

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2527 OF 2016

Takarkheda Vividh Karyakari Sahakari Society Limited Takarkheda (Sambhu), Bhatkuli,
Amravati

-vs-

The Member, Industrial Court, Amravati and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri K. S. Narwade, Advocate for petitioner.
Smt A. R. Kulkarni, Assistant Government Pleader for
respondent No.1.
Shri A. S. Dhore, Advocate for respondent No.2.

CORAM : A.S.CHANDURKAR, J.

DATE : July 03, 2019

In view of notice for final disposal issued earlier the learned counsel for the parties have been heard.

The petitioner is aggrieved by the order passed by the Labour Court dated 07/04/2010 allowing the complaint filed by respondent No.2 and directing his reinstatement in service with 50% back-wages which order has been confirmed by the Industrial Court.

2. According to the respondent No.2 who was working as Salesman with the petitioner-Society from 20/02/1997 without any break, his services were terminated on 31/05/2001 on the ground that he was guilty of misappropriating funds of the Society. This order of termination was challenged by filing complaint before the Labour Court

on the ground that the services of respondent No.2 were terminated without holding any inquiry. The order of termination was also stated to amount to an unfair labour practice. The respondent No.2 examined himself while the Society examined its Secretary. The Labour Court recorded a finding that the Society had failed to prove any misconduct and that the services of the respondent No.2 were illegally terminated resulting in an unfair labour practice. By directing reinstatement and grant of 50% back-wages, the complaint was allowed. These findings have been confirmed by the Industrial Court.

3. Shri K. S. Narwade, learned counsel for the petitioner submits that in view of the written admission given by the respondent No.2 in the letters dated 27/04/2001 and 09/05/2001 it was clear that the respondent No.2 was guilty of retaining the amounts that ought to have been deposited with the Society. As it was clearly admitted by the respondent No.2 that he had failed to deposit the said amounts with the Society including the readiness to pay those amounts, the same amounted to admitting the commission of misappropriation. In the light of these admissions it was not necessary to hold any inquiry and the services were rightly terminated. He further submitted that in the dispute filed before the Co-operative Court an order of recovery of the said amounts came to be passed which also substantiated the case of

the Society. Both the Courts without considering these aspects of the matter erred in allowing the complaint. There was no justification in directing reinstatement with 50% back-wages.

4. Shri A. S. Dhore, learned counsel for the respondent No.2 supported the impugned order and submitted that the order of termination being stigmatic it was necessary to hold an enquiry in that regard. A mere statement that the respondent No.2 would deposit the amounts held by him with the Society could not be considered as admission of any misappropriation. In absence of any inquiry being held against the respondent No.2 on the charge of misappropriation, the order of termination was rightly set aside by the Labour Court and confirmed by the Industrial Court.

5. On hearing the learned counsel for the parties and on perusing the documents placed on record it can be seen that the admissions relied upon by the Society merely indicate the willingness expressed by the respondent No.2 of depositing certain amounts in the Society. The same is contained in the letters dated 27/04/2001 and 09/05/2001. The respondent No.2 in those letters had not stated that he was guilty of misappropriating the funds and was admitting his guilt. These letters at the most could have been the basis for directing recovery of

those amounts from the respondent No.2 which has been done by the Co-operative Court in the dispute filed by the Society. The order of termination issued to the respondent No.2 specifically states that since the respondent No.2 was guilty of misappropriation, his services were being terminated. The order of termination on the face of it was stigmatic. No inquiry was held before terminating the services of the respondent No.2 and hence both the Courts rightly found that without holding such inquiry the services of the employee could not have been terminated in a stigmatic manner.

6. After considering the entire material on record it is found that the Courts have allowed the complaint by appreciating the entire material in a proper perspective. No other legal conclusion or inference can be drawn as sought to be urged on behalf of the Society. In absence of any jurisdictional error, I do not find any reason to interfere with that adjudication.

The Writ Petition is therefore dismissed. No order as to costs.

JUDGE