

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**WRIT PETITION NO. 1551 OF 1999
WITH CA/5505/2002 IN WP/1551/1999**

The Chief Executive Officer,
Zilla Parishad, Ahmednagar.

.. Petitioner.

Versus

Shri Popat Vishwanath Temak,
At & Post : Karanjgaon,
Tal. Newasa, Dist. Ahmednagar.

.. Respondent.

Mr. S.T. Shelke, Advocate for the Petitioner.
Smt. Renuka Ghule, Advocate for the sole-Respondent.

CORAM : SHARMILA U. DESHMUKH, J.
Reserved on : FEBRUARY 20, 2023.
Pronounced on : MARCH 14, 2023.

JUDGMENT :

1. The challenge in the petition is to the Part-I Award dated 19th October, 1994 and Part-II Award dated 15th October, 1998 passed by the Labour Court in Reference IDA No.10 of 1989. By the Part-I Award, the enquiry conducted by the petitioner was held to be illegal, improper and in violation of the principles of natural justice. By Part-II Award, the reference was allowed and it was declared that the dismissal order passed by the petitioner dated 12th October, 1982 is illegal and contrary to the provisions of the law and a direction was given to reinstate the respondent within a period of

one month from the date of publication of the Award with continuity with back-wages to the extent of 50%.

2. Records and Proceedings were received by this Court. Office noting records that as per the communication received from Labour Court, evidences were included in File B and as per Labour Court departmental order of 2016 File B and File C were destroyed and as such, the Court proceeded on the basis of documents which were annexed to the petition and were handed over at the time of the hearing of the petition.

3. The facts of the case are as under:

. A reference was made by the Deputy Commissioner of Labour under Section 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947 (for short, “the Act”) for adjudication of dispute between the petitioner and the respondent as mentioned in the Schedule which reads as under:

“Shri Popat Vishwanath Temak should be reinstated with full back wages and continuity of services with effect from 12.4.1982.”

. The respondent-employee joined the services of the Petitioner in the year 1964. He was appointed as agricultural assistant. Subsequently he was transferred at Rastapur Grampanchayat, Newasa as Gramsevak. Thereafter he was transferred to Anchalgaon Group Gram Panchayat, Panchayat Samiti Kopargaon, and was appointed as Administrator *vide* order dated

25th June, 1976. The duties entrusted interalia included looking after the tree plantations and to employ the persons from the villages for said purpose, the expenses whereof to be borne from the Rural Employment Guarantee Scheme. Subsequently, the respondent was transferred to Shrirampur Panchayat Samiti.

. The Block Development Officer, Kopargaon issued notice dated 12th September, 1978 to the Respondent, alleging that that he had misappropriated a sum of Rs.1758/- as under:

- (i) Rs. 1176=00 False Vouchers.
- (ii) Rs. 510=00 Bogus expenditure in connection with road.
- (iii) Rs. 72=00 Bogus expenditure in connection
_____ with trees.

Total Rs. 1758=00.

4. Show cause notice dated 27th October, 1980 was issued to the Respondent by the Chief Executive Officer under the provisions of Rule 6 of the Maharashtra Zilla Parishad and Panchayat Samiti Rules setting out the substance of charges against the Respondent. It was alleged that while working as Administrator in Gram Panchayat Anchalgaoon during the period 10th January, 1977 to 20th July, 1977, the following misappropriation was committed by the Respondent:

- a) For tree plantation at Oghadi Pajhar Lake, an expenditure of Rs.530/- was shown, however, no such

work was done and bogus expenditure was shown and the amount was misappropriated by him;

- b) for carrying out the repairs of the road of Oghadi village, an expenditure of Rs.180/- was shown, however, no such repairs were carried out and bogus expenditure was shown and the amount was misappropriated;
- c) for carrying out the repairs of road at Bolki village, an expenditure of Rs.420/- was shown, however, no such work was carried out and bogus expenditure was shown and the amount was misappropriated;
- d) for the repairs of the road at Anchalgaon, an expenditure of Rs.393/- was shown, however, no such work was carried out and bogus expenditure was shown and the amount was misappropriated;
- e) for the purpose of carrying out the public work in village Oghadi, an expenditure of Rs.700/- shown, however no such work was carried out and bogus expenditure was shown and the amount was misappropriated.
- f) Expense of Rs.1030/- was shown towards the tree plantation and for its maintenance, however, no such work was done and bogus expenditure was shown and the amount was misappropriated.

