

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8 OF 2019

Panjab Rajaram Kachare	]	
Age – 60, Occu. : Nil,	]	
R/o. : Agashivnagar, Tal. Karad, Dist. : Satara.	]	... Petitioner

Versus

1. The Chairman,	]	
The Karad Janata Sahakari Bank Ltd.,	]	
Head Office at Shivajinagar, Karad,	]	
Taluka – Karad, District – Satara.	]	
2. The Chief Executive Officer,	]	
The Karad Janata Sahakari Bank Ltd.,	]	
Head Office at Shivajinagar, Karad,	]	
Taluka – Karad, District – Satara.	]	
3. Official Liquidator,	]	
Deputy Registrar, Coop Societies,	]	
Karad, District – Satara.	]	... Respondents

WITH

WRIT PETITION NO.1916 OF 2018

Panjab Rajaram Kachare	]	
Age – 60, Occu. : Nil,	]	
R/o. : Agashivnagar, Tal. Karad, Dist. : Satara.	]	... Petitioner

Versus

1. The Chairman,	]	
The Karad Janata Sahakari Bank Ltd.,	]	
Head Office at Shivajinagar, Karad,	]	
Taluka – Karad, District – Satara.	]	
2. The Chief Executive Officer,	]	
The Karad Janata Sahakari Bank Ltd.,	]	
Head Office at Shivajinagar, Karad,	]	
Taluka – Karad, District – Satara.	]	

3. Official Liquidator,	]	
Deputy Registrar, Coop Societies,	]	
Karad, District – Satara.	]	... Respondents

Mr. Suresh Pakale, Senior Advocate a/w Mr. Nilesh Desai i/b Mr. Shankar M. Katkar for Petitioner in both Writ Petitions.

Mr. Kiran Bapat, Senior Advocate a/w Mr. Gaurav Gawande i/b M/s. Desai & Desai Associates for Respondent No.1 in both Writ Petitions.

CORAM :- SANDEEP V. MARNE, J.

DATE :- 28 NOVEMBER, 2023

JUDGMENT :

1. Petitioner, an ex-employee of the The Karad Janata Sahakari Bank Ltd., is aggrieved by the punishment of dismissal from service imposed on him and has filed these two petitions upon being unsuccessful before the Labour and Industrial Courts in getting the dismissal orders set aside.

2. Facts of the case are that Petitioner was employed as Cashier in The Karad Janata Sahakari Bank Ltd. He was further promoted to the post of In-Charge Passing Officer on 09/05/2001 at Pal Extension Division. However he was immediately reverted to the post of Recovery Clerk from 09/06/2001. Upon receipt of complaints from depositors/borrowers, Petitioner was subjected to two disciplinary enquiries in the form of chargesheets dated 15/07/2004 and 07/01/2005. He faced charges of misappropriating the amounts of depositor and borrower of the Bank. After holding inquiry, he was held guilty in both the disciplinary proceedings. He filed two separate Complaints before Labour Court, Satara apprehending his dismissal. On 21/08/2006, two orders were passed dismissing him from service. The Labour Court passed Part-1 Award in both the Complaints holding that the enquiries conducted

against the Petitioner were improper. Respondent No.1 – Bank therefore led evidence before the Labour Court. The Labour Court set aside the dismissal order dated 21/08/2006 by its Judgment and Order dated 16/09/2011 in Complaint (ULP) No.36/2006 and directed reinstatement of the Petitioner with 50% backwages. In Complaint (ULP) No.36A/2006, the Labour Court delivered Part-2 Award on 19/09/2011 by setting aside dismissal order dated 21/08/2006 and directing Petitioner's reinstatement with full backwages.

