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

915 WRIT PETITION NO.9633 OF 2019

WITH

WRIT PETITION NO.2067 OF 2021

NANDED DISTRICT CENTRAL CO OPERATIVE BANK,
THROUGH IT'S ASSISTANT MANAGER (LEGAL)
VERSUS
VIJAYKUMAR PANDURANG JADHAV

...

Mr R. K. Ingole, Advocate for petitioner;
Mr M. D. Shinde, Advocate for respondent

CORAM : RAVINDRA V. GHUGE, J

DATE : 10th March, 2022

ORAL ORDER :

1. Since the learned Advocates for the respective sides have appeared in the matters and have addressed the Court, formal notice is issued to the respondent, service of which is waived by the learned Advocate.

2. In the first petition, the petitioner/Bank has put forth prayer clauses (A) and (B) as under :

“(A) By a writ of certiorary, orders or directions in the nature of certiorari, the impugned order dated 15.01.2019 passed by the Learned Industrial Court at Jalna in Revision (ULP) No.45/2018 as well as the impugned order dated 02.07.2018 passed by the Learned Labour Court at Nanded in Complaint (ULP)

(2)

no. 87/2015 below Exhibit- U-2 may kindly be quashed and set aside;

(B) Pending hearing and final disposal of this Petition, the implementation, execution and operation of the impugned order dated 15.01.2019 passed by the Learned Industrial Court at Jalna in Revision (ULP) No. 45/2018 as well as the impugned order dated 02.07.2018 passed by the Learned Labour Court at Nanded in Complaint (ULP) no. 87/2015 below Exhibit- U-2 may kindly be stayed;”

3. In the second petition, the petitioner/Bank, in relation to the same Complaint (ULP) No.87/2015 filed by the respondent/workman, has put forth prayer clauses (A) and (B) as under :

“(A) By a writ of certiorary, orders or directions in the nature of certiorari, the impugned order dated 09.09.2019 passed by the Learned Industrial Court at Jalna in Revision (ULP) No.52/2018 as well as the impugned order dated 06.08.2018 passed by the Learned Labour Court at Nanded in Complaint (ULP) no. 87/2015 below Exhibit- O-2 may kindly be quashed and set aside;

(B) Pending hearing and final disposal of this Petition, the implementation, execution and operation of the impugned order dated 09.09.2019 passed by the Learned Industrial Court at Jalna in Revision (ULP) No. 52/2018 as well as the impugned order dated

(3)

06.08.2018 passed by the Learned Labour Court at Nanded in Complaint (ULP) no. 87/2015 below Exhibit- O-2 may kindly be stayed;"

4. Having taken into account the exhaustive submissions of the learned Advocates for the respective sides, I have considered the record available. The sequence of events can be summarized as under :

- (a) On 19/07/2010, the respondent was suspended from duties;
- (b) On 04/12/2010, the petitioner/Management issued a charge-sheet (the first charge-sheet), containing 9 charges levelled upon the respondent.
- (c) The respondent replied to the charge-sheet on 22/01/2011;
- (d) After a full-fledged enquiry, the Enquiry Officer submitted his report dated 26/07/2011, holding the respondent guilty of some of the charges and exonerated him from some charges.
- (e) On 10/12/2011, the Board resolved to reject the report of the Enquiry Officer and decided to reopen the enquiry.
- (f) On 03/01/2010, the petitioner issued a letter to the

(4)

respondent informing him that a fresh enquiry would be conducted.

(g) On the same day i.e. 03/01/2010, a supplementary charge-sheet (the second charge-sheet) containing one charge, was served upon the petitioner.

(h) The Enquiry Officer submitted his report dated 25/08/2015, holding the respondent guilty of all the 10 charges levelled upon him (1st + 2nd Charge-sheet).

(i) On 19/11/2015, the Board resolved to issue a second show cause notice to the respondent proposing the punishment of dismissal from service.

(j) The petitioner issued a second show cause notice dated 23/11/2015

(k) The respondent filed Complaint (ULP) No.87/2015 before the Labour Court on 04/12/2015.

(l) Written statement of the petitioner/Bank was filed on 07/01/2016.

(m) By an interlocutory order below Exh.U-2, the Labour Court granted protection to the respondent.

(n) The petitioner preferred Revision (ULP) No.45/2018 before the Industrial Court, which was dismissed vide judgment dated 15/01/2019.

