

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

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WRIT PETITION NO. 5050 OF 2017

VITTHAL LAXMAN UMAP

VERSUS

THE AHMEDNAGAR DISTRICT CENTRAL CO-
OPERATIVE BANK LTD THROUGH ITS MANAGING
DIRECTOR

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Advocate for Petitioner : Mr Shelke Avishkar S.
Advocate for Respondents : Mr Gaware Niteen V.

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CORAM : V.K. JADHAV, J.

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Reserved on : February 08, 2018
Pronounced on : February 21, 2018.

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COURT'S ORDER :-

1. Heard finally with consent at admission stage.
2. By this writ petition, the petitioner is challenging the judgment and order dated 6.12.2012 and 13.5.2015 passed by 2nd Labour Court, Ahmednagar, in complaint (ULP) No.40/2010 as well as the impugned judgment and order dated 3.2.2017 passed by the learned Member, Industrial Court, at Ahmednagar, in Revision Application (ULP) No.21/2015.
3. Brief facts, giving rise to the present writ petition

are as under :-

a] The petitioner was appointed as a driver on the establishment of respondent since 1991. On 3.4.2010 one another vehicle of respondent Bank was break down at village Neera, Tq. Baramati, District Pune. One Mr. B.T.Karande was the driver on the said vehicle. Thus, the petitioner was sent alongwith another vehicle to the said village to bring the said vehicle. Accordingly, the complainant fixed the said break down vehicle with the another vehicle which he had carried to the said village and started proceeding. On way, within the limits of village Kedgaon, due to some steering problem, the vehicle met with an accident. In consequence of which, both the vehicles fallen into a road side ditch. After the said incident, respondent bank had passed an order of suspension of the petitioner vide order dated 13.4.2010 and also issued a show cause notice dated 3.5.2010 calling upon explanation of the petitioner as to why domestic enquiry should not be initiated against him. The petitioner had duly replied the said notice vide letter dated 6.5.2010. The petitioner was however served with the charge sheet dated 10.5.2010 leveling as many as

five charges against the petitioner as per the relevant standing orders of the bank. Respondent Bank has also appointed the Standing Counsel as well as the legal advisor as enquiry officer. On the basis of the oral and documentary evidence placed on record, the enquiry officer submitted his report dated 26.7.2010 holding that all the charges levelled against the petitioner are proved. Thus, the petitioner was called upon to file his say. The petitioner had submitted a letter dated 31.7.2010 to the respondent bank contending therein that he does not wish to add anything more. Respondent Bank by order dated 6.8.2009 issued order of dismissal of the petitioner from service.

b] In the backdrop of the aforesaid facts and circumstances, the petitioner has approached the Labour court, Ahmednagar by filing the complaint U.L.P. 40/2010 raising several challenges. Respondent Bank has also appeared in the said complaint and filed say denying all the allegations about unfair labour practice. The learned Judge, Labour Court, Ahmednagar has framed preliminary issue as to “Whether the domestic

enquiry held against the applicant is illegal, in violation of the principles of natural justice and whether findings recorded by the enquiry officer are perverse?” By order dated 6.12.2012, the learned Judge of the Labour Court has held that inquiry is fair, proper and in consonance with the principles of natural justice and further the findings recorded by the enquiry Officer are not perverse. By judgment and order dated 17.10.2013 the learned Judge of the Labour Court, Aurangabad, has dismissed the complaint.

c] Being aggrieved and dissatisfied with the judgment and order dated 6.12.2012 and 17.10.2013, the petitioner has preferred revision ULP No.54/2013 before the learned Industrial Court, Ahmednagar and the learned Member, Industrial Court, by its impugned judgment and order dated 29.11.2014 partly allowed the revision and set aside the final judgment and order passed by the Labour Court dated 17.10.2013. The matter was remitted back to the Labour Court for deciding afresh on the point of punishment. On remand, the Labour Court, Ahmednagar, by judgment and order dated

13.5.2015 dismissed the complaint (ULP) No.40/2010 holding that the petitioner has failed to prove that respondent Bank awarded shockingly disproportionate punishment by making discrimination. Being aggrieved and dissatisfied with the said order, petitioner again preferred revision application (ULP) No.21/2015 before the learned Member, Industrial Court, Ahmednagar, and the learned Member, Industrial Court, Ahmednagar, by impugned judgment and order dated 3.2.2017 dismissed the said revision. Hence, this writ petition.

