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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12302 OF 2017

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| 1. The Hasti Co-operative Bank Ltd.,
Dondaicha, Taluka - Shindkheda
District - Dhule
Through its General Manager | PETITIONERS |
| 2. The Hasti Co-operative Bank Ltd.,
Dondaicha, Taluka - Shindkheda
District - Dhule
Through its Chairman | |

VERSUS

Shri. Shashikant s/o Raghunath Chaudhari Age - 50 years, Occ - Service R/o Plot No. 2, Professor Colony, Dondaicha, Taluka - Shindkheda District - Dhule	RESPONDENT
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Mr. Vijay B. Patil, Advocate for the petitioners Mr. Shrikant S. Patil, Advocate for the respondent	
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 16th OCTOBER, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. The petition has been moved questioning propriety of two concurrent decisions by Labour and Industrial Courts on preliminary issues.

3. It is the case of respondent – complainant before labour court that petitioner bank is engaged in unfair labour practice referred to under Schedule – IV, under items 1 (a), (b), (d), (f) and (g) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act. Petitioner bank resisted the complaint and issues came to be framed at Exhibit-3, *inter alia* issues No. 4 and 5 were – whether complainant proves that departmental inquiry conducted by respondent is not fair, legal and proper and whether complainant proves findings recorded by the inquiry officer are perverse.

4. Labour court, under its judgment and order dated 2nd December, 2016, found that services of the respondent – complainant would be governed by Model Standing Orders, which are issued by the Government of Maharashtra for banking industry pursuant to Maharashtra Industrial Relations Act, 1947 and services of respondent – complainant would seldom be governed by rules as may have been framed by the petitioner bank and approved by the District Deputy Registrar, Co-operative Societies. The Labour Court found that provisions of Maharashtra Industrial Relations Act, are applicable to the petitioner bank and its employees and petitioner bank had been under obligation to have the certified standard orders for its rules and regulations

under section 35 of said enactment. Service rules produced by the petitioner certified by District Deputy Registrar, Co-operative Societies, is not a certification from competent authority and had found that Commissioner of Labour is the competent authority to certify the standing orders under section 35 of the Maharashtra Industrial Relations Act, 1946. The Labour Court has further observed that the government has notified Model Standing Orders for banking industry and there are specific provisions with regard to misconduct under Rule 21 of the same. Proceedings of domestic inquiry conducted by the petitioner bank are not under the provisions of these notified standing orders. It has further been considered that having regard to decision of Delhi High Court in the case of *“Rajeshwar Singh V/s Union of India and Others”*, reported in *1990 I CLR 59* charge sheet is defective and entire domestic inquiry is vitiated, may be that the respondent No. 1 had participated in domestic inquiry and an opportunity had been given to cross-examine witnesses and thus labour court considered that domestic inquiry conducted by the petitioner bank against respondent - complainant, is not just, fair and proper and findings recorded by the inquiry officer are also perverse although it may appear that the inquiry officer refers to the evidence on record.

5. Petitioner bank had been before Industrial Court against aforesaid order in revision bearing Revision Application (ULP) No. 3 of 2017 and the same as well has been dismissed by the industrial court.

6. Perusal of the decision of the revisional court would indicate that the petitioner - bank had emphasized the issue with regard to jurisdiction of the court, however, it transpired that request to hear said issue as preliminary issue had been rejected by the labour court. Said order had been subject matter of challenge before revisional court and the revisional court had dismissed the revision. In the circumstances, revisional court found that in the present proceedings, it would not be able to deal with the same in the absence of challenge to its decision passed on the same. Revisional court further has observed that section 79 (AA) of Maharashtra Co-operative Societies Act, provides for making regulations by society for carrying out business and getting approved said rules from Registrar. The court has observed that said provision does not speak of framing of service rules. The revisional court further found that state government had issued a notification on 16th October, 1981 framing Model Standing Orders for banking industry. The

standing orders had been issued under section 35 of the Maharashtra Industrial Relations Act, which provide for disciplinary action and the procedure therefor and it was thus considered that it was incumbent to conduct inquiry pursuant to the procedure prescribed under the Model Standing Orders.