5. Aforesaid six charges were imputed and the Respondent was directed to submit his explanation within a period of 10 days and in event any witnesses were to be examined in his defence, the list of witnesses to be forwarded to the office. It was stated that if no

explanation was received within a prescribed time, it would be presumed that he was nothing to say and no witnesses to be examined.

6. By order dated 4th March, 1981 Shri G.B. Kamble, Block Development Officer was appointed as Enquiry Officer. The Enquiry Officer Shri G.B. Kamble submitted the Enquiry Report dated 3rd October, 1981 to the Chief Executive Officer, stating that during the hearing of the departmental enquiry on 30th September, 1981 at Panchayat Samiti, Akola, the respondent has admitted the charges of misappropriation. The Report further stated that prior to the proceedings being forwarded for the purpose of enquiry to the enquiry officer, the respondent has given written admission by letter dated 1st May, 1978 and 3rd December, 1980 before the Block Development Officer and Taluka Panchayat Officer and has admitted the misappropriation of the amount shown below Charges 1 to 6 and has also shown his willingness to refund the said amount. It was stated that during the present enquiry, the Respondent has admitted the charges and has agreed to return the amounts.

7. The report further states that misappropriation of government funds is serious matter and three years prior thereto inspite of statement dated 1st May, 1978 given by respondent stating that the amount will be returned, the Respondent has not returned the amount and as such the amount should be directed to be

returned in lumpsum. It was recommended that henceforth the Respondent should be confined to desk work and no duty involving financial work should be given to him. Along with the report, a statement was forwarded showing the charges levelled and the evidence in the form of the Gram Seva Audit Reports.

8. Based on the enquiry report, final show-cause notice dated 3rd November, 1981 was issued to the respondent seeking an explanation as to why he should not be dismissed from service. As against the said show-cause notice, the respondent by his letter dated 6th December, 1981 submitted that during the Enquiry, he was unwell and as such he had admitted the charges. He submitted that the charges are not admitted and there is no misappropriation by him as alleged. Considering the explanation submitted by the respondent, an opportunity was given to submit his defence and on 13th January, 1982, the respondent submitted his written explanation. At the time of submitting his defence, the respondent submitted that as per the vouchers submitted by him, the expenditure was incurred on the works carried out by him and the payments were made to the persons as per the vouchers and as such necessary inquiry in that respect should be carried out.

9. Considering the defence of the respondent, the Chief Executive Officer took a decision to verify the authenticity of the vouchers and issued an order dated 1st February, 1982 directing the

Block Development Officer to conduct verification of the vouchers. By report dated 11th February, 1982 the Block Development Officer submitted that the vouchers are bogus and have been issued without any work being done.

10. The Block Development Officer concluded that the respondent has committed misappropriation of sum of Rs.2936/-. The Chief Executive Officer, who is the Disciplinary Authority, by order dated 24th February, 1982, after considering the previous enquiry reports as well as the subsequent report of the Block Development Officer dated 11th February, 1982 issued the order of dismissal. As against the order of dismissal, departmental appeal was preferred by the respondent before the Commissioner, under the provisions of Rule 24 of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964, which was dismissed by the Commissioner and the order of the Disciplinary Authority dated 12th April, 1982/24th February, 1982 was upheld. As against this, the respondent approached the Deputy Commissioner of Labour and the dispute came to be referred to the Labour Court for adjudication being Reference IDA No.10 of 1989. Statement of Claim was filed by the Respondent, which was opposed by the Petitioner.