2. Respondent No.1 – Bank preferred Revision Application (ULP) Nos.37/2011 and 38/2011 challenging both the Awards of the Labour Court. Both Revision Applications were heard together by the Industrial Court, Satara and by Judgment and Order dated 25/07/2013, the Industrial Court set aside the Part-2 Awards of the Labour Court and remanded back both the Complaints for fresh decision by the Labour Court. After the remand, the Labour Court dismissed Complaint (ULP) No.36A/2006 thereby upholding the order of dismissal imposed on the Petitioner. Since the order of dismissal was upheld by dismissing Complaint (ULP) No.36A/2006, the Labour Court declined relief of reinstatement in Complaint (ULP) No.36A/2006 by delivering separate Judgment dated 16/04/2014. Aggrieved by the Labour Court's decision dated 16/04/2014 in Complaint (ULP) No.36A/2006, the Petitioner filed Revision Application (ULP) No.34/2014. The Bank also challenged Labour Court's decision dated 16/04/2014 by filing Revision Application (ULP) No.4/2015. The Bank apparently filed its Revision regarding findings recorded by Labour Court with regard to non-proof of Charge No.1. By common Judgment and Order dated 11/10/2017, the Industrial Court has dismissed both Revision Application (ULP) Nos.34/2014 and 4/2015 confirming the Labour Court's decision dated 16/04/2014.

3. So far as Complaint (ULP) No.36A/2006 is concerned, both Petitioner and the Bank filed Revision Application (ULP) Nos.33/2014 and 5/2015. By common Judgment and Order dated 29/06/2018, the Industrial Court has dismissed Petitioner's Revision Application (ULP) No.33/2014 and has partly allowed Bank's Revision Application (ULP) No.5/2015 setting aside the findings of Labour Court on Issue Nos.3 and 4.

4. Aggrieved by the Judgment and Order dated 11/10/2017 passed by the Industrial Court, Petitioner has filed Writ Petition No.1916/2018. In respect of Judgment and Order dated 29/06/2018, the Petitioner has filed Writ Petition No.8/2019.

5. I have heard Mr. Pakale, learned senior advocate appearing for Petitioner. He would submit that Charge No.(i) in Writ Petition No.1916/2018 has already been disproved against the Petitioner both by the Labour Court and the Industrial Court. So far as Charge No.(ii) is concerned, he would submit that no evidence is available on record to prove Charge No. (ii). That the findings recorded by the Labour Court and the Industrial Court with regard to Charge No. (ii) are perverse. Alternatively, Mr. Pakale would submit that penalty of dismissal from service is shockingly disproportionate considering the fact that only Charge No. (ii) is proved and that Charge No.1 is disproved. So far as Writ Petition No.8/2019 is concerned, Mr. Pakale would submit that the Labour Court has correctly recorded finding with regard to unfair labour practices on the part of Respondent No.1 – Bank and the Industrial Court has erroneously reversed those findings. That, in both the cases, charges have been proved merely on the basis of surmises in absence of any concrete proof. He would submit that the service record of the Petitioner

is otherwise unblemished and blotless and therefore a minor penalty ought to have been imposed on the Petitioner, even if any of the charges are actually held to be proved against him. He would therefore pray for setting aside the order passed by the Industrial Court and Labour Court and pray for reinstatement of Petitioner with full backwages.

6. *Per Contra*, Mr. Bapat, learned senior advocate appearing for Respondent No.1 – Bank would oppose both the Petitions. He would submit that the Petitioner has committed grave misconduct of misappropriation of funds of depositors and borrowers of the Bank and has thereby breached their trust. The Petitioner has misused the trust imposed in him by the account holders and has made erroneous withdrawals from their accounts and pocketed their money. That, upon receipt of complaints from account holders, disciplinary enquiries were conducted against him and the Bank has led evidence before the Labour Court in support of proof of charges. That since the charges are supported by the evidence on record, interference by this Court in the findings recorded by the Labour Court and Industrial Court is not warranted. He would submit that dismissal from service is the correct penalty imposed for serious charge of misappropriation by a bank employee.

