

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

WRIT PETITION NO.4667 OF 2021

Vardhman Shantinath Jain
Aged about 61 years, Occ. Nil
Karmavir Nagar, Indira Path
At Post Taluka Kopargaon
Dist. Ahmednagar

... Petitioner

Versus

The Kopargaon People's Co-op Bank Ltd.,
Post Box No.8,
At Post Taluka Kopargaon
District Ahmednagar
PIN: 423601
Through it's General Manager

... Respondent

...
Advocate for Petitioner: Mr. V. N. Upadhye
Advocate for Respondent: Mr. C. V. Dharurkar
...

CORAM : NITIN B. SURYAWANSHI, J.

**RESERVED ON : 30th AUGUST, 2023
PRONOUNCED ON : 04TH OCTOBER, 2023**

ORDER :

1. This petition filed under Article 226 and 227 of the Constitution of India, impugns order dated 06/04/2015, passed by Labour Court, Ahmednagar, in Application (BIR) No.01/2004 and the order 01/08/2019, passed by Industrial Court, Ahmednagar, in Appeal (IC) No.01/2015.

2. It is the case of petitioner that he was initially appointed as 'Clerk' on 01/02/1982 and he became permanent with

effect from 01/09/1983. He has worked as a Cashier at various branches of respondent bank, such as Shirdi, Sahajanandnagar, etc. He was working as a Cashier in the main branch at Kopargaon from 02/12/2002 till he was terminated by order dated 10/03/2004. On 23/03/2003, he was called upon at the house of Shri Ratanbhau Thole, Founder Director of the Bank. At that time, Chairman Mr. Lohade, Director Mr. Kangale, General Manager Mr. Sabaranjak, Branch Manager Mr. B. D. Pande and Clerk Mr. R. S. Satdive were also present there. Petitioner was informed that there was misappropriation of amount of Rs.67,000/- from the account of Mr. S. B. Lodha in Shirdi Branch and entry in cash book dated 28/02/2002, which was in the handwriting of petitioner, was shown to him, but entry of the said amount was not appearing in the ledger. Petitioner stated that, as per the routine practice he has paid amount of Rs.67,000/- on voucher/withdrawal slip. Petitioner was asked to take inspection of said voucher/withdrawal slip in the Shirdi Branch. Though searched, the said voucher/withdrawal slip was not found in the Shirdi branch. Thereafter, written explanations of petitioner, Clerk Mr. Satdive, Branch Manager Mr. Pande and Peon Mr. Wagh, were obtained. According to petitioner, he was threatened with arrest through police and was pressurised to deposit amount of Rs.67,000/-. Petitioner was under impression that voucher/withdrawal slip would be found in other bundle and it

would be traced out. Therefore, he assured to deposit amount of Rs.67,000/- under protest. Petitioner contends that he has written letter dated 23/03/2003, as dictated by the then Chairman. On the same day, father of petitioner was also pressurised to deposit amount of Rs.67,000/-. It was assured that after completion of inquiry the said amount will be refunded to him. Accordingly petitioner's father deposited amount of Rs.67,000/-. Thereafter, for 10 days, petitioner was sent to Shirdi Branch to trace the voucher/ withdrawal slip, however, he was unable to trace it. Accordingly, he submitted report to the superiors. Charge-sheet dated 07/07/2003 was served on petitioner leveling charges that he has committed misappropriation. Petitioner denied the charges and submitted his reply on 10/08/2003. After conducting inquiry, by order dated 10/03/2004, services of petitioner were terminated.

3. Petitioner challenged the said termination order in departmental appeal, which came to be dismissed. Therefore, petitioner approached the Labour Court, Ahmednagar, by filing Application (BIR) No.01/2004, challenging the termination order. The Labour Court, after recording evidence and hearing the parties dismissed the application on 06/04/2015.

4. Petitioner challenged the decision of Labour Court by filing Appeal (IC) No.01/2015, which was treated as Revision by the

Industrial Court, Ahmednagar, and the same is also dismissed on merit, by judgment and order dated 01/08/2019. Both these decisions are impugned in present petition.

5. Heard learned advocate for petitioner and learned advocate for respondent. Perused the writ petition memo, annexures thereto and the impugned orders.

