

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

WRIT PETITION NO.6020 OF 2019

Gulab Namdeo Bhure

Versus

State of Maharashtra and others

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

Mr. O.A. Ghare, Advocate for Petitioner.

Mr. Amit Madiwale, Assistant Government Pleader for
Respondent No.1.

Mr. D.M. Kakani, Advocate for Respondent Nos.2 and 3.

**CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.**

DATE : 9 MARCH 2021

P.C.:

Heard the learned Counsel for the parties.

2. By an order dated 27 August 2019, notice was issued for final disposal.

3. The Petitioner, who was working as a Branch Manager and was reverted to the post of a Senior Clerk, has challenged the action of reversion.

4. The Petitioner was working as a Junior Clerk with the Respondent Nos.2 and 3- Co-operative Society. By an order dated 1 December 2013, the Petitioner was promoted as a Branch Manager, Second Cadre. Thereafter by an order dated 4 July 2017, the Petitioner came to be reverted. The order of reversion referred to the communication issued by the Respondent No.1- Divisional Joint Registrar, Co-operative Societies, Nagpur dated 20-3-2017 and the complaint given by one Ashfaq Khan, the Respondent No.4. The Petitioner has challenged the order passed by the Respondent No.1- Divisional Joint Registrar dated 20-3-2017 and the order passed by the Respondent Nos.2 and 3- Co-operative Society, the employer, dated 4 July 2017. The ground of reversion is that the Petitioner was not qualified to be promoted.

5. The Division Bench, while issuing notice in this Petition on 27 August 2019, observed thus :

“The challenge in this petition is impugned order dated 20-03-2017 issued by the Divisional Joint Registrar, Co-operative Society, directing the reversion of petitioner from the post of Manager to the post of Junior Clerk on the ground that his promotion was not in accordance with the Rules. The question is of the jurisdiction and the authority of the Divisional Joint Registrar to direct reversion of the petitioner though without hearing to the petitioner.

Issue notice for final disposal of the matter to the respondents, returnable on 22-10-2019.

The learned Assistant Government Pleader waives service of notice for respondent No.1.

The petitioner is permitted to delete paragraph 13 in the petition. Deletion be carried out forthwith.”

6. The contention of the Petitioner is two-fold. First, the challenge to the order of the Divisional Joint Registrar is based on lack of jurisdiction on the part of the Divisional Joint Registrar and that no opportunity was given to the Petitioner while issuing this direction. Second, challenge is to the order passed by the Respondent- Co-operative Society, the employer, on the ground that it is passed solely on the direction of the Divisional Joint Registrar and consequently no procedure as per the Service Rules applicable to the Petitioner prior to demotion/reversion, is followed.

7. As regards the first contention as to the jurisdiction of the Divisional Joint Registrar, an affidavit-in-reply is filed by the Respondent No.1, wherein the Respondent No.1 has admitted that he had no jurisdiction to issue such order of demotion/reversion. The contention that the Respondent No.1 had no jurisdiction, therefore, stands admitted. Nothing is placed on record that the Petitioner was given any opportunity.

8. As regards the second contention, it has to be noted that the Petitioner was promoted in the year 2013 and continued to work there till 2017 and upon a complaint, the order of reversion

was passed. In these facts, at least a show cause notice ought to have been given calling for an explanation, assuming a full-fledged inquiry is not to be instituted. Respondent- Employer Society contends that a resolution was passed in the General Body Meeting, where the Petitioner was present and he was fully aware. This is not a procedure under the applicable Service Rules. The Petitioner was reverted upon a complaint of the co-worker and the inquiry had acquired an adversarial colour. For this action, an opportunity ought to have been given. Therefore, the action taken in breach of basic principle of natural justice will have to be quashed and set aside.

9. In view of above, the impugned order dated 20 March 2017 passed by the Respondent No.1- Divisional Joint Registrar and dated 4 July 2017 passed by the Respondent Nos.2 and 3- Co-operative Society, the employer, are quashed and set aside.

10. Since we have set aside the order of the Divisional Joint Registrar on the ground of lack of jurisdiction and that of the Respondent- employer on the ground of non-compliance with the procedure, we make it clear that we have not commented on the merits of the imputations made against the Petitioner, for the further action, if any, of the employer.

11. The Writ Petition is accordingly disposed of in above terms.

(ANIL S. KILOR, J)

(NITIN JAMDAR, J)

Lanjewar

Prashant
Lanjewar

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signed by
Prashant
Lanjewar
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