11. The Petitioner raised an objection to the reference under Section 10 of Industrial Dispute Act, on the ground that

individual grievance of the workman cannot be said to be an Industrial Dispute. It was stated that the Respondent had accepted the charges, by his statement dated 3rd October, 1981, that the vouchers of accounts are false and bogus before the auditor who initially carried out the audit and during the enquiry statement was given accepting the charges. Part I Award was answered against the Petitioner and evidence was led to establish the misconduct of the respondent and the reference was allowed by Part-II Award.

12. Heard Mr. Shelke, learned counsel appearing for the petitioner and Smt. Ghule, learned counsel appearing for the respondent.

13. First and foremost, Mr. Shelke submits that the reference is not maintainable. Placing reliance upon the definition of the “Industrial Dispute” contained in Section 2(k) of the Industrial Disputes Act, 1947, he submits that it is evident that dispute between a single workman and the employer would not fall within the definition of the Industrial Disputes Act, unless the same is espoused by the union or supported by other workmen. He would further submit that considering that the Respondent has voluntarily admitted the charges, there was no necessity to conduct any further enquiry and as such the only issue remains is imposition of penalty. He would further submit that although the Chief Executive Officer had directed an enquiry into the authenticity of the vouchers, the

direction itself is contrary to law as the enquiry had already been conducted. He would further submit that the verification report in respect of the vouchers was not part of the enquiry which stood concluded vide Enquiry Report dated 3rd October, 1981 and the enquiry was never reopened. He would further submit that this Court will not reappreciate the evidence as an Appellate Court and it is for the Disciplinary Authority to decide the nature of the punishment. He relies upon the following decisions

- (i) **Chairman & Managing Director, V.S.P. & Ors. V. Goparaju Sri Prabhakara Hari Babu**, reported in 2008 II CLR 338;
- (ii) **The Nedungadi Bank Ltd., Appellant v. K.P.Madhavankutty and others, repondents**, reported in AIR 200 SCC 839;
- (iii) **Brij Bihari Singh s/o. Bacchan Singh and another vs. Western Coalfields Ltd., Nagpur and others**, reported in 2022 (3) Mh.L.J. 86;
- (iv) **State of U.P. and others, Appellants v. Nand Kishore Shukla and another, Respondents**, reported in AIR 1996 1561;
- (v) **Workmen of M/s. Dharam Pal Prem Chand (Saugandhi) Appellants v. M/s. Dharam Pal Chand (Saugandhi) Respondent**, reported in AIR 1966 SC 182;
- (vi) **U.P.State Road Transport Corporation vs. Suresh Chand Sharma**, reported in 2016 (6) Mh.L.J.

14. Per contra, Smt. Renuka Ghule has invited the attention of this Court to Section 2-A of the Industrial Disputes Act, 1947 and would contend that the dispute arising out of the termination of the individual workman would fall within the definition of “industrial dispute” under the Industrial Disputes Act, 1947. She would further submit that the enquiry officer has submitted a report on the basis of the admission of the guilt, which admission was immediately withdrawn before the Chief Executive Officer and considering the withdrawal of the admission, there was a verification directed into the authenticity of the vouchers. She would further submit that in the enquiry concerning the authenticity of the vouchers, the respondent was not given any opportunity of cross-examining the witnesses. She would further submit that the petitioner has failed to prove the misconduct. In support of her submissions, she relies upon the decision in the case of **Shri Natha S/o Rambha Warbhavan Vs. The Sarpanch & Ors.**, in **Writ Petition No.452 of 1986**, decided on **8th June, 2000**.

15. Considered the rival submissions of the parties and perused the material on record with the assistance of the learned Counsels for the parties.

16. The first and foremost issue raised by the learned Counsel for the Petitioner is of maintainability of the reference, in as much as the dispute in the present case arose between an individual workman and the employer which was not espoused by the union of the

workmen or by majority of the workman. He has relied on the decision of the Apex Court in the case of the **Workmen of M/s. Dharam Pal Prem Chand (Saughandhi) (supra)**. At this stage, it would be appropriate to refer to the definition of “Industrial Dispute”, as set out in Section 2 (k) of the Industrial Disputes Act, 1947, which reads thus:

“2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

(k) "industrial dispute" means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.”

