounts to the petitioner being treated harshly and arbitrarily. Even in the matter of quantum of punishment, the same is not commensurate with the proven guilt. For all these reasons, in our power of judicial review, we must interfere and set aside the impugned order.

13 On the other hand, Mr. Bhanage appearing on behalf of the respondents would submit that this Court is exercising

powers under Article 226 of the Constitution of India. The power of judicial review does not enable this Court to sit in appeal over the findings of the Enquiry Officer, the order of the Disciplinary Authority and that of the Appellate Authority. He would submit that the petitioner's arguments proceed on completely erroneous assumption that there was any prejudice or bias against him. The petitioner may have rendered prolonged services to the bank, but in terms of the powers conferred in the bank by the bipartite agreement, it was open for the bank to proceed against him in the event of any misconduct being committed. In penalizing the petitioner for such misconduct the bank was obliged to hold a Disciplinary Inquiry. The petitioner was served with a show cause notice and it is not as if one paragraph of the same can be picked up and read in isolation. The show cause notice called upon the petitioner to show cause as to why action should not be taken against him. The petitioner furnished an explanation which was not found to be satisfactory. Thereafter the inquiry was directed and it was duly held. The petitioner was informed about his rights at such inquiry, including engagement of a defence representative. The petitioner was allowed full opportunity of not only producing documents or material in defence, but equally to cross-examine the Management witnesses. He has participated in the Enquiry and cross-examined them at length. By independent application of mind, the Disciplinary Authority came to the conclusion that the petitioner's services cannot be continued and must be dispensed with. The acts were grave, serious and such that would affect the reputation of the bank. The employee of the bank cannot unauthorizedly and illegally close any account, causing loss to public exchequer and depriving the bank of recovering public dues. Secondly, a personal computer and a computer provided by the office stand on a different footing. In the official premises, the computer ought to be utilized for official work alone. No personal files can be loaded, much less accessed and viewed by the employee during office hours. Even if that has to be done, due permission from the competent authority should be obtained. In the present case, the material loaded on the computer was not only found to be offensive, vulgar but pornographic in nature. If an employee of a bank indulges in such acts, he cannot expect sympathy from his superiors or the competent authorities. Rather, such authorities are bound to take note of the complaints about such acts of the petitioner and proceed against him. These acts amount to serious misconduct and affect the reputation and image of the bank. Mr. Bhanage has taken us through all this material and findings in that regard to conclude that no interference is warranted in our writ jurisdiction in such an order and which is passed after due compliance with the principles of natural justice.

14 With the assistance of both the counsel, we have perused the writ petition and the annexures thereto. The petitioner has annexed for the Court's convenience, the entire record of the Inquiry. We had the benefit of perusing that and commencing from the show cause notice. We are in agreement with Mr. Bhanage that the show cause notice must be read in its entirety. So read, it only reveals the intent of the Management to hold an inquiry in the event the petitioner does not furnish a satisfactory explanation to the allegations in the show cause notice. Beyond that we do not read anything and as contended by Mr. Chandurkar. The first contention, therefore, and particularly that there was a bias and prejudice against the petitioner must fail.

15 The petitioner was then informed about the charges. The charge-sheet containing 13 charges has all the particulars. The petitioner was informed as to how the Management has proceeded in the matter. The show cause notice and the explanation thereto were both considered and not being satisfied with the explanation or reply, the charge-sheet was served. The charge-sheet reveals as to how the petitioner was made aware about the appointment of the Inquiry Officer, his rights at the Inquiry and the charges so also the particulars in relation thereto. The petitioner was informed that he could inspect the record in relation to these proceedings and available with the bank. He can also appoint a defence representative.

16 The first charge details of which are to be found in the charge-sheet itself pertains to closure of housing loan account No. 720946 of one Subhash Chandrakant Shah. Though that account had outstanding dues of Rs.7,72,637/-, that was closed on 5th January, 2007, without any instructions and without any *bona fide* reason. The loan account was closed by debiting sundry creditors account. Thus, the charge was of making unauthorized entries and causing loss to the bank.