6. Perusal of record indicates that preliminary issue of validity and perversity of findings of inquiry officer were held in favour of petitioner. Labour Court granted liberty to respondent bank to prove the charges by leading evidence. Accordingly, respondent bank has led evidence before Labour Court. Respondent bank by leading evidence of C.W. No.1 Subhashchandra Bhikchandji Lodha, has proved that from his account amount of Rs.67,000/- was withdrawn. From account extract, it is clear that on 28/02/2002, C.W. No.1 S. B. Lodha has not withdrawn said amount from his saving bank account No.320, maintained with respondent Bank at Shirdi Branch.

7. By leading evidence of employee of respondent bank C.W. No.2 Pramod Dattatray Savai, it is proved that petitioner has withdrawn amount of Rs.67,000/- from saving bank account of Mr. S. B. Lodha and misappropriated the same. Petitioner has fabricated record and withdrew amount of Rs.67,000/-. No voucher/

withdrawal slip was placed before Branch manager, Mr. Pande or Account Clerk Mr. Satdive. C.W. No.3 Viresh Balkrushna Paithankar has also supported the case of respondent Bank. Thus, sufficient evidence is led by respondent bank to prove serious misconduct on the part of petitioner.

8. From petitioner's evidence, it is clear that, he has not disputed that on 28/02/2002 amount of Rs.67,000/- has been debited in the name of Mr. S. B. Lodha. He has claimed that, he paid that amount as per pay order on withdrawal slip/voucher. However, this contention is falsified in the cross-examination. In cross-examination, petitioner has admitted that he has taken entries in ledger on 28/02/2002.

9. Apart from above, petitioner has admitted his misconduct in letter dated 23/03/2003, which is in his own handwriting. Petitioner has also deposited the misappropriated amount of Rs.67,000/-. Though petitioner repeatedly searched at Shirdi Branch, the voucher/withdrawal slip of the said amount was not found by petitioner.

10. Labour Court after analysing the evidence has held that, by leading cogent evidence charges of misconduct and misappropriation levelled against petitioner are duly proved by respondent bank. It is held that past service record of petitioner is

also not clean and unblemished. He was punished and imposed punishment of stoppage of three increments for withdrawing amount of Rs.37,000/- cash from respondent bank and utilizing it for his own benefits. Considering these aspects, the Labour Court has held that, respondent bank has substantiated charges levelled against applicant in charge-sheet dated 07/07/2003 and petitioner has failed to prove that impugned termination order dated 10/03/2004 is issued in violation of provisions of Section 78(1) and 79 of the Bombay Industrial Relations Act.

11. Industrial Court has treated the appeal filed by petitioner as revision and rejected it on merits by a reasoned order.

12. By relying on ***Brihan Mumbai Electric Supply and Transport Undertaking Vs. Shivaji K. Shinde, 2023 (2) Bom. LC 313 (Bom)***, wherein learned Single Judge of this Court has held that Section 88 of the Bombay Industrial Relations Act, 1946, provides that Industrial Court in appeal may confirm, add to or rescind, modify any decision or order appealed against and may pass such order therein as it may deem fit, therefore, considering facts and circumstances of a case, power of Industrial Court are quite wide to pass appropriate orders, it is argued that Industrial Court has erred in treating appeal as revision and has failed to exercise appellate jurisdiction. By setting aside order passed by Industrial Court,

matter may be remanded back to Industrial Court to decide appeal filed by petitioner afresh on merits. The said argument cannot be accepted.

13. This Court is of the considered view that order passed by Labour Court is just legal and proper and is sustainable in view of evidence brought on record. Therefore, this Court is not inclined to accept prayer of petitioner of remanding appeal for fresh consideration.

14. There is sufficient material on record which proves misconduct on the part of petitioner. Labour Court, therefore, is justified in dismissing appeal by a well reasoned order. Industrial Court has also upheld decision of Labour Court while exercising its revisional jurisdiction.

15. Both the Courts have recorded concurrent findings of fact which are not liable to be interfered with in exercise of extraordinary writ jurisdiction. There is no illegality or perversity in the orders impugned in present petition. Writ petition being devoid of merit is dismissed.

(NITIN B. SURYAWANSHI, J.)