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

Writ Petition No.452 of 2018
Zilla Parishad Employees Urban Co-op. Bank, Wardha Vs. Ramesh Wankhede

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. S.S. Ghate, Advocate for petitioner.

CORAM : MANISH PITALE, J.

DATED : NOVEMBER 20, 2019

By this writ petition, the petitioner which is a Co-operative Bank has challenged judgment and order dated 15/06/2017, passed by the Industrial Court, Nagpur Bench, whereby complaint filed by the respondent has been allowed and the petitioner bank has been directed to grant increments to the respondent for the period of suspension when the respondent was facing an enquiry.

2. The petitioner bank had proceeded against the respondent, who was working as Branch Manager on the charge of financial defalcation. During pendency of the enquiry initiated against the respondent, he was placed under suspension. Upon culmination of the enquiry, the petitioner bank found the respondent guilty and an order was passed on 03/05/2002, whereby penalty of reversion from the post of Branch Manager to Junior Clerk was imposed upon the

respondent and it was also directed that the period of suspension between 08/09/1999 to 02/05/2002, would treated as a period of suspension and it would not be taken into consideration for any purpose.

3. Aggrieved by the same, the respondent filed a complaint before the Industrial Court under the provisions of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. By judgment and order dated 11/1/2011, the Industrial Court partly allowed the complaint filed by the respondent and held that the petitioner bank had indulged in unfair labour practices by reverting the respondent from the post of Branch Manager to the post of Junior Clerk. It was held that even if the respondent was held guilty of misconduct, he could have been reverted only to the next lower grade and accordingly, it was directed that the respondent shall stand reverted from the post of Branch Manager to the post of Assistant Accountant w.e.f. 03/5/2002. The petitioner bank was directed to pay all pecuniary benefits to the respondent applicable w.e.f. 03/05/2002.

4. On 14/2/2011, in pursuance of the said order passed by the Industrial Court, the petitioner bank passed an order reverting the respondent from the post of Branch Manager to Assistant Accountant. In the said order, it was specifically reiterated that the

period of suspension from 08/09/1999 to 02/5/2002, would be treated as period of suspension for all purposes.

5. Thereafter, on 31/08/2015, more than five years after the said order dated 14/2/2011 was passed by the petitioner bank, the respondent filed a complaint before the Industrial Court under the provisions of the aforesaid Act, claiming that the petitioner bank had indulged in unfair labour practice by treating him under suspension for the aforesaid period between 08/09/1999 to 02/5/2002 and depriving him of increments for the said period, which had detrimental effect on the fixation of his pay. The respondent prayed for relief of direction to the petitioner bank to grant increments for the aforesaid period of suspension and to refix his pay.

6. The said complaint was resisted by the petitioner bank by pointing out that the period of suspension was treated as suspension for all purposes in the first order of penalty imposed against the respondent upon founding him guilty and the same was reiterated in the subsequent order passed on 14/2/2011, pursuant to the complaint of the respondent being allowed by the Industrial Court. It was pointed out that during the period of suspension, the respondent could not be granted increments and that the complaint was required to be dismissed.

7. By the impugned judgment and order, the Industrial Court has allowed the complaint on the basis that the petitioner bank, having found the respondent guilty of misconduct had already imposed punishment of reversion and that, therefore, awarding punishment of suspension for such a long period of time was contrary to the standing order, which demonstrated that unfair labour practice was committed by the petitioner bank. On this basis, the complaint was allowed and suspension was set aside with further direction to the petitioner to grant increments for the period of suspension.

8. The petitioner bank filed the present writ petition challenging the said judgment and order, wherein notice was issued on 20/2/2018 and interim stay of the impugned order was granted, subject to the petitioner depositing an amount of Rs.60,000/- in the Registry of this Court. The said amount was indeed deposited by the petitioner bank.

9. The learned counsel for the petitioner bank submitted that the impugned order was wholly unsustainable because the period of suspension was treated as a period of suspension for all purposes in both the orders of penalty issued by the petitioner bank. It was pointed out that subsequent order dated 14/02/2011, passed by the petitioner by imposing

penalty in tune with the order of the Industrial Court dated 11/1/2011, also reiterated the fact that the period of suspension between 08/09/1999 and 02/05/2002, was treated as period of suspension for all purposes. It is submitted that this order was never made subject matter of challenge by the respondent. It was after more than five years that the respondent filed the aforesaid complaint, raising grievance about the period of suspension and the deprivation of increments during the said period. It was submitted that the complaint filed by the respondent was not maintainable and that since the respondent was placed under suspension pending enquiry and eventually he was found guilty of misconduct, there was no question of payment of increments for the period of suspension. It was further submitted that in terms of standing order, subsistence allowance was indeed paid to the respondent and that there was no dispute about the same. In this backdrop, it was submitted that the impugned order was required to be set aside.