4. Learned counsel for the petitioner submits that, the learned Judge of the labour court failed to appreciate the documentary evidence placed on record in its proper perspective and recorded the perverse findings caused in miscarriage of justice. Learned Judge of the Labour Court has not considered that impugned order of dismissal is shockingly disproportionate to the misconduct alleged to be proved against the petitioner. Learned counsel submits that, impugned order of dismissal is by way of victimization and not in good faith, but in colourable exercise of the

employer's right. Learned counsel submits that, another driver Shri B.T. Karande who also alleged to be responsible for the said accident was also issued charge sheet leveling similar charges and domestic inquiry was also held against him. Enquiry officer vide his report dated 27.7.2010 held that charges against Shri B.T. Karande are partly proved. Accordingly, respondent Bank vide order dated 6.8.2010 passed the order of punishment of stoppage of one increment for the year 2010-2011. Learned counsel submits that, both the courts below have failed to appreciate that respondent Bank awarded shockingly disproportionate punishment by making discrimination. Learned counsel submits that, the petitioner belongs to the Scheduled caste and since from his initial appointment, till the impugned order of dismissal, service rendered by the petitioner was continuous, clean and unblemished. Learned counsel submits that, in order to get rid of the petitioner from service, the allegations of use of abusive language under the influence of liquor came to be levelled against the petitioner. In fact, the petitioner was abused by referring his caste. Learned counsel submits that, even

if allegations of using abusive language said to have been proved, punishment of dismissal is shockingly disproportionate to the alleged misconduct. Learned counsel submits that, enquiry was not conducted in fair and proper manner and enquiry officer has submitted his report only to favour respondent Bank and the petitioner was not given fair opportunity to submit his explanation to the findings recorded by the enquiry officer. In the alternate, learned counsel submits that, the quantum of punishment which is disproportionate to the alleged misconduct may be considered favorably.

5. Learned counsel for the petitioner, in order to substantiate his contentions placed his reliance on following cases :-

1. Ram Kishan Vs. Union of India reported in 1996 AIR (SC) 255.
2. Jai Bhagwan Vs. Commissioner of Police and others reported in AIR 2013 SC 2908.
3. Union of India, Rep. By the Secretary, the Director General (Labour Welfare) and Appellate Authority Government of India and the Welfare Commissioner and Disciplinary Authority Labour Welfare Organization Vs. Smt. J. Revathi, reported in MANU/KA/2852/2013 (WP No.25846/2013 decided on 27.11.2013.)

4. Ranjit Thakur Vs. Union of India and others reported in (1987) 4 Supreme Court Cases 611.
 5. A. K. Saxena Vs. State Bank of Patiala and others reported in (2016)11 Supreme Court Cases 289.
6. Learned counsel for respondent/Bank submitted that, the petitioner has committed serious misconduct and therefore, as per the model standing orders and rules domestic enquiry was conducted against him. In the said domestic inquiry all reasonable opportunities to defend his case before the enquiry officer were given to the petitioner. He was also given an opportunity to appoint the defence representative. Copies of all the documents were supplied to him. The petitioner and his defence representative were participated in the enquiry proceedings and, even his defence representative conducted cross examination of the witness examined on behalf of the respondent bank. Even the petitioner was given an opportunity to give his defence evidence. After conclusion of the enquiry, enquiry officer submitted the report in which he held that charges have been duly proved. Thereafter, final show cause notice

was issued to the petitioner. After considering the serious misconduct, the respondent bank has terminated his services. The punishment imposed on him is just, legal and proper. Respondent bank has not made any discrimination on the basis of any other factors. Learned counsel submits that, charges levelled as against another driver Shri B.T.Karande and charges levelled on the complainant/petitioner were different. Learned counsel submits that, on 7.4.2010 petitioner in a drunken state at about 5.30 p.m. went to the Head Office of respondent bank and asked Shri P.B. Khisti, Deputy Manager (Administration) to return the report of the accident. He has also questioned the Deputy Manager's authority seeking explanation of the petitioner for the accident. The petitioner has questioned the Authority of Deputy Manager Shri P.B. Khisti by saying that why he has called upon the petitioner to submit explanation and issued letter to that effect, *"Whether he has applied his brain and whether he is a person competent to sit on said post."* Petitioner continued to shout loudly, rudely and used bad words and caused obstruction in the office work of

the respondent Bank. Thereafter, said Deputy manager Khisti went to the cabin of the General Manager (Personal and Administration) and informed him about the incident. At that time, present petitioner also went to the cabin of the General Manager and started using bad words. The General Manager himself tried to calm-down the petitioner, but he was not in a position to listen anything. Learned counsel submits that, in the charge sheet issued to the petitioner there are charges no.3 and 4 with regard to the aforesaid incident and those are absent in respect of the charge sheet issued to the another driver Shri B.T. Karande. Learned counsel submits that, there is no discrimination in any manner and considering serious misconduct of the petitioner questioning authority of the superiors in abusive language, respondent Bank has rightly passed the order of dismissal. Learned Member of the Industrial Court, Ahmednagar has rightly considered the same and accordingly learned Member of the Industrial Court has confirmed the judgment and order passed by the Labour Court. There is no substance in this writ petition. Writ petition is also liable to be dismissed.

