

AJAY

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1128 OF 2007

Chief Executive Officer,
Sangli Zilla Parishad, Sangli. ... Petitioner

Versus

Maruti Pandurang Patil
R/o. June Khed, Tal. Walwa, Dist: Sangli. ... Respondent

**WITH
CIVIL APPLICATION NO. 2924 OF 2017**

IN

WRIT PETITION NO. 1128 OF 2007

Maruti Pandurang Patil
R/o. June Khed, Tal. Walwa, Dist: Sangli. ... Applicant

Versus

Chief Executive Officer,
Sangli Zilla Parishad, Sangli. ... Respondent

.....

- Mr. Amit Sale, Advocate for Petitioner.
- Mr. Aditya S. Desai, Advocate for Respondent/Applicant.

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 31, 2023

JUDGMENT:

1. Heard Mr. Sale, learned Advocate for the Petitioner and Mr. Desai, learned Advocate for the Respondent / Applicant.

2. This Writ Petition is filed under the provisions of Article 227 of the Constitution of India and takes exception to the twin judgments and orders dated 17.07.2006 passed by the Industrial Court, Sangli in Revision (U.L.P.) No. 29 of 1999 and dated

31.07.1999 passed by the Labour Court, Sangli in Complaint (U.L.P.) No. 40 of 1996.

3. Briefly stated such of the relevant facts required for adjudication of the present Writ Petition are as under:-

3.1. In 1966 Respondent was appointed on the post of 'Gramsevak' by Petitioner.

3.2. In 1981 - 1982, Respondent was serving as Gramsevak at village Shirdhon; taluka Kavathe Mahakal; district Sangli. During financial audit of the above years it was revealed that Respondent had misappropriated an amount of Rs. 1,454/- approximately over a period of one year during 1981-82 and departmental enquiry was initiated against him by issuing a show-cause notice dated 28.07.1987 followed by charge-sheet as per the Zilla Parishad Service (Discipline and Appeal) Rules, 1964. No reply was filed by Respondent to the show-cause notice.

3.3. On 30.10.1987 Respondent appeared before the Enquiry Officer and filed his reply dated 30.10.1987 (Exh. "C" – Page No. 20) wherein he categorically admitted the charge of misappropriation of government funds against him and sought pardon. Based on his clear admission of guilt, the Enquiry Officer concluded the Enquiry and filed Enquiry Report dated 24.11.1987 before the Petitioner, *inter alia*, stating that charges against Respondent had been duly proved.

3.4. Based on Enquiry Report and after following the due process of law, by order dated 10.01.1989 Respondent was dismissed from service.

3.5. On 26.06.1989, based on findings in the Enquiry Report Petitioner filed criminal case being R.C.C. No.35 of 1989 against Respondent under Section 409 of the Indian Penal Code, 1860 in the Court of Judicial Magistrate First Class, Kavathe Mahakal. In the said criminal proceedings, Respondent stood acquitted by order dated 03.10.1991 on technical grounds.

3.6. Being aggrieved by dismissal order dated 10.01.1989, Respondent filed Departmental Appeal before the Commissioner, Pune Division. Commissioner did not find any reason for interference and rejected his Appeal by order dated 03.10.1991.

3.7. After five years, Respondent challenged the order dated 03.10.1991 in the Labour Court, Sangli by filing Complaint (U.L.P.) No. 40 of 1996 alleging unfair labour practice at the hands of Petitioner and sought reinstatement and continuity in service with full back wages from date of dismissal. As there was an apparent delay in filing of the complaint, Respondent filed application for condonation of delay which was allowed by the Labour Court, Sangli by order dated 04.12.1997. Both parties did not lead any evidence, but chose to rely upon the Enquiry Report. By judgment and order

dated 31.07.1999 Labour Court allowed the Complaint filed by Respondent and directed Petitioner to reinstate Respondent in his original post with continuity of service and full back wages from the date of filing of Complaint.

3.8. Being aggrieved by the judgment and order of Labour Court, Petitioner filed Revision Application (U.L.P.) No. 29 of 1999 before Industrial Court, Sangli. Respondent also challenged the judgment and order of Labour Court before the Industrial Court, Sangli seeking payment of back wages from date of dismissal by filing Revision Application (U.L.P.) No. 38 of 1999. Both Revision Applications were heard simultaneously by Industrial Court, Sangli and dismissed by common judgment and order dated 17.07.2006.

3.9. Only Petitioner challenged the judgment and order dated 17.07.2006 by the present Writ Petition.

3.10. Petition was admitted by this Court on 03.12.2007 with a direction to Petitioner to deposit the amount of back wages in the Labour Court. It was also noted that since Respondent had already retired / superannuated, prayer for interim relief did not survive.

3.11. Petitioner deposited Rs.1,69,672/- being the amount of back wages on 19.06.2008 in the Labour Court.

3.12. On 23.01.2015 Respondent filed Civil Application No.2924

of 2017 seeking dismissal of the Writ Petition and permit withdrawal of the amount deposited in the Labour Court.