10. The learned counsel for the respondent employee submitted that a perusal of the order imposing penalty dated 03/05/2002, would show that the petitioner bank had imposed two punishments on the respondent, firstly treating the period of suspension as suspension for all purposes, thereby depriving the respondent pecuniary benefits and secondly, reversion from the post of Branch Manager

to Junior Clerk. It was submitted that such twin punishments could not be imposed by the petitioner bank and it was clearly in violation of the standing order. It was also submitted that the Industrial Court in the impugned order took into consideration the aforesaid aspect of the matter and correctly allowed the complaint. On this basis, it was submitted that the writ petition deserved to be dismissed.

11. Heard learned counsel for rival parties and perused the material on record. A perusal of order dated 03/05/2002, imposing penalty on the respondent shows that he was reverted from the post of Branch Manager to Junior Clerk and that it was also recorded that period of suspension would be treated as suspension for all purposes. The subsequent order of imposition of penalty dated 14/2/2011, issued by the petitioner bank in pursuance of the order of Industrial Court dated 11/1/2011, shows that the petitioner bank reiterated the fact that the period of suspension between 08/09/1999 and 02/05/2002 was treated as suspension for all purposes. The order of reversion was modified and the respondent was reverted to the post of Assistant Accountant.

12. There is no dispute about the fact that the respondent never made any grievance as regards the said order dated 14/2/2011 and the fact that the period of suspension was treated as suspension for all

purposes. It was only after more than 5 years that the respondent filed complaint before the Industrial Court, now making the grievance regarding illegal deprivation of increments during the period of suspension. The respondent based his claim of unfair labour practice on the part of the petitioner by referring to standing order wherein various punishments for misconduct have been specified. It was claimed that when the petitioner bank could have imposed punishment of suspension only for four days for misconduct, suspension for any period beyond that amounted to an unfair labour practice. It was further submitted that since the petitioner bank could not have imposed the said punishment along with punishment of reversion, the respondent was entitled for increments during the period of suspension. This contention on the part of the respondent found favour with the Industrial Court in the impugned order.

13. A perusal of the service rules and standing order, which is applicable to the employees of the petitioner bank, shows that an employee against whom enquiry is instituted can be placed under suspension and that an endeavour is to be made to complete the enquiry expeditiously and within a stipulated period of time. In order to avoid inconvenience caused to the employee against whom the enquiry remains pending for a long time, it is provided as to the manner in which subsistence allowance is to be paid to such an

employee. There is no dispute about the fact that the respondent in the present case was indeed paid subsistence allowance in terms of the applicable rules and standing order. There is no grievance raised by the respondent in that regard.

14. It is also relevant that the rules specifically provided that if as a result of the enquiry held or explanation tendered by the employee it is decided not to take any action against the employee, such an employee would be deemed to be on duty and he would be entitled to full wages minus subsistence allowance that he was already paid. In the present case, it is an undisputed fact that the respondent was found guilty of the charge levelled against him. Therefore, action was indeed taken against the respondent for the misconduct, which was proved. In such a situation, even as per the rules and standing order the respondent would not be deemed to be on duty and he was certainly not entitled to full wages for the period of suspension. Such an employee would be entitled only to subsistence allowance, which in the present case was admittedly paid to the respondent.

15. This aspect was clearly ignored by the Industrial Court while passing the impugned order, thereby demonstrating the error committed by the said Court.

16. Apart from this, the learned counsel for the petitioner bank was justified in relying upon the judgment of the Supreme Court in the case of **State of Punjab Vs. Jaswant Singh Kanwar (2014) 13 SCC 622,** wherein it has been held that an employee placed under suspension during the course of enquiry would not be entitled to increments during the period of suspension. This position of law, further supports the contention raised on behalf of the petitioner bank, apart from the fact that the rules and standing order applicable to the respondent demonstrates that he was not entitled to the claims made by him in his complaint before the Industrial Court.

17. In view of the above, it is found that the impugned order is unsustainable. Accordingly, the writ petition is allowed and impugned order is quashed and set aside.

18. Consequently, amount deposited by the petitioner bank, in this Court, in terms of order dated 20/02/2018, shall be refunded to the petitioner bank along with interest, if any.

JUDGE

MP Deshpande