17 The Enquiry Officer found that in relation to this charge, the petitioner did not deny that he dealt with this account. The petitioner did not deny that this account was to his knowledge and with all the details of the person availing the loan. The petitioner did not deny the closure of the account. All that he denied was that the Management did not produce any documents or witnesses to prove it. The bank was obliged at the same time to prove that the reason for closing the account was not *bona fide*. This presupposes that the account was closed. This presupposes that the instructions to close the same were not obtained. The closure was effected, but it was not the bank's obligation to prove and to the satisfaction of all concerned as to how closure is not *bona fide* but *mala fide*. We do not think that the Enquiry Officer was obliged to consider any further material given this nature of defence. The bank was exposed to loss of public funds and serious prejudice is established by closure of such account abruptly. When the account had a debit balance and that too of a housing loan not fully satisfied, then, the bank expected the petitioner to obtain instructions from its superiors before closing it. It was the bounden duty of the petitioner to bring to the superior's notice that the Account had an outstanding balance and which the bank

can recover in accordance with law. In not proceeding on these lines but closing that account and without any authorisation or direction from superiors definitely proved the grave misconduct and committed by the petitioner. The act of the petitioner exposes the bank to a serious loss and the charge is thus rightly held to be proved.

18 Insofar as the second charge is concerned there as well, on appreciation and appraisal of the documentary and oral evidence, the Enquiry Officer concluded that the petitioner was provided with all the documents. It is too well settled to require any reiteration that firstly the petitioner must satisfy that the documents which were not provided or copies of which were not made available were indeed germane and relevant for the Inquiry. Each and every document and which is not relevant and germane for the disciplinary proceedings need not be provided. If such of the documents which are required, but not in the custody of the petitioner to prove and establish his defence, then, non production or non availability of those documents has caused serious prejudice to the petitioner must be the second aspect and equally to be proved by the petitioner. On both counts, we do not

think that Mr. Chandurkar has satisfied this Court. Mere non production or non availability of certain documents would not vitiate the Enquiry proceedings. We have found from the records that the system failure occurred on account of the extensive interference with the same by the petitioner. Apart therefrom, what is revealed is that the petitioner accessed the system not for any official purpose, but for viewing material which was found to be obscene, vulgar and pornographic in content. The petitioner was proceeded on these lines and the bank established and proved the charges by examining witnesses. The witnesses proved the contents of the documents. The documents so also the oral evidence were duly considered and read in evidence after the petitioner was provided complete opportunity of cross-examining the witnesses of the Management. The bank has established and proved that the petitioner had loaded on to the computer provided by the office, such material and which could be safely termed as obscene, vulgar and pornographic in content. Surely this was not expected from an employee and of the stature of the petitioner. He was serving a Nationalized Bank. A public duty is being performed by such bankers and in whom the citizens of this country repose immense faith, trust and confidence. The petitioner ought to be aware that the customers and account holders bank on the officials serving the Nationalized banks. They look up to such employees for guidance and assistance. This trust and confidence is belied by the acts and of the nature performed by the petitioner. His indulging in such acts affects adversely the reputation of the bank. We do not think that the petitioner was in any manner prejudiced during the course of Inquiry. Rather, the charges have been held to be proved after complete appreciation and appraisal of the material on record so also the submissions in defence.

19 If this was not the case, the Disciplinary Authority and the Appellate Authority were not obliged to render detailed findings. Having perused their orders we find that the petitioner was treated with due care and caution. Considering that his career was at stake, the Appellate Authority thought it fit not to impose punishment of dismissal, but to substitute it with that of compulsory retirement. The punishment of compulsory retirement was inflicted by protecting the petitioner's retiral dues, including his provident fund and pension. We do not think, therefore, that the bank was prejudiced, biased or proceeded by

violating the principles of natural justice.

20 In the light of the above conclusion, we do not find any merit in the contentions of Mr. Chandurkar. The writ petition fails and is dismissed.

B.P. COLABAWALLA, J. ***S.C. DHARMADHIKARI, J.***