

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

WRIT PETITION NO. 1087 OF 2014

1. Administrator/Manager
The Chalisgaon Peoples
Co-op. Bank Limited,
Chalisgaon, Dist. Jalgaon.
 2. The Chief Executive Officer,
The Chalisgaon Peoples
Co-op. Bank Limited,
Chalisgaon, Dist. Jalgaon.
 3. Shri R. R. Patil Liquidator,
The Chalisgaon Peoples
Co-op. Bank Limited,
Chalisgaon, Dist. Jalgaon.
 4. Shri Vilas Sadashiv Rawate,
Liquidator,
The Chalisgaon Peoples
Co-op. Bank Limited,
Chalisgaon, Dist. Jalgaon,
Bhadgaon Road, Near Jayshankar
Nagar, Chalisgaon-Dist. Jalgaon.
 5. Shri Chindhu Namdeo Mahajan,
Liquidator,
The Chalisgaon Peoples
Co-op. Bank Limited,
Chalisgaon, Dist. Jalgaon,
At Post Patonda,
Taluka Chalisgaon,
Dist-Jalgaon.
- .. Petitioners

(The petitioner No. 5 Deceased)

Versus

Subhash Nemichand Bora,
Age – Major, Occu. - Nil,
R/o – Near Matoshri Hospital,

Laxmi Nagar, Chalisgaon,
District : Jalgaon.

.. Respondent

Shri Pramod S. Gaikwad, Advocate for the Petitioners.
Shri P. R. Katneshwarkar, Advocate h/f Shri S. R. Andhale,
Advocate for the Respondent.

**WITH
WRIT PETITION NO. 8880 OF 2016**

1. The Chalisgaon Peoples
Co-operative Bank Limited,
Chalisgaon, Dist-Jalgaon.
Through its Liquidator,
R. R. Patil.
2. The Liquidator,
The Chalisgaon Peoples
Co-op. Bank Limited,
Chalisgaon, Dist. Jalgaon.
Shri Vilash Sadashiv Ravate,
3. The Chalisgaon Peoples
Co-op. Bank Limited,
Chalisgaon, Dist. Jalgaon.
Through its Chief Executive Officer. .. Petitioners

Versus

Subhash Nemichand Bora,
Age – Major, Occu. - Nil,
R/o – Near Matoshri Hospital,
Laxmi Nagar, Chalisgaon,
District : Jalgaon.

.. Respondent

Shri Pramod S. Gaikwad, Advocate for the Petitioners.
Shri P. R. Katneshwarkar, Advocate h/f Shri S. R. Andhale,
Advocate for the Respondent.

**CORAM : SANDEEP V. MARNE, J.
DATE : 19TH DECEMBER, 2022.**

ORAL JUDGMENT :

. In Writ Petition No. 1087 of 2014, petitioners challenge judgment and order dated 14th March, 2013 passed by the Industrial Court, Jalgaon in Complaint ULP No. 47 of 2007, which was filed by the respondent challenging charge sheet, proceedings and conclusions in the domestic enquiry, order dated 10.02.2006 and seeking various monetary benefits arising out of service of the respondent with the petitioner-bank.

2. In Writ Petition No. 8880 of 2016, petitioners challenge judgment and order dated 27th September, 2013 passed by the Industrial Court, Jalgaon dismissing Revision ULP No. 63 of 2012 and Revision ULP No. 71 of 2012 and thereby confirming judgment and order dated 23rd April, 2012 passed by the Labour Court, Jalgaon. By its judgment and order dated 23rd April, 2012, the Labour Court has held the decision to terminate the services of the respondent to be illegal and has directed his services from 11.10.2005 to be considered as continuous upto 21.02.2009 along with backwages.

