IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.181 OF 2018
WITH
CIVIL APPLICATION NO.85 OF 2018

Anand Prabhakar Joshi	...	Appellant
Versus		
Bank of Maharashtra	...	Respondent

.....

Mr. Anand P. Joshi, Appellant present in-person.
Mr. Dhananjay J. Bhanage for the Respondent.

.....

ALONG WITH
SECOND APPEAL (ST.) 29391 OF 2017
WITH
CIVIL APPLICATION NO.186 OF 2018

Bank of Maharashtra	...	Appellant
Versus		
Mr. Anand Prabhakar Joshi	...	Respondent

.....

Mr. Dhananjay J. Bhanage for the Appellant
Mr. Anand P. Joshi, Respondent present in-person.

.....

CORAM : S.C. GUPTE, J.

DATE : 4 NOVEMBER 2019

<u>P. C.</u> :

SECOND APPEAL NO.181 OF 2018

. Heard the Appellant, who appears in person and learned Counsel for the Respondent-bank. This second appeal challenges an order of the District Court at Pune in a civil appeal from a judgment and decree passed in Special Civil Suit No.40 of 2000.

2 The Appellant herein was an employee of the Respondent-bank. A disciplinary proceeding was initiated against him on the ground of unauthorized absence from service. The absence was said to be between 21 August 1994 to 14 September 1995, when the charge-sheet was issued to the Appellant initiating the departmental proceedings. It was proved before the trial court, and which conclusion was also accepted by the first appellate court, that the Appellant's absence till 30 September 1994 was authorized; there was, however, nothing to show that the Appellant's admitted absence from service after 1 October 1994 and till 14 September 1995, when the charge-sheet was issued to him on the ground of unauthorized absentism, was authorized. The Appellant's case before the Enquiry Officer as well as the two courts below was that he was entitled to voluntary retirement from service with effect from 1 October 1994 and that his application for such voluntary retirement, which was duly made, was not accepted by the Respondent-employer on the ground that the voluntary retirement was not in force. It is submitted, relying on a circular of Indian Banks Association dated 4 January

1996, that the voluntary retirement scheme in terms of the settlement with the unions under the Industrial Disputes Act, was a binding settlement and the employees of the banks were entitled to the benefit of the settlement from the date mentioned therein, i.e. 1 November 1993. It is submitted that this scheme was accordingly applicable to the officers group from 1 November 1993 and that the Appellant's application for voluntary retirement with effect from 1 October 1994 was very much in order and was unauthorizedly rejected by the Respondent.

3 The controversy in the present case is not whether or not the Respondent-bank rightly refused to accept the Appellant's application for voluntary retirement, though it was bound to accept such application. The fact of the matter is that it did not do so at the relevant time. If the Appellant was aggrieved by the bank's refusal to to accept his voluntary application, his remedy was to get the bank accept it by invoking the appropriate provisions of law. He did not do so. He simply cannot chose to remain absent on the ground that he was deemed to have voluntarily retired on the basis of the applicable scheme and his application made in response thereof. The Enquiry Officer as well as the Disciplinary Authority and the two courts cannot accordingly be said to have erred in passing the impugned orders. The charge against the Appellant was that he was absent without a proper athorization. Though the charge that he was absent with effect from 21 August 1994 was not proved, what was proved was that he was absent unauthorizedly with effect from 1

October 1994 and till 15 September 1995, when a show-cause notice was issued to him. It is no answer to this charge of unauthorized absence that the bank was legally bound to consider the application for voluntary retirement preferred by the employee.

4 On these facts and in the light of the impugned decisions of the two courts below, no substantial question of law arises in the matter for consideration of this court. The Second Appeal, thus, has no merit and is dismissed accordingly.

5 In view of the dismissal of the appeal, Civil Application No.85 of 2018 does not survive and is disposed of.

SECOND APPEAL (ST.) 29391 OF 2017

6 This companion appeal has been filed by the Respondent-bank challenging the order of compensation passed by the courts below as a result of steps taken by the Respondent-bank in the disciplinary proceedings arising out of a charge-sheet, which was issued prior to the charge-sheet of 14 September 1995, which resulted into the termination of the Appellant's employment, which is the subject matter of challenge in his appeal and which is decided in terms of the above order. Before this charge-sheet, there was another charge-sheet issued by the Respondent-bank on 24 January 1992. Both courts below have concurrently come to a finding that the charge-sheet of 24 January 1992 was arbitrary, malafide and unlawful and the enquiry conducted against the delinquent-employee in terms of that

charge-sheet was not fair or proper. The trial court, however, in its operative order did not pass any order of compensation. The Appellant had sought compensation in the sum of Rs.26,75,000/- in respect of both enquiries, that is to say, the enquiry initiated in response to the charge-sheet of 24 January 1992 and the one initiated in response to the latter charge-sheet of 14 September 1995. The lower appellate court, whilst affirming the findings of the trial court in respect of illegality of the earlier charge-sheet and fairness and legality of the enquiry in response to it, ordered compensation of Rs.3,00,000/- against the Respondent-bank. This order has been challenged in the present second appeal by the Respondent-bank. Whether the charge-sheet of 24 January 1992 was issued malafide or was illegal and whether the enquiry conducted against the delinquent was fair or proper, are essentially issues of fact or, at any rate, mix questions of law and fact. Both courts below have concurrently come to a finding on both these issues in favour of the delinquent. The conclusions of the courts below on these issues cannot be termed as perverse, that is to say, such as no reasonable person duly instructed in law could have arrived at. The conclusions are supported by some material on record. Neither court has taken into account any irrelevant or non-germane material or circumstance, or disregarded any relevant or germane material or circumstance, whilst arriving at these conclusions. The Second Appeal does not, accordingly, raise any substantial question of law for the consideration of this court.

7 The only ground urged by learned Counsel for the Respondent bank is that there was no prayer for compensation separately for the original inquiry initiated in pursuance of the charge-sheet of 24 January 1992, and that the particulars of compensation sought by the Appellant did not support the compensation ordered by the court. Neither of the grounds has any merit. The Appellant did seek compensation for disciplinary proceedings initiated against him pursuance of both charge-sheets. The courts did not find fault with the second charge-sheet (i.e. charge-sheet of 14 September 1995) or the inquiry issued in pursuance thereof, but found earlier charge-sheet (i.e. charge-sheet of 24 January 1992) and inquiry made in pursuance thereof to be unfair and illegal. The compensation ordered cannot be said to be without any support in the particulars placed before the courts.

8 Accordingly, there is no merit in the Second Appeal and it is dismissed.

9 In view of the dismissal of the appeal, Civil Application No.186 of 2018 does not survive and is disposed of.

(S.C. GUPTE, J.)