

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4156 OF 1998

Shivaji Bhimrao Kendre,
Age 52 years, Occ. Nil
r/o at post Mala Koli,
Taluka Loha, Dist. Nanded.

..Petitioner

Versus

The Nanded District Central
Cooperative Bank Limited,
Head Office, Station Road,
Nanded through it's
Managing Director, Nanded.

..Respondent

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Advocate for Petitioner : Shri Mundhe Subhash V.
Advocate for Respondent : Shri Suryawanshi Kamlakar J.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: June 22, 2017

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ORAL JUDGMENT :-

1. Both the learned Advocates have no objection, if this Court hears this matter.

2. The petitioner is aggrieved by the judgment of the Industrial Court dated 5.2.1998, by which, Revision (ULP) No. 52 of 1995 filed by the respondent / Bank has been allowed and the judgment of the Labour Court dated 30.6.1995 in Complaint (ULP) No.92 of 1993 has been quashed and set aside.

3. Shri Mundhe, learned Advocate for the petitioner / employee strenuously submits that though he was charged with having committed major misconducts vide charge sheet dated 2.4.1992, the charge of mis-appropriation was never levelled upon him. The description of the three charges in the charge sheet may appear to be grave. However, if the charges are minutely scanned, it is apparent that due to heavy flow of work and a busy schedule, certain cheques which were stale, were inadvertently cleared and payments were made. He was, however, not the only person involved since clearing of a cheque by the Clerk or Cashier ultimately reaches the table of the Branch Manager.

4. Under the first charge, some cheques are said to have been passed and under the second charge a stale cheque has been passed and under the third charge, some cheques have been cleared though there were no funds in the drawers' accounts.

5. He has then drawn my attention to the fifteen grounds raised in the memo of the petition. He has also placed before the Court the synoptical notes dated 18.4.2017 and has

canvassed at length that no charge has been proved against the petitioner. He has further stated that the petitioner has put in 22 years of unblemished service and all his retiral benefits have been taken away on account of the impugned dismissal dated 2.7.1993.

6. He further submits that the Labour Court, by judgment dated 30.6.1995, had allowed Complaint (ULP) No.92 of 1993, filed by the petitioner and after concluding that the petitioner is guilty of negligence, had reduced the punishment from dismissal to demotion to the lower post for a period of two years. He, therefore, submits that the impugned judgment of the Industrial Court deserves to be quashed and set aside.

7. The learned counsel for the respondent submits that the Standing Orders applicable to the Bank do not specifically use the word 'misappropriation'. This impression has to be inferred after considering the charges that are held to be proved against the petitioner. Under the first charge, the petitioner had prepared cheques in the names of those agriculturists, who had not actually been involved in the sale of cotton with the Kandhar Taluka Sahakari Kharedi Vikri Sangh Limited (Cotton Division). Without confirming the list of

agriculturists and the actual amounts to be paid, larger amounts were mentioned in the cheques and those agriculturists benefited from such excess payment. It has to be inferred as to why the petitioner has illegally obliged such Cotton Growers by giving them excess payments.

8. He then submits that charge Nos.2 and 3 were with regard to clearing stale cheques, which is also impermissible in law. The Reserve Bank of India Guidelines would not permit such transactions and eventually, it would be the Bank which would suffer serious action, which could be initiated by the appropriate authorities.

9. Upon considering the submissions of the learned Advocates, I find that the Labour Court has declared the findings of the Enquiry Officer as partly perverse with regard to the first charge, which is more serious i.e. with regard to the making of excess payment in reference to bogus cheques and Cotton Growers being unduly benefited out of such acts. Though the entire record of the actual payments to be made and the actual amounts mentioned in the cheques were before the Enquiry Officer as well as the Labour Court, a conclusion has been drawn by the Labour Court that as

clearing of such cheques was not exclusively within the job profile of the petitioner, the said charge cannot be said to be true.

10. This conclusion is apparently unsustainable since in service jurisprudence, the charges can be proved on the preponderance on the principles of probabilities. Though it may not exclusively be a duty of the petitioner to scrutinize the actual payments to be made and the amounts to be written on the cheques, it is not disputed that he had prepared such cheques, which were forwarded to the higher authorities for signature and clearing. Considering the heavy work in the Bank, it cannot be ruled out that the superior authorities, who most of the times depend upon the ground work performed by the employees like the petitioner, have lost sight of such acts. In this backdrop, the Industrial Court has rightly concluded that the first charge set aside by the Labour Court, is an erroneous conclusion.

11. In so far as the second and third charges are concerned, regarding clearing of stale cheques, it is an open and shut case since the dates on the cheques and the presentation of the cheques for crediting indicated that they were sought to be credited beyond six months as was then permissible.

12. Considering the above, I do not find that the impugned judgment of the Industrial Court would be termed as being perverse or erroneous. This petition being devoid of merits is, therefore, dismissed.

13. Rule is discharged.

14. At this stage, learned Advocate or the petitioner submits that his retiral benefits are lying with the respondent. On this count, I leave it open to the petitioner to approach the respondent / Bank and in which case, the respondent would consider the claims of the petitioner as regards retiral benefits in accordance with Rules and provisions and would take a decision, to be communicated to the petitioner within a period of eight weeks from the date of any representation.

(RAVINDRA V. GHUGE, J.)

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