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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2553 OF 2019**

Anand Prabhakar Joshi

.. Petitioner

Vs.

**Chairman and Managing
Director & CEO, Bank of
Maharashtra & Anr.**

.. Respondents

Mr. Anand Prabhakar Joshi, petitioner-in-person present.
Mr. Mayur Joglekar for respondent no.1.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

**RESERVED ON: JANUARY 17, 2022
PRONOUNCED ON: JANUARY 25, 2022**

JUDGMENT [Per Dipankar Datta, CJ.]:

1. The petitioner appeared in person before us on 17th January, 2022. He fervently appealed to us to grant him relief, as claimed in the writ petition dated 1st February, 2019, upon looking into the written notes of arguments that he had filed earlier. In view of such submission made by the petitioner, we concluded hearing and reserved our judgment.

2. Having looked into the writ petition, the compilation of documents that are on record together with the written notes of arguments of the petitioner, we are pained to observe that the petitioner has been pursuing almost a lost cause and that no relief can be granted to him on this writ petition.

3. This writ petition happens to be the ultimate of the numerous forays of the petitioner seeking relief in the writ jurisdiction of this Court, arising out of the self-same grievance. While we propose to briefly refer to the earlier rounds of litigation initiated by the petitioner and the fate thereof a little later, we consider it proper to quote below the prayers in this writ petition: -

- "a. The Hon'ble court may club 2nd Civil Appeal no. 181/2018 along with this the present writ petition.
- b. To Declare that the order dt. 1-10-1996 of Respondent to remove the Petitioner from service be quashed and set aside.
- c. To declare that the "Respondent no. 1 charge sheet dated 14-09-1995 against the Petitioner may be quashed & set aside.
- d. To declare that the order dt. 18-07-2017 passed by the Hon'ble District court Pune at Civil Appeal No. 503/2016 is null and Void.
- e. The Hon'ble Court may consider
 - i) Ad-Interim Relief of Rs. 1 crore (Rupees One Crore only) until final disposal of this Writ Petition.
 - ii) The Hon'ble Court may consider Rs. 30,000/- per month adhoc Pension until final disposal of the Petition.
 - iii) The Hon'ble Court may stay the order dt. 1-10-1996 of removal from service until final disposal of the case.
- f. The Hon'ble Court may consider the period from 1-10-1994 to 1-10-1996 as 'DIES-NON'.
- g. That the Respondent no. 1 be ordered to declare the Petitioner as deemed to be in service from 1-10-1994 till the retirement on superannuation. i.e. 31-10-2012, with entitlement for deemed promotion upto officer grade VII of the Bank.
- h. That the Respondent no. 1 be ordered to pay the eligible pension from 1-11-2012.
- i. The Hon'ble Court may be pleased to order

Respondent No. 1 to pay damages of Rs.23,75,000/- to Petitioner for malfeasance acts. The interest @ 18% p.a. may be ordered from 01/10/1996 to realization of amount.

- j. That the Respondent no. 1 be ordered to pay interest @ 18% p.a. at bank lending rate of interest on Salary and Pension till realization of amount.
- k. That the respondent no. 1 be ordered to pay unliquidated damages amounting to INR 25/- crores (Rupees Twenty Five Crores only).
- l. That the Respondent no. 1 be ordered to pay the cost of the Petition.
- l. That such orders as this Hon'ble Court thinks fit & proper in the interest of Justice."

4. Bare reading of the prayers of the petitioner would give an indication why he is aggrieved. The petitioner was an employee of the respondent no.1/bank (hereafter "the Bank", for short) and pursuant to disciplinary proceedings initiated against him vide charge-sheet dated 14th September, 1995, he stands removed from service by an order dated 1st October, 1996 of the disciplinary authority. The petitioner had end number of grievances with regard to such removal. According to him, he was proceeded against for 'absenteeism' although he was never absent for any prolonged period of time for which a charge could be levelled alleging 'absenteeism'. It is alleged that the petitioner's leave record was forged by the Bank and based thereon, disciplinary proceedings initiated against him.

