

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.4318 OF 2015**

Shri Ramesh Yeshwantrao Mali

...Petitioner

vs

The Kagal Co-op. Bank Ltd.

Through the Chief Executive Officer Kagal,
Dist. Kolhapur.

...Respondent

.....

Mr. Vidyasagar Kamble, for the Petitioner.

Mr. Kiran Bapat, i/b. M/s. Desai & Desai Associates, for Respondent
No.1.

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CORAM : S.C. GUPTE, J.**DATED: MAY 3, 2016****P.C.:**

. Heard learned Counsel for the parties. The petition challenges an order of dismissal passed by the Industrial Court at Kolhapur in a complaint filed under Section 28, read with Item No.9 of Schedule 4 of the MRTU & PULP Act, 1971.

2. The case of the Petitioner in brief is that the Petitioner was working with the Respondent Bank as a Clerk, having joined the services in the year 1985. The Petitioner claims to have been transferred by the Respondent Bank to its Shahu Sakhar Karkhana Branch at Kagal and that, during his tenure at this Branch, he was given an out- duty work, such as liaison with DDR Co-operative Department, Kolhapur, Reserve

Bank of India at Mumbai and with various institutes and Government Offices. It is his case that during his tenure at Shahu Sakhar Karkhana Branch, he was virtually on an out-duty work and hence, he was not shown as present at the Branch. It is his claim that the Respondent Bank did not pay any wages to him from the year 2001. He claims to have submitted his resignation to the Bank on 15 September 2005, which resignation was accepted and upon which, he was relieved from duty by the Respondent Bank. It was the complaint of the Petitioner before the Industrial Court at Kolhapur under Section 28, read with Item 9 of Schedule IV of the MRTU & PULP Act that his wages, for the period from November 2001 till his resignation on 15 September 2005, were not paid. It was also his complaint that he was not paid retirement benefits, such as gratuity and provident fund, taking into account his services from 2001 to 2005.

3. The Industrial Court, after allowing the parties to lead evidence, both oral and documentary, found that the complaint was, in the first place, vague. There was no pleading on the part of the Petitioner as to when and from which place he was transferred to Shahu Sakhar Karkhana Branch of the Respondent Bank. Secondly, the Court found that there were no particulars of any work given by the Respondent Bank to the Petitioner during his purported tenure with Shahu Sakhar Karkhana Branch. The Court noted that there was no record whatsoever concerning the so called out-duty work, which the Petitioner claims to have performed for the Bank. There was no claim at any time for any travelling allowance, dearness allowance or any travelling bill. The Court also found it odd that the Petitioner kept quiet

when he was on out-duty on every single day during November 2001 and October 2004, but each day he was shown absent on the muster roll. The Court also took into account the admitted fact that the Petitioner actually worked as a Councillor with the Municipal Council of Kagal during 2001-2006. The Court noticed that the Respondent Bank for the period of November 2001 onwards throughout showed him absent in the salary sheets. In the face of this documentary and oral evidence before the Court, the Court found that the Petitioner had failed to establish any unfair labour practice on the part of the Respondent Bank.

4. The conclusion drawn by the Industrial Court, on the basis of material before it, is a possible conclusion, which is supported by evidence on record. There is no relevant material, which is disregarded by the Industrial Court whilst arriving at the conclusion. So also, there is no irrelevant material, which is considered by the Industrial Court in reaching its conclusion. The conclusion is such as a reasonable person properly instructed in law could have legitimately arrived at on the basis of the material produced before him.

5. Learned Counsel for the Petitioner submitted that the Respondent Bank ought to have been directed to produce its muster register/roll on record, which alone could establish whether or not the Petitioner was absent during the period 2001 and 2005, as claimed by the Respondent Bank. The argument does not hold any water. The complaint itself is on the footing that the Petitioner was shown absent in the muster roll of the Respondent Bank. If that is the Petitioner's own

case, there is no point in ascertaining absence on production of the muster roll.

6. In sum, there is no merit in the challenge to the impugned order. The writ petition is, accordingly, dismissed. No order as to costs.

(S.C. GUPTE, J.)