4. In the present case it is seen that Respondent - Employee approached the Labour Court after a delay of seven (7) years from the date of his dismissal from service. It is pertinent to note that Respondent was issued a show-cause notice to which he did not file any reply. He was thereafter issued a charge-sheet dated 28.07.1987 and based on the charges of misappropriation of government funds enquiry was held on 30.10.1987. In the said Enquiry proceedings, the Enquiry Officer recorded the statement of Respondent - Employee wherein he admitted his guilt and stated that though he had misappropriated the amounts, after he was apprehended he deposited the said amount and there was no monetary loss caused to the Petitioner. This statement is in his writing and signed by him. It is at Exh. "C", Page No. - 20 to the Petition.

5. It is seen that in the same statement Respondent - Employee sought pardon for his act of misappropriation of funds on the ground that he was the sole earning member in his family and therefore mercy should be shown to him. The entire Enquiry proceedings were filed under Exhibit C - 10 before the Labour Court. In this context, it needs to be reiterated that when the Respondent - Employee approached the Labour Court after 7 years, though he

alleged unfair labour practice on the part of the Petitioner, he did not retract his admission of guilt and the statement recorded by the Enquiry Officer. It is seen that it was not Respondent's case in the Labour Court that his statement of admission of guilt was obtained under coercion or under duress by the Enquiry Officer / Petitioner. The Labour Court in its judgment and order has in fact held that the entire enquiry was held in a legal and proper manner, however it differed with the punishment given to the Respondent which according to the Labour Court was disproportionate to the misconduct of Respondent. Hence, the Labour Court held that findings of the Enquiry Officer were perverse.

6. In the above background, it needs to be considered that once the Respondent had admitted the charges of misappropriation and the misconduct before the Enquiry Officer, there would be no question of requiring the Respondent to lead any evidence with respect to any unfair labour practice on the part of the Petitioner to the contrary. In that view of the matter, I find that the findings returned by the learned Labour Court are perverse and not sustainable in the facts of the present case. One of the findings of the learned Labour Court is that if misappropriation of funds emanated from the audit report, then it was incumbent upon the parties to examine the auditor and independently prove misappropriation of

funds by placing the audit report on record. In the absence of this exercise, the learned Labour Court opined that though the Enquiry was fair, the fact that there was misappropriation of funds was not proved. In this context, it needs to be reiterated that this is not a case where any benefit of doubt is required to be given to the Respondent based on the facts of the case. Further, before the Labour Court it was always open to the Respondent to lead evidence to establish the fact that his admission of guilt was not on his own accord or under duress. However once the Respondent had admitted his guilt and sought pardon for his misconduct there was no question of him leading any evidence to the contrary as he had accepted responsibility for his misconduct. Further it seen that it was also not the Respondent's case either before the Labour Court or the Industrial Court that his statement was extracted by the Enquiry Officer against his wishes or contrary to the due procedure of law. Therefore once the Respondent having voluntarily, unequivocally, unconditionally admitted his misconduct and prayed for mercy as he was the only earning member in his family and also having stated that he had received all documents and did not have any complaint regarding the documents it would necessarily mean that he had accepted the documents contained in the list filed under Exhibit C - 10 before the Labour Court having admitted his guilt. Therefore, the findings returned by the Labour Court and upheld by the Learned

Industrial Court in paragraph no.14 of its judgment and order that the discussion made in the case could lead to believe that the plea of guilt in the domestic Enquiry “might be the result of some sort of inducement” as alleged by the Complainant / Respondent is not sustainable and deserves to be set aside. If the Complainant was induced to make the statement of pleading guilty before the Enquiry Officer, there was no reason for him to remain silent for more than 7 years before approaching the Labour Court. The delay in approaching the Labour Court itself speaks volumes of the conduct of the Respondent. In paragraph No.12 of its judgment and order the learned Industrial Court has recorded that, Complainant / Respondent admitted his guilt and requested for a lenient view on the ground that he was the only earning member in his family. In that view of the matter, I am inclined to appreciate the ratio and legal principles laid down by the Supreme Court in the case of ***Central Bank of India Ltd. Vs. Karunamoy Banarjee***¹, paragraph No.19 of the said judgment reads thus:-

“19. We must however, emphasize that the rules of natural justice, as laid down by this Court, will have to be observed, in the conduct of a domestic enquiry against a workman. If the allegations are denied by the workman, it is needless to state that the burden of proving the truth of those allegations will be on the management; and the witnesses called by the management, must be allowed to be cross-examined by the workman, and the latter must also be given an opportunity to examine himself and adduce any other evidence that he

¹1968 AIR (SC) 266

might choose in support of his plea. But, if the workman admits his guilt to insist upon the management to let in evidence about the allegations, will, in our opinion only be an empty formality. In such a case, it will be open to the management to examine the workman himself, even in the first instance, so as to enable him to offer any explanation for his conduct or to place before the management any circumstances which will go to mitigate the gravity of the offence. But, even then, the examination of the workman, under such circumstances, should not savour of an inquisition. If, after the examination of the workman, the management chooses to examine any witnesses, the workman must be given a reasonable opportunity to cross-examine those witnesses and also to adduce any other evidence that he may choose."

