

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11309 OF 2016

Sachin Vitthalrao Kumkar,
Age-35 years, Occu-Nil,
R/o Ganesh Nagar, Behind Old S.P.
Office, Beed, Dist.Beed

– PETITIONER

VERSUS

1. The Chairman / Administrative,
The Beed District Central Co.op.
Bank Ltd., Beed, Dist.Beed,

2. The Chief Executive Officer,
The Beed District Central Co.op.
Bank Ltd., Beed, Dist.Beed

– RESPONDENTS

Mr.N.L.Dhoble, Advocate for the petitioner.
Mr.V.N.Upadhye, Advocate for respondent Nos.1 & 2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/01/2017

ORAL JUDGMENT :

1. Learned Advocates for the respective sides submit that they have no objection if this matter is heard and decided by this Court.

2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3. I have considered the strenuous submissions of Mr.Dhoble,

learned Advocate for the petitioner and Mr.Upadhye, learned Advocate for the respondents.

4. The petitioner is aggrieved by the order dated 03/09/2013 delivered by the Labour Court by which the domestic enquiry conducted against the petitioner has been held to be fair and proper and the findings of the Enquiry Officer are sustained.

5. Similarly, the petitioner is aggrieved by the judgment of the Industrial Court dated 03/09/2016 by which Revision (ULP) No.67/2014 filed by the petitioner has been dismissed.

6. The thrust of the petitioner's submission is that the enquiry proceedings were conducted in one day, procedure of the enquiry was not explained and reasonable opportunity of defending himself was not granted. He was assured that the enquiry is a formality and no adverse action would be taken against the petitioner. The Enquiry Officer was Advocate of the respondent/Bank and has not conducted the enquiry fairly. The enquiry is vitiated as it has been conducted in undue haste and in utter violation of the principles of the natural justice.

7. I find from the record that the petitioner was charged with having misappropriated Rs.2,57,500/-. He was served with a charge sheet and after receiving his reply, an enquiry was initiated. He participated in the enquiry.

8. It is revealed that the petitioner did not raise any objection to the appointment of the Enquiry Officer. He stated that he would defend himself in the enquiry. The respondent examined one witness on 25/09/2010. The petitioner cross-examined the said witness and did not seek an adjournment. Thereafter, the petitioner led his oral evidence. He did not seek an adjournment for preparing his evidence. He was cross-examined. He did not file an application praying for examining more witnesses.

9. The petitioner was a cashier with the respondent/Bank and is an educated Officer. He initially joined as a Peon in 1999 and then promoted as a clerk and subsequently as a Cashier.

10. In his cross examination before the Labour Court on the first 2 issues, he has stated that, *"The bank has not ordered me in writing to deposit the amount of advice. I have deposited the amount of advice with interest in the bank. I have not demanded the documents from*

the bank or the witness list in writing. N.M.Kulkarni was initially appointed as a Clerk and then after he was promoted as a Manager so according to me, he was not competent to appoint as a Enquiry Officer.”

11. It is further admitted that he had not lodged any objection about the Enquiry Officer having purportedly obtained his signatures forcefully on the enquiry papers.

12. It appears from the record that the petitioner had retained an amount of Rs.2,57,500/- for a period of about 7 months with him, unauthorizedly. He has subsequently deposited the amount with interest. This aspect has been recorded by the Enquiry Officer in its findings.

13. The Hon'ble apex Court in the matter of State Bank of Patiala and others Vs. S.K.Sharma, reported at [AIR 1996 SC 1669] has concluded that any deviation from the procedural rights cannot be a ground for setting aside an enquiry. Unless substantive rights are violated, an enquiry should not be declared as vitiated. In the instant case, the petitioner has not sought an adjournment at any stage in the enquiry, has not objected to the appointment of the

Enquiry Officer and did not apply for leave to examine further witnesses on the subsequent date.

14. In this backdrop, merely because the enquiry was conducted in one day, would not vitiate the enquiry. Circumstances emerging from the enquiry are to be seen and analyzed in order to conclude that the principles of natural justice have been violated and despite requests from the charge sheeted workmen, no adjournment is granted and he is forced to participate in a enquiry in a single day by rejecting his requests for adjournment. If such factors are visible, an enquiry could be vitiated under Item 1(f) of Schedule IV of the MRTU and PULP Act, 1971.

15. The petitioner has admitted before the Labour Court in his cross examination that he had retained the amount with him which he has subsequently deposited alongwith interest. The aspect as to whether he voluntarily deposited the amount with interest or not, can be considered to judge his bonafides while deciding the proportionality of the punishment which stage is yet to be completed by the Labour Court. In this backdrop, the conclusion of the Enquiry Officer cannot be faulted.

16. Considering the above, I do not find that the Labour Court and the Industrial Court have erred in arriving at their conclusions in the impugned orders. This petition, being devoid of merit, is therefore dismissed. Rule is discharged.

17. Needless to state, the Labour Court is expected to decide the issue of proportionality of the punishment strictly in accordance with the standing orders applicable, the gravity of the misconduct and the past service record of the petitioner.

(RAVINDRA V. GHUGE, J.)