7. Learned advocate for the petitioners, Mr. Vijay Patil contends that the Model Standing Orders have been issued under the provisions of Maharashtra Industrial Relations Act and the service rules as approved by District Deputy Registrar, Co-operative Societies are practically one and the same and there is hardly any difference between the two sets of rules. He submits that while the labour court has found that domestic inquiry has been conducted by following principles of natural justice and further found that the inquiry officer's report is supported by evidence, it would not be said that any particular prejudice is caused to the respondent - complainant. Since, no particular prejudice can be said to have been caused to the respondent - complainant, the inquiry cannot be faulted with for the same had been conducted pursuant to service rules and not according to Model Standing Orders. Learned advocate refers to and relies on a decision of the Supreme Court, in the case of *"Sanjay Kumar Singh V/s Union of India and Others"*, reported in *AIR 2012 SC 1783*. In the

peculiar facts of that case, the court had found that it was contended that charge sheet had not been read out to the delinquent and that the charge sheet had been sent to the delinquent. The charge sheet had been read out to them during trial and had also been sent to them before that. As such, they were fully aware of the charge sheet. In the circumstances, non reading of charge sheet while it was read out during the trial when it could be read out and no prejudice can be said to have been caused in the circumstances to the delinquents. It was in those circumstances, the court had considered that no prejudice can be said to have been caused for non reading of charge sheet, since the delinquents were made aware of contents of charge sheet much before.

8. In the circumstances, he submits that since the respondent - complainant had been charge sheeted, he has given defence in reply to the same and had participated, rules of natural justice have been duly followed. The view adopted by two courts is a technical view and, therefore, urges to indulge into the request made in the writ petition.

9. On the other hand, Mr. Shrikant Patil, learned advocate for the respondent - complainant submits that such a stand as

appearing under the submissions being taken now on behalf of the petitioners had never been a ground before any of the two courts hitherto. He submits, it may have to be noted that, respondent all along right from the beginning had been making it clear that service rules may not hold the field and situation only would be governed by Model Standing Orders, issued by government for banking industry. Despite this, according to him, domestic inquiry had been purportedly carried out forcing participation in the same. In the circumstances, whole proceedings being worked out under the service rules, while situation was to be governed by certain other set of rules had been improper. He submits that it would not be proper to say that the Model Standing Orders and the service rules are exactly the same. There are lot of differences. He, further submits that procedure as prescribed by Model Standing Orders in conduct of domestic inquiry had not been carried out. He submits that it would emerge that no show cause notice had preceded the so called intimation of charges and the same also had been composite order suspending the respondent - complainant. He submits that in the process, it emerges that no proper procedure had been followed causing breach of principles of natural justice. He further submits that while situation is governed by different

set of rules and the inquiry being conducted on altogether different set of rules, would tantamount to breach of principles of natural justice as observed in the case of *Rajeshwar Singh (supra)* referred to and relied on by two courts below. He further submits that the Supreme Court in the case of “*Cooper Engineering Limited and Others V/s). P. Munde*” reported in 1975 DGLS (soft) 285 : 1975 AIR (SC) 1900 has ruled as under:

“ 22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence. It will not be thereafter permissible in any proceeding to raise line issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication. ”

10. He further submits that it has clearly been observed by the Supreme Court, it is now up to the management to decide

whether it will adduce any evidence before labour court or not. He particularly emphasises that the Supreme Court has further observed that there will be no justification for any party to stall final adjudication of dispute by labour court by questioning its decision with regard to preliminary issue, when the matter if worthy can be agitated even after final award. He, therefore, submits that the high court should dissuade itself from interfering with order passed by labour court and confirmed by revisional court.

11. During the course of hearing, Mr. Shrikant Patil, learned advocate appearing on behalf of the respondent - complainant also adverts to that there is acceptance of the fact that Model Standing Orders issued by the State government would govern the situation. For said purpose he purports to refer to and rely on communications issued to quite a few employees in 2017, as are annexed to the affidavit in reply to the writ petition.

12. The two courts hitherto have considered that while banking industry is governed by Model Standing Orders issued by the State Government, pursuant to section 35 (5) of Maharashtra Industrial Relations Act, to proceed to conduct inquiry under service rules approved by the District Deputy Registrar, Co-operative Societies, is not proper. Revisional court has

considered that said authority is not competent authority under Maharashtra Industrial Relations Act and, as such, the proceedings would be governed by Model Standing Orders. It emerges that inquiry had not been conducted pursuant to Model Standing Orders and it is being referred to that service regulations were followed. It also appears to be contention of the respondent - complainant that managing director would not be a proper authority to pass dismissal order and according to him it would be some other authority. In the circumstances, and particularly having regard to observations as appearing in paragraph No. 22 reproduced hereinabove and two courts hitherto having concurred on that domestic inquiry would not be said to be proper, findings so recorded do not appear to be without any reason or rationale, same is with reference to the material placed on record and the rulings relied upon on behalf of the petitioners being given in different context and different set of facts, I do not think that petitioners' request would require consideration under discretionary powers of this court in writ petition. Writ petition, therefore, is not entertained and the same is dismissed. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]