7. Thus it is seen that in the given facts of the present case, if the Respondent - Employee has admitted his guilt, then to insist upon the management / Employer to lead evidence about the allegations would be an empty formality. According to me, in the facts and circumstances of the present case the aforementioned proposition clearly applies. This is not a case where strict proof or corroborative evidence is required to be proved beyond reasonable doubt. Infact it is seen that the Respondent - employee did not choose to lead any evidence before the Labour Court. Hence, once no evidence was led to the contrary before the Labour Court by the Respondent – employee, the Learned Labour Court based on conjectures and surmises was incorrect in holding that there was any unfair labour practice on the part of Petitioner.

8. It is seen that the Respondent – Employee was indicted for misappropriation of funds of Rs.1,454/- which was meant for village development, a portfolio handled by him. A high degree of probity is required of Government employees like the Respondent who was working as a Gramsevak. The said funds were meant for village development and were a substantial amount in the years 1981 to 1983. Having admitted his guilt it is seen that a criminal complaint under Section 409 of the Indian Penal Code, 1860 was also lodged against the Respondent before the Judicial Magistrate First Class, Kavathe Mahakal by the Petitioner. Though it is stated that he was acquitted of the charges in the criminal complaint on technical grounds and was not given a clear honorary acquittal, it needs to be reiterated that disciplinary action / proceedings in a departmental Enquiry are independent of the criminal complaint and its result. What is important to be noted is that, in the departmental Enquiry itself the Respondent accepted his misconduct unconditionally and once that was done, the consequences had to follow. The act of misappropriation of Government funds is of a serious nature. What is pertinent to note here is that the Respondent – employee did not lead evidence before the Enquiry Officer, before learned Labour Court or before learned Industrial Court in support of his alleged case.

9. It is seen that the record of the case clearly indicates that during the years 1981 - 1982 and 1982 – 1983, Respondent was entrusted with substantial amounts of village development funds and during various dates between 12.02.1982 and 29.03.1983, Respondent had made incorrect entries of lesser amounts in the village development funds register on three different occasions namely on 12.02.1982, 11.03.1982 and 25.03.1982 and misappropriated the differential amounts. Next it is seen that without authority of law on two different occasions, Respondent had spent village development funds on his own accord and made an entry to that effect in the village development funds register and when he was apprehended, he returned back part of the said amount by re-entering the same in the village development funds register. The next charge was that Respondent while handing over the accounts of the Gramseva Yojana funds to another Gramsevak on 03.09.1982 did not handover the amount of Rs.335/- which was held in hand by him and also never accounted by him. Thus it is seen that the indictment of Respondent was not on account of only one act but a series of acts over a period of more than one year and therefore having admitted to the said acts of misappropriation, the Respondent - employee deserves no sympathy at all.

10. I have also perused the statement given by the Respondent - employee dated 30.10.1987 to the Enquiry Officer which is at Exhibit – C Page No.20 of the Petition. In that statement he has categorically stated that he accepted that he has misappropriated the funds and he was ready and willing to pay any amount against the same. Next he has stated that, he may be pardoned since he comes from a poor family and his entire family of 8 members was dependent upon his income. He has stated that he had children who are young and he should be pardoned once and that he would not repeat his mistake and give opportunity for any complaint. It is seen that it was not just one act of the Respondent- employee which led to his dismissal but a series of acts of misappropriation of Government funds. Hence, the judgment and order dated 17.07.2006 of the Industrial Court deserves to be interfered with.

11. In view of the aforementioned observations and findings, the findings returned by the learned Industrial Court that the guilt of the Complainant / Respondent is entirely based on the plea of his guilt and there ought to have been other corroborative evidence and in the absence thereof the plea of guilt might be the result of some sort of inducement is unsustainable and cannot be countenanced. Considering the fact that the plea of guilt of the Respondent in the present case is voluntary and unconditional as also unequivocal,

there can be no inducement attached to it and therefore benefit of doubt cannot be given to the original Complainant / Respondent in the present case.

12. In view of the above, I find no merit in sustaining both the impugned judgments and orders dated 17.07.2006 and 31.07.1999 passed by the learned Industrial Court and the learned Labour Court. Both the judgments and orders dated 17.07.2006 and 31.07.1999 passed by the learned Industrial Court and the learned Labour Court are quashed and set aside.

13. Civil Application No.2924 of 2017 filed by the Respondent – Employee accordingly stands dismissed in view of the above order. The amount of Rs.1,69,672/- deposited by Petitioner in the Labour Court be returned back to the Petitioner alongwith accrued interest within a period of six weeks upon an authenticated copy of this order being produced in the Labour Court.

14. With the above directions, Writ Petition stands allowed.

15. No orders as to costs.

[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
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AMBERKAR
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