7. Learned counsel for respondent Bank in order to substantiate his contentions placed his reliance on following judgments :-

1. Sahil Khan Vs.Hashmat and Company reported in 2006 (6) Bom.C.R. 243.
2. Usha M. Mahadik Vs. Parle Products Limited and another reported in 2006 (4) Bom.C.R. 436.
3. Prabhu Nagnath Surve Vs. I.B.P. Company Limited and another reported in 2006 (Supp.1) Bom.C.R.345.

8. On careful perusal of the impugned judgment and order passed by the Labour Court as well as the learned Member of the Industrial Court, I do not find any substance in the submissions that Domestic enquiry was not conducted in a fair and proper manner and enquiry officer has submitted the report only to favour the Management. In the said domestic enquiry, it appears that, reasonable opportunity has been extended to the petitioner to defend his case. Even, he was permitted to appoint the defence representative. Copies of all the documents were submitted to him in defence. The petitioner and his defence representative are participated in the proceedings and also subjected to

cross examination the witness of the bank at length. Even, the petitioner was again given opportunity to lead his defence witness/evidence. After conclusion of the enquiry, enquiry officer has submitted his report, in which he has held that charges have been duly proved. Thereafter, final show cause notice was issued to the complainant alongwith copy of the findings recorded by the enquiry officer. After giving an opportunity of being heard to the petitioner, respondent bank by considering serious misconduct of the petitioner has passed the order of punishment. The learned judge of the Labour Court has accordingly recorded the findings on the preliminary issues in the negative and held that, enquiry is fair, proper and in consonance with the principles of natural justice and findings recorded by the enquiry officer are not perverse. Learned Member of the Industrial Court, though, confirmed the said findings of the Labour Court, remitted the matter to the Labour Court for deciding afresh on the point of quantum of the punishment alone. I do not find any fault in the findings recorded by the Labour Court and confirmed by the Learned Member of the Industrial,

Ahmednagar Court to that extent.

9. So far as quantum of punishment is concerned, I find serious misconduct on the part of the petitioner. He has not only questioned the authority of his superiors for calling upon his explanation, but also used the abusive language. The petitioner in a loud voice and rude manner questioned the authority of Shri Khisti, the Deputy Manager (Administration) by saying that, *whether he has any brain to issue a letter to him calling upon his explanation about the accident and whether he is competent enough to sit on the said chair*. It has been specifically alleged and the same has been proved that the petitioner was under the influence of liquor at that time. Even the Deputy Manager Shri Khisti (Administration) went to the cabin of the General Manager (Personal and Administration) for informing him about said incident, petitioner followed him, went to the cabin of the General Manager and used bad words. Though, General Manager, of course, who is the most senior and superior officer present in the Bank, tried to calm-down the petitioner, however, petitioner was not in

a position to listen anybody. Said incident has been witnessed by many employees. These specific charges are not framed against another driver Mr. B T Karande. He had not used any abusive language, nor he questioned the authority of any superiors. I do not find that any discriminating treatment was given to the petitioner by considering some other factors, nor I feel that the respondent Bank has passed the said order to settle some other scores against the petitioner. The petitioner has questioned the authority of his superiors in abusive language and further made a scene in presence of other employees of the respondent bank. I do not think that, quantum of punishment is unduly harsh, and vindictive in nature.

10. In a case Ranjit Thakur Vs Union of India and others (supra) relied upon by the learned counsel for the petitioner, Supreme Court in paragraph No.25 of the judgment has made following observations :-

“25. Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction

and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. All powers have legal limits. In Council of Civil Service Unions Vs. Minister for the Civil Service Lord Diplock said :

Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case by case basis may not in course of time and further grounds. I have in mind particularly, the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic community;....”

11. In this case, the appellant (delinquent), who was in armed services had not commended himself well to

respondent no.4, who was the commanding officer of the regiment. Consequently, he was punished. He had already served a sentence of 28 days R.I. imposed on him for violating the norms for presenting representations to higher officers. While serving the said sentence, the appellant/delinquent stated to have committed another offence. Said charge was about disobeying a lawful command given by his superior officer. The appellant was directed to eat his food, which he did not do so. Consequently, a sentence of R.I. for one year was imposed and in pursuance of which the appellant was removed immediately to civil prison Tejpur to serve out the sentence. The appellant was also dismissed from the service, with the added disqualification of being declared unfit for any future civil employment. In the backdrop of these facts, the Supreme Court has observed that irrationality and perversity are recognized grounds of judicial review and held that punishment so awarded is strikingly disproportionate as to call for justify interference and the same cannot be allowed to remain uncorrected in judicial review.