3. It must be observed at the outset that though the employee (respondent) in both the petition is same, the subject matter of issue in both the proceedings is entirely different. Writ Petition No. 1087 of 2014 essentially arises out of the domestic enquiry conducted against the respondent, whereas Writ Petition No. 8880 of 2016 arises out of the alleged termination of services of the respondent on account of liquidation of petitioner-bank. However, since the petitioner-bank has already been liquidated and now appears to be an empty shell, I have proceeded to hear

both petitions together so as to put an end to the entire controversy considering advanced age of the respondent.

4. So far as Writ Petition No. 1087 of 2014 is concerned, the Industrial Court has held that the departmental enquiry conducted against the respondent as illegal and has set aside the findings of the enquiry officer as perverse. Such directions issued by the Industrial Court, in my view are totally erroneous in that the domestic enquiry is yet to be taken to its logical end by passing final order of punishment. What prompted the respondent to approach Industrial Court by filing Complaint ULP No. 47 of 2007 was essentially the order dated 10th February, 2006, which imposed various conditions detrimental to the interest of the respondent while reinstating him. While going into the issue of legality of the order dated 10.02.2006, the Industrial Court went into the issue of validity of the enquiry conducted against the respondent and the findings recorded by the enquiry officer. No doubt this was done in pursuance of specific prayers made in the complaint. However, in my view no cause of action arose in favour of the respondent to approach the Industrial Court challenging the findings of the enquiry officer before conclusion of the disciplinary proceedings. Therefore, in my view the direction issued by the Industrial Court holding departmental enquiry to be illegal and findings of the enquiry officer as perverse are clearly erroneous.

5. So far as the order dated 10.02.2006 is concerned, respondent came to be reinstated in service by revoking his suspension by that order. However, the order further recorded finding of guilt in respect of charge, denied subsistence

allowance during the period of suspension, denied increments for two years and reverted the respondent from the post of cashier to that of clerk. In my view, the said order dated 10.02.2006 was preposterous to the least. While revoking suspension, there was not occasion to the petitioner-bank to inflict penalty of reversion of the respondent, deny increments and payment of subsistence allowance. Payment of subsistence allowance during suspension is a right of an employee and the same could not have been denied.

6. So far as Writ Petition No. 8880 of 2016 is concerned, the petitioner-bank had terminated the services of the respondent essentially on the ground of its liquidation. Learned counsel for petitioners has submitted that it is not only the respondent, but services of all the employees came to be terminated. Learned counsel for respondent would submit that while the others were extended compensation package, the respondent was denied any compensation while unceremoniously throwing him out of service. The Labour Court has set aside the termination and extended the benefit of backwages and continuity. The respondent has otherwise reached the age of superannuation in the year 2013. Contemporaneously, the bank itself has gone under the liquidation.

7. Considering above circumstances, in my view, neither the enquiry can be remanded back for taking the same to its logical conclusion, nor services of the petitioner can be reinstated. The petitioner-bank is also under liquidation, who is short of resources to satisfy the entire claim of backwages, if any. This Court by its order dated 25.02.2014 had directed the petitioner-

bank to deposit an amount of Rs. 9,26,847/- in this Court, which has been deposited. By order dated 26.09.2014, this Court permitted the respondent to withdraw an amount of Rs. 3,00,000/- subject to various conditions and the amount has been withdrawn.

8. In this view of the matter, ends of justice would meet if both the petitions are disposed of by holding the respondent entitled to the amount of compensation of Rs. 9,26,847/- as a full and final settlement in respect of his claims with the petitioner-bank.

9. Accordingly, writ petitions are disposed of with liberty to the respondent to withdraw the balance amount of Rs. 6,26,847/- (Rs. Six Lacs Twenty Six Thousands Eight hundred Forty Seven only) from this Court along with accrued interest. If any interest has accrued on withdrawn amount of Rs. 3,00,000/-, same shall also be paid to the respondent. The respondent shall not have any claim against the petitioner-bank in respect of his services. There shall be no order as to costs.

Rule discharged.

[SANDEEP V. MARNE, J.]

bsb/Dec. 22