5. Let us now take a look at the multiple proceedings that were initiated by the petitioner before the civil courts. He instituted Special Civil Suit No. 40 of 2000 against the Bank

for compensation and damages in the court of the Civil Judge (Senior Division), Pune at Pune. After several amendments, the prayer clauses in the plaint read as follows: -

- a. This Hon'ble court be pleased to declare that the Defendant is liable to pay the compensation to the Plaintiff for their arbitrary, malafide and unlawful acts against the Plaintiff.
 - b. This Hon'ble court be pleased to declare that the order dated October 1/96 on charge-sheet dt. 14.9.95 is illegal and void-ab-initio benefit of any legal consequences and the Plaintiff is deemed to be in service of the Defendant with deemed eligible promotions.
 - c. The Hon'ble court may declare the action of Defendant dated 1.10.96 in charge-sheet dt. 24.1.92 as null and void for violating principles of natural justice in conduct of departmental inquiry on said charge-sheet.
 - d. This Hon'ble Court be pleased to order the Defendant to pay an amount of Rs.26,75,000/- inclusive of deemed salary from 1.10.1994 to 30.9.1999 to the Plaintiff on their illegal actions on both the inquiries till the date of filing of suit. All the actual salary emoluments and other eligible allowances applicable to Pune City area may be awarded from 1.10.1994 till realization of suit.
 - e. The interest on the above amount from 1.10.94 till the date of realization @ 12% p.a. compound interest or appropriate interest may please be awarded from the Defendant.
 - f. Costs of the suit may please be awarded.
 - g. Other just and equitable orders deemed necessary in the facts and circumstances of the case and in the interest of justice may please be passed."
6. Special Civil Suit No. 40 of 2000 was partly decreed on 16th April, 2016 by the learned Civil Judge. Compensation of Rs.3 lakh was granted to the petitioner along with interest @ 6% p.a.

7. Separate appeals under section 96 of the Code of Civil Procedure, 1908 (hereafter "the CPC", for short) were carried from such decree by the parties to the suit. By a common judgment and order dated 18th July, 2017 passed by the Additional District Judge, Pune, the appeal of the petitioner was partly allowed by enhancing the rate of interest to 8% p.a. from 6% p.a. The appeal of the Bank was, however, dismissed.

8. Two appeals (invoking provisions of section 100 of the CPC) were carried before this Court by the parties from the first appellate judgment and decree. By a common judgment and order dated 4th November, 2019, a learned Judge of this Court dismissed both the appeals holding that no substantial question of law was involved therein.

9. Once again, two review petitions were filed by the parties to the suit under section 114 read with Order XLVII Rule 1, CPC. Both the petitions were heard by the same learned Judge, who had the occasion to consider the second appeals at the stage of admission under Order XLI Rule 11 of the CPC. His Lordship, by an order dated 5th October, 2020, dismissed both the review petitions holding that neither the order dated 4th November, 2019 suffered from any error apparent on the face of the record nor was any new or important matter or evidence brought on record justifying review.

10. It is not in dispute that challenging the order dated 5th October, 2020, the petitioner has filed a second review petition before this Court and it is pending.

11. Having noticed the line of remedy pursued and exhausted by the petitioner before the civil courts as made available by the CPC, it would be profitable to note how and when the petitioner pursued the Constitutional remedy under Article 226 of the Constitution as well as under Article 32 thereof.

12. Even before institution of Special Civil Suit No. 40 of 2000, the petitioner had knocked the doors of the writ court by instituting Writ Petition No. 1228 of 1997. We find reference of this writ petition in a compilation of the Bank. The challenge was laid to the departmental inquiry. Since the copy of the order was not available readily, we had called for the records of Writ Petition No. 1228 of 1997 and find that the same was disposed of on 6th September, 2001 by a coordinate Bench with the following order: -

“ Civil Application as well as Writ Petition allowed to be withdrawn.

Authenticated copy be made available to the petitioner’s counsel.”

13. Thereafter, between 2004 and 2014, the petitioner had the occasion to institute 10 criminal writ petitions and several civil writ petitions, together with miscellaneous applications therein. In none of these proceedings does the petitioner appear to have obtained any tangible relief in regard to the proceedings initiated by the Bank leading to termination of his service. We have noticed that the petitioner had even the occasion to approach the Supreme Court under Article 136 of

the Constitution against an order dated 14th October, 2016 passed by a co-ordinate Bench of this Court, but his special leave petition was dismissed with a direction to the civil court to expedite its decision in Special Civil Suit No. 40 of 2000.