17. In the case of **Workmen of M/s. Dharam Pal Prem Chand (Saughandhi) (supra)**, the Apex Court was considering the impugned order of dismissal of employee passed on 28th July, 1961 and as such the Apex Court has taken into consideration the provision of Section 2 (k) of the Act defining industrial dispute. On 1st December, 1965, the Act was amended and Section 2-A came to be introduced and the relevant sub-Section (1) of Section 2-A, reads thus:

“2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- (1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to

be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.”

18. Conjoint reading of Section 2(k) and sub-section (1) of Section 2-A of the Act, indicates that normally, the dispute relating to an individual workman is not an industrial dispute unless it is sponsored by the Union of which the workman is a member or supported by majority of workman. However, by reason of introduction of Section 2-A, there has been change , by virtue of which, in certain cases such a dispute, although may not be espoused by the group of workman or union, will still be deemed to be an industrial dispute. Apex Court in the case of **Rustom & Hornsby (I) Ltd. Appellant v. T.B. Kadam, Respondent**, reported in **1975 AIR 2025**, held as under:

“Section 2-A provides in effect that what would not be an industrial dispute as defined in Section 2(k), as interpreted by this Court, would be deemed to be an industrial dispute in certain circumstances. There is no question of giving retrospective effect to that section in making the reference. When the section uses the words "discharges dismisses, retrenches etc." it does not deal with the question as to when that was done but merely refers to a situation or state of affairs.

It is no objection to this to say that. such an interpretation would lead to an old dispute being reopened after the lapse of many years. Every reference would be made only sometime after the dispute has arisen. Even in this case, if a labour union or a group of workmen had sponsored the case of the respondent,

such a reference after lapse of some time would have been valid. All that Section 2-A has done is that by legislative action such a dispute is deemed to be an industrial dispute even where it is not sponsored by a labour union or a group of workmen. The only consideration in such matters is whether there was or apprehended an industrial dispute when the reference was made.”

19. It is clear from the above that by virtue of introduction of Section 2-A to the Act, a dispute pertaining to the dismissal of an individual workmen would be deemed to be an industrial dispute. Learned Counsel for Respondent has rightly relied upon the provision of Section 2-A of the Act. In light of the statutory provisions and the aforesaid decision, it is not possible to accept the submission that the dispute being relatable to the dismissal of an individual workman was not maintainable as industrial dispute.

20. Let us now consider the validity of the Part I Award and Part II Award. As far as Part I Award is concerned, the Labour Court has held the enquiry conducted by the petitioner to be improper and in violation of the principles of natural justice for the reason that only the statement of the witnesses was recorded and no opportunity of cross-examination was given to the Respondent. This was in reference to the enquiry conducted by the Block Development Officer into the authenticity of the vouchers by which certain payments were shown to have been made towards the expenditure incurred.

21. After the enquiry officer had submitted the Enquiry report dated 3rd October, 1981, final show cause notice dated 3rd November, 1981 was issued to the Respondent. Considering the explanation tendered by the Respondent, wherein he stated that due to ill health, the charges were admitted before the Enquiry Officer. He denied that he has committed misappropriation and has withdrawn the admission given. He stated that the work was done as per the vouchers submitted by him and payments made to respective parties. In view of this explanation tendered by the Respondent, the Chief Executive Officer took a decision to conduct an enquiry into the authenticity of the vouchers and directed the Block Development Officer, Panchayat Samiti, Kopagaon to conduct an inquiry into the authenticity of the vouchers by order dated 1st February, 1982. The Block Development Officer submitted a confidential report dated 11th February, 1982 stating that the vouchers are bogus and without carrying out the work expenditure is shown.

