

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 6164 OF 2007

Shankar s/o. Bhujangrao Sudage,  
Age 50 years, Occu. Service,  
R/o. Shirur Anantpal, Taluka Shirur,  
Anantpal, District Latur.

**....Petitioner.**

**Versus**

1. The Chief General Manager  
(appellate authority)  
State Bank of India,  
Disciplinary Cell, Local Head Office,  
IInd Floor, Bandra-Kurla Complex,  
Mumbai.
2. The General Manager,  
(D & PB), State Bank of India,  
Local Head Office at  
Bandra-Kurla Complex,  
Mumbai.
3. The Deputy General Manager,  
State Bank of India (Disciplinary Authority)  
Zonal Office at N-5, CIDCO,  
Aurangabad.
4. The Assistant General Manager,  
State Bank of India,  
Region-I, Regional Office,  
New Mondha, Nanded.

**....Respondents.**

Mr. V.D. Gunale, Advocate for petitioner.

Mr. S.A. Kulkarni, Advocate for respondent Nos. 1 to 4.

**CORAM : T.V. NALAWADE AND  
SUNIL K. KOTWAL, JJ.  
DATED : FEBRUARY 14, 2018.**

**JUDGMENT : [PER T.V. NALAWADE, J.]**

- 1) The petition is filed under Article 226 of Constitution of

India for writ of certiorari, for quashing and setting aside the order made by respondent, appointing and appellate disciplinary authority against the present petitioner. Appellate authority has modified the order of penalty imposed by the lower authority of dismissal from service. Other penalty like reverting the petitioner back to the original post Clerk is imposed and some consequential orders are made. Both the sides are heard.

2) The petitioner was selected for the post of Clerk in the year 1991 in State Bank of India. He was selected from general category, though he claims that he belongs to backward class, scheduled caste. It appears that one organisation of scheduled caste of which the petitioner was member had made representation to respondent Bank. In the representation, the organisation had asked to see that the persons of backward community get the promotional posts. The respondent then allowed the petitioner to appear for departmental examination in the year 1995. In ordinary course as an open candidate, he would have been entitled to appear for the competitive examination in the year 1998 as open category candidate. The petitioner passed in the said competitive exam in the year 1995 and order of appointment also came to be issued. At the time of issuing order, it was made clear to the petitioner that his caste certificate was required to be verified through proper channel.

The petitioner did not get the verification of caste certificate. He was actually posted before getting the verification of the certificate and he worked on the promotional post. As he did not produce verification certificate, after following necessary procedure, departmental inquiry was started. There was charge that by making false representation the petitioner had made claim against reserved category post for promotion. The Inquiry Officer held him guilty and disciplinary authority imposed the penalty of dismissal from service. The order of dismissal from service was made on 18.6.2004 and it was to take effect from the date of service of penalty order. Due to this order the petitioner was rendered out of service with effect from 14.7.2004. He filed appeal before the appellate authority. After giving hearing to the petitioner, the appellate authority partly allowed the appeal and made the following order.

"Instead of 'Dismissal from Service' imposed on him by the Appointing Authority, it is accordingly decided to reinstate Shri. S.B. Sundge in the Bank's Service as per his post/position in the Bank as on 31st July, 1994, from the date of receipt of this order by him. The period of 'Dismissal from Service' in terms of order of punishment dated 18th June, 2004 till his reinstatement, is to be treated as not on duty and break in service. As such the appellate will not be eligible for or derive any benefit of whatsoever nature for such period, such as Salary, Leave, Leave

encashment, Medical facility, Pension, Gratuity, P.F., Allowance etc. The said recovery in para (c) above shall be partly appropriated from his Provident Fund from the balance in Bank's contribution and remaining amount will be recovered from Shri. Sundge before permitting him to rejoin the Bank's Service. I order accordingly."

3) It appears that the petitioner retired due to superannuation in the year 2013. For complying the aforesaid order and for getting the order of reinstatement, he deposited some amount like the amount of Rs.2.72 lakh.

4) The learned counsel for petitioner submitted that in any case, the petitioner was entitled to get the promotion as he had passed the departmental examination. It was submitted that only because the verification certificate was not available, it could not have been presumed that the petitioner was not belonging to scheduled caste. He also submitted that when the petitioner had actually worked on the promotional post, the order of the recovery of the amount which was in excess of the salary of Clerk could not have been recovered.

5) There is no force in most of aforesaid submissions made

by the learned counsel for petitioner. When admittedly he was selected as open category candidate, from that category he was not entitled to get promotion from the reservation quota even in that year. The promotional avenues could have been opened to him in the year 1998 as open category candidate, but by playing aforesaid tactics he saw that the opportunity was given to him in the year 1995. Thus, there was misrepresentation on the part of petitioner. The record is produced to show that in the year 1995, by filling form on 4.5.1995, he informed that he was belonging to scheduled caste. Further, the record shows that there was condition precedent of production of verification certificate in respect of the caste claim. Admittedly, he did not produce such certificate. It is not possible to accept the contention that the authority refused to issue such certificate to him. He could have taken steps to see that the claim was referred in any way before Caste Scrutiny Committee, but that was not done. In any case, even if that circumstance is ignored, he had deceived the employer by playing tactics. In view of these circumstances, the order of dismissal from service was made against him.

6) The order of appellate authority shows that before the appellate authority, the petitioner admitted his guilt and he prayed for lenient view. Due to that and also due to aforesaid

circumstances, the appellate authority took a lenient view and made the order of aforesaid nature.

7) It is true that in ordinary course, this Court would not have allowed the employer to recover the amount received as salary by petitioner in respect of the post on which he had actually worked. However, he had caused loss to the department by making false representation. These circumstances also could have been considered by this Court. As already amount is recovered and it was condition precedent for petitioner to get reinstatement, this Court holds that it is not possible to interfere in that part of order of appellate authority. However, the appellate authority has held that the period for which the petitioner was not in service after his dismissal viz. period between 14.7.2004 and 1.9.2006 needs to be treated as a break period. This Court holds that when reinstatement was given to him by taking lenient view and he returned back to his post as Clerk, further order like giving continuation of service atleast for the purpose of pension could have been given to him. He had not worked during that period and so, there was no question of giving any pay, salary or other allowances in respect of that period. So, this Court holds that for the purpose of pension and medical allowances this period needs to be counted. The period cannot be counted for other things which are mentioned by the appellate authority. In the

result, following order is made :-

**ORDER**

- A) The Writ Petition is partly allowed.
- B) The order of the appellate authority is modified as under :-

(I) The petitioner stands reinstated on the previous post as Clerk on 31.1.1994.

(II) The period between 14.7.2004 to 1.9.2006 and the date when he was allowed to resume the duty as Clerk by the appellate authority is to be counted for the pension purpose and for medical allowance only, but not for other purpose like provident fund, gratuity, leave and salary etc. Accordingly, the pension is to be re-fixed.

(III) The remaining reliefs are not granted to the petitioner.

Rule is made absolute in above terms.

**[SUNIL K. KOTWAL, J.]**

**[T.V. NALAWADE, J.]**

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