

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

WRIT PETITION NO.1450 OF 2020

Pandit Shripati Patil

...Petitioner

vs.

The Manager,
Kolhapur District Madhyamik Shikshak
Sevakanchi Sahakari Pat Sanstha

...Respondent

Mr. Sandeep Koregave, for the Petitioner.
None for the Respondent.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 14, 2023

P.C.:

1. In this petition under Article 227 of the Constitution of India, the petitioner who was working as a cashier-cum-clerk with the respondent takes exception to the judgment and order dated 17th October, 2018 passed by the learned Industrial Court, Kolhapur in Revision Application (ULP) NO. 151 of 2013 preferred under section 44 of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (the Act, 1971) whereby the revision preferred by the petitioner against Part-I judgment and order passed by the Labour Court No. 2, Kolhapur on preliminary issues in Complaint (ULP) No. 109 of 2006 dated 16th August, 2013 came to be dismissed.

2. The petitioner was working a cashier-cum-clerk at Vadgaon

branch of the respondent, the credit cooperative society. In the audit report for the year 2003-04 it transpired that the petitioner along with the branch manager had committed misappropriation to the tune of Rs. 10,76,596/-. The petitioner allegedly admitted the misconduct and and misappropriation of funds to the tune of Rs. 5,13,741/- by executing an instrument dated 22nd February, 2005 and had also issued a cheque in favour of the respondent for the sum of Rs. 5 lakhs payable on 23rd February, 2005 towards the repayment of the defalcated amount.

3. A charge sheet was issued on 19th July, 2005. The petitioner allegedly refused to accept the charge sheet sent by RPAD. Notices were issued by the Inquiry Officer. The petitioner allegedly refused to accept the notices sent by RPAD. Thus, a notice was published in newspaper. As the petitioner did not turn up, the Inquiry Officer proceeded to conduct the inquiry ex-parte and returned the finding of guilt against the petitioner. Based on the inquiry report, the petitioner was terminated on 16th January, 2006.

4. The petitioner lodged a complaint alleging unfair labour practices within the meaning of item No. 1(a) (b)(f) and (g) of Sch. IV of the Act, 1971. The petitioner asserted notices were never

served on the petitioner and by making a farce of inquiry in flagrant violation of principles of natural justice, the respondent terminated the petitioner and thereby engaged in unfair labour practices.

5. The Labour Court, by judgment and order dated 6th August, 2013 was persuaded to hold that the petitioner/ complainant failed to prove that the inquiry was a farce and not legal. It was further held that the findings on the first four counts of charge, relating to misappropriation of the funds, were not perverse.

6. Being aggrieved, the petitioner preferred revision before the Industrial Court. By the impugned judgment and order the Industrial Court found no reason to interfere with the judgment of the Labour Court, in exercise of the revisional jurisdiction under section 44 of the Act, 1971.

7. Mr. Koregave, the learned counsel for the petitioner, would urge that the Labour and Industrial Court committed a grave error in holding that the inquiry was fair, legal and proper. Indisputably, the inquiry was conducted and concluded ex-parte. No opportunity of hearing much less an effective opportunity of hearing was given to the petitioner. In the circumstances, the Courts below ought to

have considered the consistent case of the petitioner that the notices were not served on the petitioner.

8. The Labour Court as well as the Industrial Court have recorded a categorical finding that there was material to show that the petitioner consistently refused to accept the service of the charge sheet and the notices issued by the Inquiry Officer through RPAD and thus a notice of inquiry was published in the newspaper. Ultimately, the Inquiry Officer proceeded to record the evidence of the department's witnesses and conclude the inquiry.

9. Mr. Koregave, would urge that the respondent does not claim that the notices were duly served on the petitioner. However, the fact that the charge sheet and notices were returned unserved with the remarks "*the addressee refused to accept the service*" could not be contested. In the circumstances, both the Labour Court and Industrial Court, relying upon the presumption contained in section 27 of the General Clauses Act and well recognized position in law that if a notice sent by registered post is returned with the endorsement of the postal authorities that the addressee refused to accept the service of the article it would amount to a good service, refused to countenance the submission on behalf of the petitioner.

10. I do not find any error in the approach of the Labour and Industrial Court. It is imperative to note that the petitioner conceded that the address on which the charge sheet and notices were sent was his correct address. No explanation as such was sought to be offered as regards the circumstances in which the notices were returned with the remarks 'refused'.

11. Mr. Koregave urged that the respondent ought to have examined the concerned postal official in proof of the endorsement on the postal articles. I am afraid to accede to this submission in the face of the presumption contained in section 27 of the General Clauses Act. If the petitioner's claim was that the notices were not refused at his instance, or that the remarks were incorrect, it was for the petitioner to establish the said fact. No fault can thus be found with the finding recorded by the Courts below.

12. Mr. Koregave, further urged that in the complaint lodged by the respondent for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 consequent to the dishonour of the subject cheque drawn by the petitioner, the later came to be acquitted. Reliance was sought to be placed on the observations contained in the said judgment to bolster up the case that the fact

that the said cheque was drawn towards repayment of the allegedly misappropriated amount has not been proved to the hilt. In my view, the aforesaid circumstance does not enure for the benefit of the petitioner at this stage. The considerations in a disciplinary proceeding and a prosecution, especially for an offence punishable under section 138 of the Negotiable Instruments Act, 1881, are materially distinct.

13. The upshot of the aforesaid consideration is that a clear case of “refusal” to accept the service of charge sheet and the notices of the disciplinary proceedings has been made out and the non-appearance of the petitioner was to his own peril. Resultantly, no interference is warranted in exercise of extraordinary writ jurisdiction.

14. Hence, the petition stands dismissed.

15. No costs.

(N. J. JAMADAR, J.)