22. The Block Development Officer in his confidential report has submitted as under:

As regards Oghadi Village:

- (a) Shrimati Kalabai Eknath Gonte, a labourer, who stated that she had carried out the work of watering the trees at Pajhar Lake; that she was getting wages of Rs.20/-

for one or two weeks; that still she has to receive Rs.500/- from Grampanchayat and that she worked for two months. It was recorded that as per the vouchers amount of Rs.588/- is shown as payment to her, which appears to be bogus in view of the statement recorded.

- (b) Shri Namdeo Baburao Jorvar, a labourer, in whose name voucher dated 11th January, 1977 for Rs.33/-, Voucher No.2 dated 5th February, 1977 for Rs.51/-, Voucher No.6 dated 31st May, 1977 for Rs.15/- and voucher No.7 dated 21st January, 1977 for Rs.10/- are shown to have been paid. He has stated that he has not done the work of maintenance of the trees of Gram Panchayat and that the Respondent has never employed him. He has further denied his signature on the muster.
- (c) Shri Yadav Raoji Bhalerao, in whose name payment as against Voucher No.5 dated 10th March, 1977 for Rs.30/- is shown to have been paid. He has stated that he has never done the work of putting Murum and sand on the village road.
- (d) The villagers were questioned about the repairs carried out to the village Well. It was stated by the villagers that no work of repairs to the village well was carried out by the Respondent
- (e) Spot inspection of the public Well was conducted, which indicates that no work of repairs was carried out, however, vide Voucher No.4 dated 20th May, 1977, a sum of Rs.700/- has been shown as payment to Shri Eknath Bhika

Madke for repairs to the well. The villagers of Oagdi village have stated that since the establishment of Gram Panchayat, murum or sand has not been put on the village road.

As regards Bolki Village:

- (a) The statements of (i) Chima Shivram Gangurde, (ii) Bhima Shivram Gangurde, (iii) Kisan Shankar More, (iv) Smt. Sarubai Maruti Pagare, (v) Namdeo Shankar More, (vi) Soma Maruti Lashkare, were recorded in connection with the Voucher No.6 dated 18th February, 1977 and Voucher No.8 dated 21st June, 1977, in which they have stated that they were not employed for putting murum and sand for the purpose of carrying out repairs to the village road. The voucher shows the signature by Soma Lashkare, however, he cannot sign and as such, the voucher was reported to be bogus.
- (b) The villagers have stated that since the establishment of the Gram Panchayat, there is no work of road repairs carried out in the village. As regards the vouchers, two persons in whose names the vouchers stands have expired and three have migrated from the village.

As regards village Achalgaon:

- (a) The Block Development Officer has reported that as regards the Voucher No.7 dated 30th March, 1977, the voucher shows the payment made for the purposes of carrying out the road repairs and the labour charges shown as Rs.30/-, however, Narayan Khandu Jadhav stated that he has not done any work and he has not taken money and he cannot sign.

- (b) As regards the voucher No.1 (muster) dated 5th May, 1977, Laxman Bala More has been shown to be paid labour charges for Rs.30/- for the purpose of putting murum and sand on the village road for 10 days. However, Laxman Bala More has stated that he has not done any work and he has not received any money.
- (c) As regards voucher No.1 (muster) dated 5th May, 1977, Kisan Shivram Thombre has been shown to be paid labour charges for Rs.30/- for the purpose of putting murum and sand on the village road for 10 days. He has stated that he has not carried out any work and he has not received any money. He has further stated that payment is also shown in the name of his wife Mandabai Kisan Thombre, however, his wife's vision has been damaged prior to 15 to 20 years and as such, she cannot work.
- (d) The villagers have stated that since establishment of the Gram Panchayat, the work of road repairs is not being carried out and as regards the persons in whose names the vouchers made out, one person has expired 4 to 5 years back and four persons have migrated from the village.