12. However, the facts of the present case are altogether different and ratio laid down in the aforesaid case cannot be made applicable to the present case as a straight jacket formula.

13. In a case A.K Saxena Vs. State Bank of Patiyala and others (supra), the facts are altogether different. Though, respondent Bank of Patiyala has tried to differentiate the case of the appellant, who happened to be head cashier as against other three employees, who also involved in the fraud without knowing that it was a fraud. The Supreme Court in paragraph no.5 has made following observations :-

5. In the above factual matrix, we put query to the learned counsel for the Bank as to how the appellant alone is discriminated and dismissed from service. The learned counsel has invited our attention extensively to the evidence that appellant was the kingpin of the whole transaction, being a Head Cashier other three have only obeyed his request for consequential steps. We find it difficult to appreciate the submission in view of the factual position as noted above.

14. I do not think that aforesaid case can be made applicable to the facts and circumstances of the present

case.

15. In a case of Ram Kishan Vs. Union of India (supra), relied upon by the learned counsel for the petitioner, in the facts of the said case, in paragraph No. 11 of the judgment, the Supreme Court has made following observations :-

“11. It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of the abusive language. No straight jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.

16. In this case, the appellant has used abusive language against his superior authority. On the facts and circumstances of the case, the Supreme Court, has observed that, by an abusing language used by anybody against a superior, it must be understood in the environment in which that person is situated and

the circumstances surrounding the event that led to the use of the abusive language. No straight jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.

17. In the instant case, facts are altogether different and no straight jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service.

18. In a case of Jai Bhagwan Vs. Commissioner of Police (supra) relied upon by the learned counsel for the petitioner, the Supreme Court in paragraph no.13 of the order has made following observations :-

“13. Coming to the case at hand we are of the view that the punishment of dismissal from service for the kind of misconduct proved against the Appellant appears to us to be grossly disproportionate. There is no allegation that the Appellant had manhandled the police Inspector who had gone to check the cabin. Delay of 10 minutes in opening the cabin door, which according to the Appellant was open but had got stuck because of humidity leading to expansion of

the wooden frame, was not a matter that ought to have led to the Appellant's dismissal after he had served the police force for over 10 years. Even assuming that the version given by the Appellant was not acceptable the same did not constitute a misconduct of a kind that would justify the Appellant's dismissal from service leading to forfeiture of his past service. That the Appellant was not in uniform may also be breach of discipline calling for administrative action against him but not so severe as to throw him out of the police force. The analogy drawn by the Appellant in this case and that of Ram Kishan's case (*supra*) is not, therefore, wholly misplaced. The delinquent in that case too was charged with misbehaviour with his superior leading to his dismissal from service which was found by this Court to be disproportionate to the nature of misconduct calling for moderation.

19. Considering the facts of the case, the Supreme Court is of the view that punishment of dismissal from service for the kind of misconduct proved against the appellant appears to be grossly disproportionate.

20. In the case cited above, there are allegations like that the appellant was not in proper uniform and that though the P.I. had gone to check the cabin there was delay in opening the cabin door on the part of appellant. It is also alleged that that appellant misbehaved with

the PI who had gone to check the cabin. Thus, in the facts of the said case, the Supreme Court has interfered in the punishment imposed as against the appellant, however, facts of the instant case are altogether different.

21. In the instant case, punishment as imposed is commensurate with the misconduct of the petitioner herein. The petitioner was serving as a driver and even then, he questioned the authority of his superiors by using abusive language. He did not stop using abusive language as against the Deputy Manager of the Respondent Bank, but when the Deputy Manager of the Respondent Bank went to Higher Officer i.e. General Manager, petitioner has followed him and again continued with his abusive language even in the cabin of the General Manager. Many of the employees have witnessed said incident. I do not think that the approach of the Respondent Bank is vindictive in nature. In order to maintain the discipline and peace in establishment, the respondent Bank has passed the order of punishment proportionate to the misconduct

alleged and proved against the petitioner. I do not find any justifiable ground to interfere in the same. Resultantly, I do not find any substance in the writ petition. Hence, following order.

O R D E R

1. Writ Petition is hereby dismissed.
2. In the circumstances, there shall be no order as to costs.

sd/-

(V.K. JADHAV, J.)

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AAA/-