

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 3445 of 2008

Nagorao S/o Kamaji Bamne,
age 56 years occupation service
R/o Chincholi Mali Taluka Kaij District Beed.

...PETITIONER.

VERSUS

1. Maharashtra Gramin Bank,
Nanded,
through its Chairman
at present Nanded.
2. The Disciplinary Authority & Chairman,
Maharashtra Gramin Bank,
Nanded.
3. The Senior Manager,
Maharashtra Gramin Bank,
Nanded.

...RESPONDENTS

Mr S.V. Kurundkar, Advocate for petitioner.
Mr M.M. Patil (Beedkar), for respondents

CORAM : P.B. VARALE, AND
SUNIL K. KOTWAL, JJ.

DATE : 7th December 2017

ORAL ORDER :

Heard Mr Kurundkar, learned Counsel appearing for
petitioner.

2. The petitioner is before this Court challenging the orders

dated 27th November 2006 passed by respondent No.2 i.e. Disciplinary Authority and a communication/letter dated 1st August 2007 issued by respondent No.3 i.e. Senior Manager, Maharashtra Gramin Bank, Nanded.

3. Though Mr Kurundkar, learned Counsel, made a detail reference to the documents placed on record to submit that the orders impugned in the petition are clearly unsustainable. The thrust of submission of Mr Kurundkar is that the communication dated 1st August 2007 thereby reducing the punishment awarded to the petitioner, is unsustainable on the ground that no reasons are assigned in the order. He submitted that similar is the case in order dated 27th November 2006. The Disciplinary Authority passing a reference that on careful consideration, the order is passed. Submission of Mr Kurundkar learned Counsel, is that these Authorities passing orders prejudicial to the interest of the petitioner, who is an employee, ought to have assigned reasons, so that the petitioner could have availed the appropriate remedies. Such an exercise of passing order without assigning reasons is time and again subjected to a criticism in the judgments of this Court as well as the Hon'ble Apex Court. Mr Kurundkar then submits that in nearly identical situation, the Division Bench of this Court in the judgment and order dated 11th August 2017 in Writ Petition No. 2764 of 2006,

elaborately dealt with the issue. Mr Kurundkar then submitted that the Authorities, namely, respondents No.2 and 3, are not supposed to pass order either mechanically or casually. Order must reflect the reasons. The reasons should show that there is an application of mind. Failure of such application of mind or failure in assigning the reasons make order the non-est.

4. Mr Beedkar, learned Counsel appearing for the respondents, though made an attempt to submit before us that the Authorities passed the orders in view of the prevailing rules, we are unable to accept the submission of Mr Beedkar for the simple reason that these orders clearly failed to assign any reason, least to say appreciation of the material on the backdrop of so called prevailing Rules.

5. Mr Kurundkar was justified in placing heavy reliance on the judgment of this Court in Writ Petition No. 2764 of 2006. In Writ Petition No. 2764 of 2006 also the Disciplinary Authority passed an order of reduction of three times in pay scale as well as reduction to lower stage of pay in the time scale. Then the appeal of the petitioner was kept before the Board of Directors and communication was forwarded to the petitioner to the effect that appeal was considered, and after discussion, the Board resolved to reduce the payment by bringing down basic pay in the time scale. In Writ

Petition No. 2764 of 2006, one more ground was raised by the petitioner and that was breach of principles of natural justice. It was submitted that no opportunity of hearing was granted to the petitioner. In the present case, Mr Kurundkar fairly submitted that petitioner was afforded opportunity of hearing but even application of mind of the Authority of hearing of the petitioner is not reflected in the order. As such, hearing of the petitioner before the Authority was clearly an empty formality. The Division Bench of this Court while considering the aspects, namely, failure of principles of natural justice and unreasoned order, also considered the Rules and Regulations and reference is made to Regulation No. 47 of the Marathwada Gramin Bank Officers and Employees Service Regulations 2001 in the judgment and order.

6. The learned Counsel for the petitioner relied on the judgment of the Full Bench of this Court in the case of **Anil Amrut Atre Vs. District and Sessions Judge, Aurangabad {2002 (3) Mh.L.J. 750}**. It would be useful to refer to these observations and the the same reads thus:

*“13. The learned counsel for the petitioner placed reliance on the judgment of the Full Bench of this Court in the case of **Anil Amrut Atre Vs. District and Sessions Judge, Aurangabad, reported as 2002(3) Mh.L.J. 750** and in particular on paragraphs 23, 26 and*

31. He submits that Rule 23(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979 which is in pari materia with Regulation 47 of the Regulations 2001 has been considered by the Full Bench of this Court and has held that the expression "consider" will include within its sweep application of mind, personal hearing and recording of reasons. He submits that the appellate authority was not only bound to render hearing to the petitioner but was also bound to provide reasoned order to the petitioner."

7. A conjoint reading of the Regulations and the the judgment in the case of **Anil Amrut Atre**, cited supra, resulted in allowing the petition by the Division Bench of this Court. This Court, in the result, quashed and set aside the communication impugned in the petition and allowed petition by making Rule absolute. That was about opportunity of hearing. There is no reason to take other view than the view adopted by the Division Bench in the judgment and order dated 11th August 2017.

8. The impugned order dated 27th November 2006 passed by respondent No.2 i.e. Disciplinary Authority and a communication/letter dated 1st August 2007 is quashed and set aside.

9. The Appellate Authority by granting afresh opportunity of hearing to the petitioner shall pass a reasoned order after

considering the material on record, and if any oral or written submissions are made by the petitioner, the same be taken into consideration while passing order afresh.

10. It is made clear that this Court has not expressed any view on merit of the matter, including quantum of punishment inflicted by the Appellate Authority, in the impugned order.

11. The Appellate Authority shall pass order afresh within three months from the date of receipt of the authenticated copy of this order.

12. The Appellate Authority shall furnish a copy of the reasoned order to the petitioner within four weeks from the date of passing of such order.

13. Petitioner is directed to inform his present address to the Appellate Authority for the purpose of communication and for compliance of this order, within two weeks from today.

14. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

15. The parties and the Appellate Authority to act on the authenticated copy of this order.

(SUNIL K. KOTWAL)
JUDGE.

(P.B. VARALE)
JUDGE.

pjm