23. It is evident from the above, that extensive inquiry was carried out by the Block Development Officer upon the direction of the Chief Executive Officer, wherein statements of the persons in whose names the vouchers were issued, were recorded. The Block Development Officer on the basis of the enquiry has concluded that the Respondent has prepared bogus vouchers. As the enquiry officer

had submitted his report on the basis of the admission which was given by the respondent and the Chief Executive Officer had given further opportunity to the respondent to prove his defence, as such, in my opinion, the enquiry was reopened by the Disciplinary Authority. In my view, the Chief Executive Officer being the Disciplinary Authority was empowered by sub-rule (3) of Rule 6 to enquire into the charges, which reads thus:

“6. Procedure for imposing major penalties:

*(1) ******

*(2) ******

(3) On receipt of the written statement of defence, or, if no such statement is received within the time specified under sub rule (2), the Disciplinary Authority may itself inquire into the charges not admitted in the statement or if it considers it necessary so to do, appoint an Inquiry Officer for that purpose.”

24. Sub-Rule (3) of Rule 6 of the Panchayat Samiti Rules, empowers the Disciplinary Authority to enquire into the charges itself or if it considers appropriate to do so appoint an enquiry officer for that purpose. Although, in the present case, the enquiry officer was appointed, the Disciplinary Authority thereafter, took upon itself the task of further inquiry and reopened the enquiry by directing the Block Development Officer to verify the authenticity of the vouchers.

25. It is clear from the order dated 24th February, 1982 that the Chief Executive Officer while issuing the order of dismissal has relied upon not only the findings of the enquiry officer dated 3rd October, 1981 but also the report of the Block Development Officer dated 11th February, 1982 as regards the authenticity of the vouchers. It is an admitted position that the statements of the witnesses were recorded by the Block Development Officer without affording an opportunity of cross examination to the Respondent. Considering that the dismissal order is based on both the Enquiry Reports i.e. the earlier report submitted by the Enquiry Officer appointed to conduct the departmental enquiry as well as the report submitted by the Block Development Officer as regards the authenticity of the vouchers, the Respondent had a right to cross examine the witnesses whose statements were recorded by the Block Development Officer. As such, in my opinion, there is violation of principles of natural justice, which has been rightly held by the Labour Court in Part I Award and as such I do not find any infirmity in the findings of Part-I Award.

26. Subsequent to the Part-I Award, to establish the misconduct of the respondent, the petitioner examined three witnesses i.e. the Labourers Smt. Kalabai, Yadav Bhalerao and Changdevo Ghongte. These three witnesses examined were stated to be the persons in whose names the payments were shown to be made through the vouchers.

27. As observed above, the Records and Proceedings containing the evidence was not forwarded to this Court and as such, I have relied upon the observations made in Part-II Award. The parties agree that there is no factual error in the Part-II Award as regards the evidence of these three witnesses. It is observed that Smt. Kalabai has deposed that the government officer had not visited her village for enquiry and denied her statement and as such was declared hostile. In the cross examination, after being declared hostile, she has deposed that she has not received the amount of Rs.33/- and that she has not performed the work of repairing the road and tree plantation. As regards the second witness Yadav Bhalerao is concerned, he has deposed that he had no connection with the Gram Sevak in the year 1977 for putting of sand and no amount was received from the Gram Sevak. He has further denied the vouchers and the statement was not admitted. The Labour Court has observed that the evidence of the third witness Changadeo Ghongte does not establish the guilt.

28. Analysing the evidence of these three witnesses, the impugned Part II Award holds that the Petitioner has failed to prove the misappropriation of amount.

29. The dismissal order dated 23rd February, 1982/12th April, 1982 alleges misconduct of misappropriation of sum of Rs.513/- while carrying out the work of tree plantations and

maintenance of the trees at Oghadi Pazhar lake; misappropriation of sum of Rs.180/- while carrying out work of repairs at Oghadi village; misappropriation of sum of Rs.420/- while carrying out road repairs of Bolki village, misappropriation of sum of Rs.393/- while carrying out road repairs at Anchalgaon, misappropriation of sum of Rs.700/- while carrying out public works at Oghadi village and misappropriation of sum of Rs.1030/- while carrying out work of tree plantation and their maintenance. The case of the Petitioner is a specific case of misappropriation with specific dates and amounts. The Petitioner was therefore under an obligation to prove the specific cases of misappropriation of the specific amounts. In that context, the evidence of the Audit Officer, on whose audit reports, the findings of the Enquiry Officer is based, would be the best evidence. However the Audit Officer has not been examined.