7. Rival contentions of the parties now fall for my consideration.

8. As observed above, two separate disciplinary proceedings have been conducted against the Petitioner in respect of two sets of charges. In both the disciplinary proceedings, the Petitioner has been dismissed from service. Even if the penalty of dismissal from service is upheld in one of the two Petitions, the other Petition is automatically rendered infructuous. In that view of the matter, the charges levelled and findings recorded in Writ Petition No.1916/2018 are discussed.

9. In Writ Petition No.1916/2018, the Petitioner faced two charges; (i) misappropriation of amount of Rs.998/- while effecting closure of loan account of the borrower and (ii) misappropriation of amount of Rs.1,300/- while effecting withdrawal of a deposit. So far as Charge No.(i) is concerned, the same is held to be disproved by the Labour Court in Part 2 Award dated 16/09/2011. Even after remand by the Industrial Court, Charge No.(i) was again held to be disproved by the Labour Court in its Judgment and Order dated 16/04/2014. The said finding is upheld even by the Industrial Court by its Judgment and Order dated 11/10/2015. Thus, so far as Charge No.(i) is concerned, the same has been repeatedly disproved by the Labour Court and also by the Industrial Court. The said finding is not challenged by the Respondent No.1 – Bank.

10. So far as Charge No.(ii) is concerned, the same was held to be proved by the Labour Court in Award dated 16/09/2011. The Petitioner did not challenge the said finding by filing Revision before the Industrial Court. At that time, the Revision was filed only by the Bank and in Bank's Revision, the proceedings came to be remanded to the Labour Court. Even after remand, Charge No.(ii) came to be proved by the Labour Court. The said finding is upheld by the Industrial Court. Apart from the fact that there is sufficient evidence on record to prove Charge No.(ii), the Petitioner did not question the finding of proof of Charge No.(ii) in the earlier Award dated 16/09/2011. Thus, if the Respondent No.1 – Bank was not to challenge the Award dated 16/09/2011, the finding about proof of Charge No.(ii) would have attained finality. In Charge No.(ii), the allegation against the Petitioner was that the depositor had approached the Petitioner for premature encashment of fixed deposit of Rs.24,000/-. The maturity value was

Rs.26,770/-. However, the Petitioner reflected amount of Rs. 25,470/- in the passbook and misappropriated the balance amount of Rs.1,300/- by forging the signature of depositor on withdrawal slip. This serious charge of misappropriation of amount of Rs.1,300/- is held to be proved twice by the Labour Court. The finding is upheld by the Industrial Court. I see no reason to interfere with the said finding which is supported by the evidence on record.

11. While determining correctness of findings recorded in a domestic enquiry, the Courts and Tribunals can interfere only if the findings are found to be perverse i.e. not supported by any evidence. Even if there is some evidence to support the finding of guilt, Courts / Tribunals cannot interfere in the finding of guilt by going into the aspect of adequacy of evidence. In the present case, Charge No.(ii) is held to be proved against the Petitioner and the said finding is supported by the evidence on record.

12. Mr. Pakale has strenuously contended that the punishment imposed on the Petitioner is shockingly disproportionate to the misconduct alleged and proved. I am unable to agree. Misappropriation of amounts of depositor or borrower by a bank employee is the highest degree of misconduct. Depositors or borrowers impose faith in the Bank employees and breach of trust by them for personal gain cannot be lightly brushed aside as a minor misconduct. For proved misconduct of misappropriation of funds of bank customers, imposition of penalty of dismissal from service would not shock the conscience of this Court. The penalty is thus commensurate with the gravity of misconduct found to be proved against Petitioner. I, therefore, do not find any error in the order passed by the Industrial Court in Writ Petition No.1916/2018.

13. Since penalty of dismissal from service is upheld in Writ Petition No.1916/2018, it is not necessary to discuss the charges and evidence in Writ Petition No.8/2019.

14. I, therefore, do not find any merit in both the Writ Petitions. Both the Writ Petitions are accordingly dismissed without any order as to costs.

(SANDEEP V. MARNE, J.)