(5)

(o) On 06/08/2018, the Labour Court declared that the enquiry was fair and proper, but held that the findings of the Enquiry Officer, on the 10 charges said to be proved against the respondent, to be perverse.

(p) The petitioner preferred Revision (ULP) No.52/2018 for challenging the said order and the same was dismissed on 09/09/2019.

(q) The petitioner also preferred Revision Application (ULP) No.45/2018 for challenging the order below Exh. U-2. The same was dismissed by the judgment dated 15/01/2019.

5. Considering the conspectus of the matter and the glaring irregularities committed by the petitioner, I am not required to advert to the entire submissions of the parties. Suffice it to say that, the first charge-sheet culminated in a full fledged enquiry. The petitioner disagreed with the findings of the Enquiry Officer. The correct legal course to be followed was that the petitioner should have issued a show cause notice to the respondent by assigning detailed reasons for not accepting the findings of the Enquiry Officer and for forming a view, calling upon the respondent to explain, as to why the charges should not be

(6)

deemed to have been proved against him. **(Read : High Court of Judicature at Bombay, thr. it's Registrar Vs. Shashikant S. Patil and anr., (2000) 1 SCC 416).** Instead of doing so, the petitioner passed a Resolution in it's Board meeting, rejecting the report of the Enquiry Officer and resolved to appoint a new Enquiry Officer and conduct a second enquiry. This is impermissible in law. The petitioner, thereafter, issued the second charge-sheet and by clubbing both the charge-sheets, conducted a fresh enquiry insofar as charge No.10 is concerned, and re-conducted the enquiry insofar as the first charge-sheet is concerned.

6. Since the above act of the employer in conducting a second enquiry in the 1st charge-sheet is impermissible in law, I do not find that the order of the Labour Court below application Exh.U-2, granting interim protection to the respondent, deserves to be interfered with. This petition is, therefore, dismissed.

7. In Writ Petition No.2067/2021, the learned Labour Court has rightly concluded in paragraph 8 in it's part 1 order dated 06/08/2018 on the two issues that, the first enquiry was conducted for the 9 charges and a re-enquiry was conducted with regard to the same with the addition of the 10th charge and that, this is

(7)

impermissible. The Labour Court was right in coming to this conclusion and therefore, entire enquiry with regard to the first charge-sheet, has been discarded. In my view, as the re-enquiry in the first charge-sheet was impermissible, the second enquiry conducted to the extent of the first charge-sheet has to be nullified and discarded. This leaves only one charge and i.e. charge No.10 before the Labour Court and for which, the departmental enquiry could be sustained.

8. I have perused paragraph 9 of the Part 1 order of the Labour Court, dated 06/08/2018. The Labour Court should have relied upon the entire Record and Proceedings and should have perused the quality of evidence available with reference to charge No.10. It is well settled that, if there is some evidence available to establish the guilt of the employee, the findings of the Enquiry Officer ought not to be interfered with. It is equally settled that, quality of evidence recorded in Departmental Enquiry is not to be compared with the quality of evidence required in a criminal trial. For the past 5 decades, the law has crystallized that the charges in a Departmental/Domestic Enquiry can be proved on preponderance on the principles of probabilities and even hearsay evidence is accepted. Just because some employees superior to

the respondent have been exonerated, would not mean that the findings of the Enquiry Officer with regard to charge No.10 can be vitiated. [**Read :- (1) State Bank of Patiala and others Vs. S. K. Sharma, (1996) 3 SCC 364; and (2) State of Karnataka and anr. Vs. N. Gangaraj, (2020) 3 SCC 423].**

9. In view of the above, Writ Petition No.2067/2021 is partly allowed with the following directions :-

- a) The impugned order dated 06/08/2018 delivered by the Labour Court is quashed and set aside with a direction that the litigating parties would address the Labour Court on the basis of the evidence recorded in the enquiry in respect of charge No.10.
- b) Thereafter, the Labour Court is at liberty to decide, whether the findings of the Enquiry Officer are sufficient to prove the charge or not.

10. The Labour Court is reminded that the probative value of evidence required to prove a charge in a domestic enquiry, is not at par with the probative value of evidence required in a criminal trial, to prove the offence beyond any doubt. It is, therefore, expected that the litigating parties would advance their oral

(9)

submissions in relation to issue No.2 in the context of charge No.10 by placing reliance upon the Record and Proceedings of the enquiry. Thereafter, the Labour Court would proceed to pass a reasoned order. This exercise shall be concluded, on or before 30/07/2022.

(RAVINDRA V. GHUGE, J.)

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