30. Considering that the charge-sheet which was issued to the respondent placed reliance upon the audit report, it is surprising that the Petitioner-Zilla Parishad has not bothered to examine any official to bring on record the audit report. Neither the Auditor has been examined nor enquiry officer has examined and rather the petitioner in order to prove misconduct has chosen to examine the witnesses in whose names the vouchers are alleged to have been issued. As the Block Development Officer had conducted the enquiry into the authenticity of the vouchers, in my view, it was necessary to

examine, the Block Development Officer to prove that the vouchers submitted by the Respondent were bogus vouchers.

31. The natural sequence of events to be proved would be firstly to prove that expenditure was claimed to have been incurred on certain works carried out by Respondent, secondly to prove the vouchers through which payments were made, thirdly to prove that no such work was carried out and fourthly to prove that the vouchers are bogus as the persons in whose names payments are shown to be made were not paid.

32. Perusal of the impugned Part II Award does not indicate that the vouchers were produced or proved by the Petitioner. As it was the specific case of the Petitioner that the Respondent had not carried out the alleged work, it was necessary to examine an official of Petitioner Zilla Parishad to establish that no such work had been carried out. As the expenses were alleged to have been shown through vouchers, it was necessary to produce and prove the vouchers and subsequently after the vouchers were proved to have been issued by the Respondent then the next witnesses would be the labourers in whose names the vouchers are made. By merely examining the labourers, in whose names the vouchers had been issued, without laying down the foundation of misappropriation by appropriate evidence, it cannot be held that the Petitioner has

proved the misconduct alleged i.e. misappropriation of the specific amounts.

33. There is no deposition, at least produced before this Court, which proves the misconduct of misappropriation. The Petitioner has not established the charges imputed as regards the non carrying out of road repairs and non plantation of trees and absence of maintenance. The Petitioner has also failed to prove that for the purpose of these works, expenditure was shown by the Respondent by way of payment through vouchers. There is no oral or documentary evidence on record in that respect. The examination of these witnesses, in the absence of examination of an official of the Petitioner Zillha Parishad and Audit Officer, de-hors any documentary material, does not prove the alleged misconduct of misappropriation. Although, the witnesses have stated that no work had been carried out by them, as the Petitioner has failed to establish that the Respondent had shown the expenditure by way of payment through vouchers and that the vouchers were issued in favour of these three witnesses, the evidence of the witnesses that they had not carried out any work does not assist the case of the Petitioner.

34. Much emphasis has been laid on the admissions alleged to have been given by the Respondent during the enquiry and it is submitted that in view of the admission, it is not necessary for the

Petitioner to prove the misconduct. In the present case, after the admission was given the Enquiry Officer had submitted his Enquiry report. In reply to the final show cause notice, the Respondent had submitted an explanation withdrawing his admission and in view of his explanation, the Chief Executive Officer had directed an enquiry into the authenticity of the vouchers. This indicates that the withdrawal of the admission was accepted by the Chief Executive Officer and further enquiry was directed. In view thereof, the submission of the learned Counsel for Petitioner that the admission proves the misconduct is liable to be rejected.

35. As regards the submission of the learned counsel for the Petitioner that there has been a delay in the reference, the provisions of Section 10 of the Industrial Disputes Act, 1947, which deals with the reference of disputes to Boards, Courts or Tribunals, do not prescribe any period of limitation for reference of industrial dispute for its adjudication by the Labour Court. On the contrary, it specifically provides that it can refer the industrial disputes at any time. In the present case, the punishment of dismissal was imposed on 12th April, 1982, the appeal filed by the Respondent came to be dismissed by the Commissioner on 22nd February, 1983 and the revision of the Respondent came to be dismissed by the State Government on 6th August, 1985, and thereby the Respondent had approached the Conciliation Officer and after failure report in conciliation proceedings the dispute was referred to the Labour Court on 19th October, 1994.

