

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4511 OF 2019

1. Bhausahab Madhavrao Funde,
Age-65 years, Occu-Pensioner,
R/o Jawahar Colony, Nagar Road,
Beed, Tq. and Dist. Beed,

2. Kashinath Bapurao Kulkarni,
Age-Major, Occu-Pensioner,
R/o Ambajogai, Tq.Ambajogai,
Dist. Beed,

3. Nagnath Pandurang Akuskar,
Age-Major, Occu-Pensioner,
R/o Adas, Tq. Kaij, Dist. Beed

-- PETITIONERS

VERSUS

Beed District Central Co-operative
Bank Ltd.,
through its Law Officer
Sharad Chandrabhan Thombre,
Age-45 years, Occu-Service,
R/o Beed, Tq. and Dist. Beed

-- RESPONDENT

Mr.K.J.Suryawanshi, Advocate for the petitioners.
Mr.D.J.Choudhari, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 17/12/2019

ORAL JUDGMENT :

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

2. The petitioners are aggrieved by the order dated 02/03/2019 delivered by the Maharashtra State Co-operative Appellate Court, by which delay of 1 year and 3 months has been condoned. Consequentially, the respondent/bank is permitted to contest the appeal before the Appellate Court.

2. The grievance of the petitioners is that they have been illegally terminated by the employer. The Co-operative Court delivered its award on 06/07/2017, by which it has partly allowed the dispute No.46/2016 and quashed the resolution dated 16/07/2013 and 31/08/2013 passed by the Bank by which their purported resignation was accepted. The petitioners had preferred Appeal No.125/2017 before the Appellate Court praying for full back wages. Vide a purshis Exh.7, these petitioners withdrew their appeal. After this order was passed on 01/12/2018, the Bank preferred a counter Appeal No.87/2018 on 10/12/2018 for challenging the order of the Co-operative Court.

3. I have considered the submissions of the learned Advocate and have gone through the petition paper book with their assistance. I do not find that any statutory remedy other than approaching the

State Co-operative Appellate Court is available to the respondent/Bank for challenging the judgment of the Co-operative Court. Keeping in view the law laid down in Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], and Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649], the delay of 1 year and 3 months does not appear to be inordinate so as to deprive a litigant of availing a statutory remedy. On this count, the impugned order, condoning the delay, cannot be faulted.

4. The petitioners have raised an issue of bonafides. Contention is that these petitioners preferred an appeal for challenging the denial of full back wages, on 06/09/2017 before the Appellate Court. The respondent appeared in the proceedings and did not prefer an appeal till 01/12/2018. After the appeal was sought to be withdrawn with liberty to avail of a remedy for recovery of wages, the Appellate Court has recorded that the petitioners desire to withdraw the appeal un-conditionally and such unconditional withdrawal was ordered. Taking advantage of this situation, the respondent has then preferred an appeal on 10/12/2018 and the petitioners have developed a feeling that the respondent/employer has tricked them.

5. The submissions of the petitioners deserve consideration. The fact that the Bank waited to note the result of their appeal does not indicate bonafides on the part of the Bank. If it intended to challenge the order of the Co-operative Court, it could have filed its appeal promptly. However, on this count, the appeal cannot be dismissed as the conduct of the Bank could be dealt with by imposing costs and at the same time by granting liberty to the petitioners to seek restoration of their appeal if they so desire. This would be an equitable relief.

6. In view of the above, this petition is partly allowed only to the extent of imposition of costs. The petitioner/Bank shall deposit an amount of Rs.10,000/- per petitioner with the Appellate Co-operative Court, at Auranabad, on or before 20/01/2020., If the petitioners intend to seek restoration of their appeal, they would not withdraw the amount of costs. However, if they do not intend to seek restoration of their appeal, they would be at liberty to withdraw their costs unconditionally.

7. Rule is made partly absolute in the above terms.

(Ravindra V.Ghuge, J.)