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

BENCH AT AURANGABAD.

WRIT PETITION NO.1358 OF 2017

Shravan S/o Sakharam Kangude ... Petitioner.

Versus

The State of Maharashtra
and others. ... Respondents.

...

Mr.S.G.Dodya, advocate for the petitioner.
Mr.S.G.Karlekar, A.G.P. for the State.
Mr.Ruturaj C.Patil, advocate for Respondent No.2

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**CORAM : S.V.GANGAPURWALA AND
A.M. DHAVALE,JJ.**

Date : 03.05.2018.

PER COURT :

1. It is contended that petitioner is serving as a sweeper with the Respondent Bank since 9.9.1997, at Gevrai branch. In the year 2013, the petitioner was directed to attend the duties of Daftary. It was not the job of the petitioner. Learned counsel further submits that

the branch Manager of Gevrai, issued an order to the effect that the petitioner has disobeyed the office orders as the petitioner has refused to work as Daftary. The petitioner gave reply and explained his difficulty in not performing the work of Daftary. The petitioner was harassed. The petitioner was given illtreatment and mental harassment. Instead of taking any action against the Branch Manager, the petitioner was transferred from Gevrai branch to Ashti by relieving letter dated 19.7.2014. The said transfer orders were against the Rules. The petitioner had entire family to support which is residing at Gevrai. The petitioner had to take care of his mother who is always ill. The petitioner in all adverse circumstances joined his duties at the transferred place, however, salary was not been credited to the account of the petitioner though petitioner made various representations. Because of non-payment of salary, petitioner did not have the necessary funds to travel from Gevrai to Dharur to attend his duties. The petitioner, therefore, during October 2014 till December 2015 took leave on

number of occasions by written application. The salary was not released and arrears of Rs.5,50,000/- (Rupees five lac fifty thousand) were due towards the salary. The Respondent No.3 directed the head Office to stop the salary of the petitioner without any reason. The show cause notices were issued to the petitioner for unauthorised absence. The petitioner replied by giving explanation. Thereafter, on 10.5.2016, disciplinary authority issued charge-sheet. Five charges were levelled against the petitioner. However, on 17.6.2016, instead of making inquiry the Respondent No.2 ordered that the petitioner has voluntarily abandoned his post from 17.6.2016. The said letter is also published in daily newspaper Parshwabhumi dated 18.6.2016. Learned counsel submits that without conducting Departmental Inquiry, the petitioner's services has been done away with. The petitioner is a permanent employee. Written applications were given from time to time. The attitude of the Respondent is malafide. The salary of the petitioner was stopped from August 2014 and only meager amount was released and since December

2015, the salary was completely stopped. The Respondents withdrew disciplinary proceedings also. The Respondents have not followed the Rules, so also bipartite settlement dated 2.6.2005. The explanation given by the petitioner from time to time is not considered. The learned counsel relies on 8th bipartite settlement dated 2.6.2005, more particularly, clause 33.

2. Mr.Patil, learned counsel for the Respondents also relies on clause 33 of the bipartite settlement to submit that if the employee absents himself from work for a period of 90 or more consecutive days without prior sanction, the Management may give notice to the employee at his last address calling upon him to work within 30 days, failing which it will be deemed that the employee has voluntarily abandoned service. In the present case, the petitioner has absented himself from the duties. Time to time notices were given but the petitioner did not join and as such on 17.6.2016, the order was passed.

3. We have considered the submissions. Under notice dated 16.3.2016 issued by the Branch Manager of Killedharur Branch to the petitioner, it was intimated to the petitioner that the petitioner has absented himself from 24.12.2015 without permission from the competent authority. The petitioner was asked explanation about his absence and was further directed to report on duty within 30 days. On 7.4.2016, the petitioner replied the notice. Thereafter, notice dated 13.4.2016, was issued to the petitioner further calling upon the petitioner to report to the duty within 30 days from the date of the notice dated 13.4.2016. In the meantime, on 10.5.2016 revised draft charge-sheet was issued, thereby framing five charges. One of the charge is that the petitioner remained unauthorisedly absent while working at Killedharur branch. However, before the disciplinary proceedings could be culminated, the Respondents on 17.6.2016 passed an order to the effect that petitioner has abandoned his work and the post occupied by the petitioner stands vacant.

4. It would appear that the Respondents on their own volition had resorted to the disciplinary proceedings by issuing the charge-sheet and thereafter, revised draft charge-sheet thereby giving impression to the petitioner that the charges are being enquired into. The Respondents in the midst could not have left the Departmental proceedings and choose the other option. Once the option of resorting to Departmental Enquiry was undertaken by the Respondents, they ought to have taken disciplinary action against the petitioner upon culmination of inquiry. The impugned order dated 17.6.2016 regarding abandonment of service is without conclusion of Departmental Enquiry.

5. In view of the above, the impugned order is set aside. The petitioner may join at Killedharur.

6. The Respondents if they so choose to, are entitled to initiate Departmental Enquiry as may be permissible. Of-course, the petitioner will be entitled to defend the same in accordance

with law.

7. In case the Departmental Enquiry is initiated by the Respondents, the petitioner shall cooperate in the Departmental proceedings. As far as question of transfer is concerned, the petitioner may give an application to the Respondents. The Respondents shall consider the said application in accordance with its Rules and take decision upon it expeditiously.

8. In view of the above, the impugned order is set aside. The petitioner may join at Killedharur.

9. Considering the fact that the impugned order is set aside, the Respondents shall pay 50% back wages to the petitioner from 17.6.2016 till this date. The same would be subject to the petitioner joining the post at Killedharur within seven (7) days.

10. The Writ Petition is accordingly

disposed of. No costs.

(A.M.DHAVALE,J.) **(S.V.GANGAPURWALA,J.)**

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