36. Perusal of the statement filed by the Petitioner in the Reference reveals that no plea regarding delay is taken. It appears that during arguments, the submission of delay has been raised. Had the plea of delay being raised in the statement, the Respondent would have been in a position to put forth an explanation as regards the alleged delay. As such I am not inclined to consider the submission of delay raised by the learned counsel for Petitioner, particularly when no prejudice is shown to have been caused to the Petitioner.

37. In the case of **Ajaib Singh v. The Sirhind Co-operative Marketing-cum-processing Service Society Ltd. & Another**, reported in (1999) 6 SCC 82, in paragraphs 5 and 10, the Apex Court held thus:

“5. In dealing with the industrial disputes, the courts have always emphasized the doctrine of social justice, which is founded on basic ideal of socio-economic equality as enshrined in the Preamble of the Constitution. While construing the provisions of the Act, the courts have to give them a construction which should help in achieving the object of the act.

10. It follows therefore, the provisions of Article 137 Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workmen merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the

relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages.”

38. As regards the decision in the case of **Chairman & Managing Director, V.S.P. & Ors. (supra)**, cited by the Petitioner, in that case the charges were admitted by the Respondent and hence were not required to be proved by the management. In the present case, after the admission before the Chief Executive Officer, while submitting the explanation to the final show cause notice, Respondent has withdrawn his admission and the Chief Executive Officer had accepted the explanation and directed further enquiry. As the explanation itself was accepted by the Chief Executive Officer, the submission of the learned counsel for the Petitioner that the misconduct of the Respondent was not required to be proved by the Petitioner, in view of the admission of the charges is liable to be rejected.

39. As regards the decisions of the Apex Court in the case of **The Nedungadi Bank Ltd. (supra)**, and in the case of **Brij Bihari Singh s/o. Bacchan Singh and another (supra)**, the said decisions have been relied upon in support of the petitioner's submission on the ground of delay. As observed above, in the present case, as the plea of delay does not find place in the pleadings before the Labour Court, consequently, the Respondent-workman could not have justified the delay or set out the explanation showing the circumstances, which prevented him from

approaching the Court at an early stage. In the absence of pleadings, the decisions do not assist the case of the Petitioner.

40. As regards the decisions in the case of **State of U.P. and others (supra)**, and in the case of **U.P. State Road Transport Corporation (supra)**, the Apex Court has held that it is settled that the Court is not a Court of Appeal to go into the question of imposition of punishment and it is for the Disciplinary Authority to consider what would be the nature of the punishment to be imposed on a government-servant, based upon proved misconduct. In the present case, as in my opinion, the Petitioner has failed to prove the misconduct, the question of going into the proportionality of the punishment does not arise.

41. In light of the above, the Petition fails. The impugned judgment and order directs reinstatement of the Respondent within a period of one month from date of publication of the Award with continuity and backwages to the extent of 50% w.e.f 12th April, 1982. This Court is informed that the Respondent has retired by superannuation. While issuing Rule, this Court had granted interim relief in terms of prayer clause (C) subject to the Petitioner depositing the amount of arrears in the Court. The Respondent is at liberty to withdraw the said amount, if deposited by the Petitioner.

42. For the reasons stated above, Rule stands discharged. The Respondent be granted all benefits of continuity of service w.e.f. 12th April, 1982. Considering that the Respondent has not worked

from 12th April, 1982 till his retirement, the back wages to be restricted to the extent of 50% w.e.f. 12th April, 1982. However, for the purposes of computing his post retiral dues and pensionary benefits, his whole salary on notional basis for the aforesaid period should be computed as revised from time to time.

43. In view of the dismissal of the writ petition, nothing survives in the pending civil application and same stands disposed of.

(SHARMILA U. DESHMUKH, J.)

44. After the judgment is pronounced, learned counsel for the petitioner seeks stay of the operation of this judgment. The judgment is stayed for a period of eight weeks from today.

(SHARMILA U. DESHMUKH, J.)