

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 WRIT PETITION NO.2502 OF 2021

DWARKADAS MANTRI NAGARI SAHAKARI BANK LIMITED
THROUGHCHIEF EXECUTIVE OFFICER
VERSUS
MAHAVIR MOTILAL POKHARNA

...
Advocate for Petitioner : Mr Vinayak Narayan Upadhye
Advocate for Respondent sole : Mr Parag Vijay Barde

AND
WRIT PETITION NO.12900 OF 2021

VERSUS
MAHAVIR MOTILAL POKHARNA
VERSUS
DWARKADAS MANTRI NAGARI SAHAKARI BANK LIMITED
THROUGHCHIEF EXECUTIVE OFFICER

Advocate for Petitioner : Mr Parag Vijay Barde
Advocate for Respondent sole : Mr Vinayak Narayan Upadhye

CORAM : SANDEEP V. MARNE, J.
DATE : 14th DECEMBER, 2022

PER COURT :

1. In Writ Petition No. 2502/2021, petitioner bank has challenged the Judgment and order dated 18.07.2019 passed by the Industrial Court in Revision (ULP) No. 40 of 2014 and 44 of 2014 thereby confirming the order of the Labour Court in regard to the relief of reinstatement, but awarding 50% back wages w.e.f. 02.02.2002. The employee has also filed writ petition No.12900/2021 challenging the same order of the Labour Court to the extent of denial of 50% back wages. Writ petition No. 12900/2021 is not listed on today's board. With the consent of learned counsel for the parties, the same is taken on board and heard along with Writ Petition No.2502/2021.

2. The original complainant came to be employed as a trainee Clerk in the petitioner bank on 16.06.1997. While so working, he came to be arrested by Police on 14.07.2001 in connection with FIR lodged against him relating to fake notes. He remained under Police custody from 14.07.2001 to 14.01.2002. The petitioner bank claims to have requested the employee to resume duties by letter dated 17.01.2002, but he failed to resume duties. By order passed on 2nd February, 2002, petitioner bank proceeded to terminate the services of the employee on the ground of loss of confidence on account of involvement in offence relating to fake notes. Admittedly, no domestic enquiry was conducted against the employee before passing of termination order dated 02.02.2002.

3. The employee filed Complaint (ULP) No. 53/2006 before the Labour Court, Ahmednagar challenging his termination which came to be partly allowed vide Judgment and order dated 06.03.2014 setting aside the termination order dated 02.02.2002 and directing petitioner bank to reinstate him in service with continuity w.e.f. 02.02.2002. The Labour Court, however, did not award any back wages to the complainant.

4. Aggrieved by the Judgment and order dated 06.03.2014 passed by the Labour Court, both the petitioner bank as well as the original complainant filed their respective revision applications before the Industrial Court. The revision application filed by the complainant was with regard to denial of back wages. By common Judgment and order dated 18.07.2019, the Revision (ULP) No.44/2014 filed by petitioner bank came to be dismissed. The Revision (ULP) No. 40/2014 filed by the complainant

came to be partly allowed directing payment of 50% back wages w.e.f. 02.02.2002. The Judgment and order dated 18.07.2019 passed by the Industrial Court is subject matter of challenge in this petition filed by the petitioner bank as well as the original complainant. Again, Writ Petition No. 12900/2021 is restricted only to the extent of denial of 50% back wages.

5. I have heard Mr Upadhye, learned counsel appearing for petitioner bank as well as Mr Barde, learned counsel appearing for the original complainant.

6. Admittedly, no domestic enquiry was conducted against the original complainant before passing the order of termination dated 02.02.2002. Mr Upadhye has not been able to show any provision/Rules under which petitioner bank is entitled to terminate services of an employee on the ground of loss of confidence without holding inquiry

7. Having not conducted any domestic enquiry before termination, the petitioner bank made an attempt to prove the misconduct before the Labour Court by adducing evidence. Petitioner bank examined Deelip Deshmukh, the then Cashier in the branch who admitted during the course of cross-examination that the fake notes deposited in the petitioner bank were accepted by him and he accepted the entire responsibility for the same. Even other witnesses examined by the bank could not prove any misconduct on the part of the complainant. The Labour Court has analyzed the entire evidence on record and held that no misconduct on the part of the complainant could be proved. The Industrial Court in exercise of powers of revision, has considered the findings recorded by

the Labour Court and has upheld the same.

8. In writ jurisdiction under Article 227 of the Constitution Of India, this Court would not sit as an appellate authority over the findings so recorded by the Industrial Court and Labour Court. I am therefore of the view that the order passed by the Labour Court and the Industrial Court setting aside the termination order do not suffer from any error and the same are required to be upheld.

9. The prayer of the complainant for payment of 100% back wages in Writ Petition No. 12900/2021 cannot be accepted in view of the fact that the complainant himself was responsible for involving himself in a Police case and remaining in the custody for a long period from 14.07.2001 to 14.01.2002. For such a conduct of involvement in criminal case, the bank cannot be made to pay 100% back wages during the long period of 20 years.

10. What is left now is the issue of reinstatement and back wages. The complainant has been terminated from service on 02.02.2002 and he has been out of employment of petitioner bank for last 20 long years. Even after the Labour Court set aside the reinstatement on 06.03.2014. The petitioner bank failed to reinstate the complainant in service. Even as of today complainant has not been reinstated in service. The Industrial Court has awarded 50% back wages from 02.02.2002 till the date of reinstatement. The intervening period during which the back wages claimed is unduly long of about 20 years.

11. In the above circumstances, in my view, instead of reinstating of the petitioner in service, after the long expiry of time, ends of justice would be met if the complainant is paid lumpsum compensation for wrongful termination from service. I accordingly, proceed to pass the following order :-

ORDER

- (i) The orders passed by the Labour Court and Industrial Court are modified to the extent that petitioner bank shall pay to the respondent employee a lumpsum compensation of Rs. 4,00,000/- (Rupees Four Lakhs Only) for the wrongful termination from service. Over and above, the lumpsum compensation as awarded by this Court, the respondent employee shall not be entitled for any benefit from the petitioner bank. The petitioner bank to pay the compensation amount to the respondent employee within a period of two (02) months from today.
- (ii) With the above directions, the writ petitions are disposed of.

[SANDEEP V. MARNE, J.]

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