14. What is most glaring is the attempt of the petitioner, after he had approached this Court by presenting this writ petition, to seek relief before the Supreme Court by instituting a proceeding under Article 32 of the Constitution on 10th May, 2019, giving rise to Writ Petition (C) No. 787 of 2019. In such petition, the petitioner claimed the following relief: -

- "a) this Hon'ble Court may set aside the order dated 01.10.1996 issued by the respondent-Bank by which the petitioner is removed from service;
- b) this Hon'ble Court may declare that the charge-sheet issued by the respondent-Bank dated 14.09.1995 against the petitioner may be quashed;
- c) this Hon'ble Court may declare that the order dated 18.07.2017 passed by the Hon'ble District Court, Pune in Civil Appeal No. 503 of 2016 as null and void;
- d) this Hon'ble Court may consider the period from 01.10.1994 to 01.10.1996 as "DIES-NON";
- e) this Hon'ble Court may pass an order to the respondent-Bank to declare the petitioner as deemed to be in service from 01.10.1994 till the retirement on superannuation i.e. 31.10.2012, with entitlement for deemed promotion upto officer grade VII of the Bank;
- f) the respondent-Bank be ordered to pay the eligible pension to the petitioner from 01.11.2012;
- g) the respondent-Bank be ordered to pay damages of Rs.23,75,000/- to petitioner for malfeasance acts. The interest @ 18% p.a. may be ordered from 01.10.1996 to realization of amount.
- h) the respondent-Bank be ordered to pay interest @ 18% p.a. at bank lending rate of interest on salary and pension till realization of amount;
- i) the respondent-Bank be ordered to pay unliquidated damages amounting to Indian Rupees 25/-

Crores (Rupees twenty-five crores) in addition to pay damages of Rs.23.75 lacs to petitioner on which Court fee is paid;

j) the respondent-Bank be ordered to pay the cost of the litigation;

k) such any other or further order/orders may be passed as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

15. By an order dated 25th October, 2019, the Supreme Court dismissed the writ petition by passing the following order: -

" Upon perusing papers the Court made the following

O R D E R

Permission to appear and argue in person is allowed.

We are not inclined to entertain this petition under Article 32 of the Constitution of India.

The writ petition is, accordingly, dismissed. Pending applications stand disposed of."

16. Incidentally, this writ petition was pending when the aforesaid order dated 25th October, 2019 was passed by the Supreme Court on the Article 32 writ petition. Having looked into the list of dates forming part of the Article 32 writ petition, it does not appear to us that the petitioner had disclosed therein pendency of the present writ petition before this Court and seems to be guilty of suppression of a material fact from the Supreme Court. Be that as it may, the petitioner was heard to submit that the Supreme Court had granted him liberty to raise all points in the present writ petition; but, the order dated 25th October, 2019 does not so record. However, nothing substantial turns on it. We have

failed to comprehend as to how even if the Supreme Court had not been approached the present writ petition, on facts and in law, would be maintainable.

17. Prayers (a) to (d) quoted above, simply cannot be entertained. The second appeal of the petitioner having been dismissed, the petitioner's attempt to have the order reviewed has also not met with success. The lis in such second appeal does not survive. No order in terms of prayer (a) can thus be granted. In so far as prayers (b) and (c) are concerned, the same were the subject matter of challenge in Special Civil Suit No. 40 of 2000 and the issue has attained finality with dismissal of the petition filed by the petitioner seeking review of the second appellate order under section 100 of the CPC read with Order XLI Rule 11 thereof. Prayer (d) of the writ petition is also thoroughly misconceived. The judgment and decree of the first appellate court dated 18th July, 2017 having been challenged in a second appeal under section 100 of the CPC, we wonder how the same order could be a subject matter of challenge in a different proceeding, and that too, in a writ petition. The other prayers vide prayer clauses (e) to (k) relate to the subject matter of Special Civil Suit No. 40 of 2000. This Court, albeit in a different jurisdiction, having dealt with the disciplinary proceedings including the charge-sheet, the inquiry and the order of removal, the present writ petition is plainly not maintainable being barred by res judicata and analogous principles.

18. In our view, the petitioner not having pursued this writ petition and having approached the Supreme Court for

substantially the same relief as claimed herein, the conclusion is inescapable that there had been a temporary abandonment of this writ petition and only after being unsuccessful before the Supreme Court that the petitioner is seeking to take a chance before us once again.

19. Since the petitioner had appealed to us that we ought to look into his written notes of argument and decide his claims, we have looked into the same. Such notes are replete with contentions as to how the disciplinary proceedings initiated against the petitioner together with the order of removal are bad in law and ought to be invalidated as such. We are afraid, the issue having attained finality cannot be reopened by this proceeding.

20. We would have been justified in imposing exemplary costs on the petitioner for having abused the process of Court as well as law; however, bearing in mind that the petitioner is in the winter years of his life, and may not have received proper legal advice or may have even faltered by reason of his lack of legal knowledge, we refrain from imposing such costs.

21. The writ petition, accordingly, stands dismissed.

22. We make it clear that if the petitioner seeks to approach this Court in future raising any grievance with regard to the subject matter of Special Civil Suit No. 40 of 2000 by instituting any proceeding, he would be adequately dealt with.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)