

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

LETTERS PATENT APPEAL No.48 OF 2011

In

Writ Petition No.1972 of 2009

With

Civil Application No.10839 of 2009

With

Civil Application No.1390 of 2016

The Osmanabad District Central
Cooperative Bank Ltd.,
having its Head office at
Osmanabad
Through its Authorised Person.

.. Appellant.

Versus

Vyankatesh s/o. Bapurao Kulkarni
Age 62 years,
Occupation: Nil,
R/o. Behind New Adarsh Colony,
Shrinagar, "Aboli", Latur,
Taluka and District Latur.

.. Respondent.

Shri. V.J. Dixit, Senior Counsel, instructed by Shri. A.N.
Nagargoje and Shri. P.M. Kulkarni, Advocates, for
appellant.

Shri. Madhav Ghode, Advocate, holding for Shri. P.K.
Joshi, Advocate, for respondent.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date: 25 FEBRUARY 2019

JUDGMENT (Per T.V. Nalawade, J.):

1) The letters patent appeal is filed to challenge the decision of the learned Single Judge of this Court given in Writ Petition No.1972/2009. The writ petition was filed to challenge the judgment and award dated 19-9-2008 passed by learned Member, Industrial Court Latur in Complaint ULP No.388/2004. The said complaint was filed by the present respondent under provisions of Section 28 read with Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Relief was claimed to direct the respondent-District Central Cooperative Bank Osmanabad to return the amount of Rs.1.6 lakh deposited by the complainant, present respondent along with interest. The complaint was also filed for direction to the bank to pay terminal benefits like provident fund, gratuity, leave encashment amount etc. Both the sides are heard.

2) It is the case of the respondent that he had joined the appellant-bank in the year 1965 and he retired

on superannuation on 7-1-2003. It is contended that at the time of retirement he was working on the post of Deputy Chief Officer. It is contended that without holding proper enquiry he was held guilty of misconduct and he was made to deposit amount of Rs.1.6 lakh with the bank. It is contended that no proper enquiry was conducted against him. First he was suspended and then he was directed to pay the aforesaid amount. The learned Member of the Industrial Court allowed the complaint and gave direction to return the aforesaid amount with simple interest at the rate of 12% per annum. This order was challenged in the aforesaid writ petition by the bank before the learned Single Judge. The learned Single Judge has maintained the order of the Industrial Court of directing to return the amount but the interest is reduced to make it 10% per annum.

3) The submissions made show that during the service period no enquiry was conducted against the respondent and only due to audit objection a direction was given to him to return the amount. No separate enquiry was held to fix the responsibility on him in respect of the

aforesaid amount. Though during service he was placed under suspension due to audit report, it was necessary for the employer to start and conduct enquiry for fixing the responsibility but that was not done. The Industrial Court has set aside the order only for the reason that no enquiry was held and no opportunity was given to the complainant to put forth his case. For the same reason, the learned Single Judge has confirmed the order.

4) The aforesaid circumstances show that apparently there is nothing in the appeal on merits. Further there is question of tenability of the letters patent appeal. The order was made by the Industrial Court which is subordinate court to this High Court and the High Court has supervisory jurisdiction over the Industrial Court. In view of provisions of Chapter XVII and particularly Rule 18 of the Bombay High Court Appellate Side Rules, 1960 the matter was listed before the learned Single Judge. It needs to be presumed that the learned Single Judge has considered and decided the matter by using supervisory jurisdiction given under Article 227 of the Constitution of India. In view of the

ratio of the cases reported as **(2015) 5 SCC 432 (Radhye Shyam v. Chhabi Nath)** and **(2015) 9 SCC 1 (Sh. Jogendrasinhji Vijaysinghji)** this Court holds that the letters patent appeal itself is not tenable. In the result, it is dismissed. Pending civil applications are disposed of. Interim relief granted by this Court shall continue for a period of four weeks from today.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

rs1