

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

WRIT PETITION NO. 2506 OF 2005

Madhukar Dhondappa Nagrashi

... Petitioner

Versus

Solapur Jilha Madhyavarti Sahakari Bank

... Respondent

Mr. S. K. More *for the Petitioner.*

Mr. Bhushan Walimbe *for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

DATE : 29 AUGUST 2024.

P.C. :

1) By this petition, Petitioner challenges Judgment and Order dated 27 January 2005 passed by the Industrial Court, Solapur allowing Appeal (BIR) No. 9 of 2000 and setting aside the Judgment and Order dated 5 October 2000 passed by Labour Court, Solapur in Application (BIR) No. 6 of 1995.

2) Petitioner was employed as Peon in the Respondent-Bank. A Complaint was filed alleging that Depositor-Mr. Pandit Bhaju Rathod had handed over Rs.1,400/- to the Petitioner for being deposited in his

bank account, but the actual amount found to have been deposited in the account was only Rs.400/-. Petitioner was therefore charged with the misconduct of misappropriating the amount of Rs.1000/-. When domestic enquiry was instituted, Petitioner admitted the charge by giving a statement on 3 February 1995 admitting the charge and showed willingness to refund the amount of Rs.1,000/-. On account of admission given by Petitioner the charge was held to be proved and Petitioner was terminated from services by Order dated 14 August 1995.

3) The Petitioner gave Approach Notice dated 30 August 1995 and thereafter approached the Labour Court by filing Application (BIR) No. 6 of 1995. It appears that the preliminary issue of fairness in enquiry was answered in favour of the Petitioner by Order dated 3 April 2000. The Respondent-Bank thereafter led evidence before the Court by examining the Enquiry Officer and the concerned depositor. After considering the evidence on record Labour Court delivered Final Order dated 5 October 2000 allowing the Complaint and setting aside the dismissal Order with direction for reinstatement of the Petitioner with backwages.

4) Aggrieved by the Order dated 5 October 2000 passed by the Labour Court, Solapur Respondent-Bank filed Appeal (BIR) No. 9 of 2000 before the Industrial Court, Solapur. The Appeal has been allowed by the Industrial Court by Judgment and Order dated 27 January 2005 which is also the subject matter of challenge in the present Petition.

5) Mr. More, the learned counsel appearing for Petitioner would submit that the Industrial Court has erred in allowing the appeal and all the three reasons recorded by the Industrial Court for allowing the Appeal are perverse. He would submit that though Approach Notice dated 30 August 1995 was issued by Petitioner, the Industrial Court erroneously assumed non issuance of approach notice. Secondly, he would submit that even the finding of the Industrial Court about non decision of preliminary point raised by Bank about non issuance of Approach Notice is also perverse. Thirdly he would submit that the Industrial Court has erroneously observed that the Petitioner ought to have examined himself as witness by stepping into witness box. He would submit that once Order on preliminary issues was delivered in favour of the Petitioner there was no need for him to examine himself as witness.

6) I am in agreement with Mr. More in respect of the above submissions. The Industrial Court has erroneously assumed that the Approach Notice was not given. Similarly, once the order on preliminary issues went against Respondent-Bank, it was the duty of Respondent-Bank to prove the misconduct by leading evidence before the Labour Court. The Industrial Court ought to have considered the said evidence on record, instead of holding that the Petitioner failed to examine himself as witness. The above findings recorded by the Industrial Court thus appear to be erroneous.

7) Ordinarily this Court would have been justified in remanding the Appeal for fresh decision before the Industrial Court for

decision of issue of correctness of punishment by appreciating evidence on record. However, considerable period of time has passed and instead of remanding the Appeal for fresh decision by the Industrial Court, this Court has gone into the evidence on record to examine whether the order passed by the Labour Court is otherwise sustainable or not.

8) Petitioner faced serious charge of misappropriation of amount handed over to him by the depositor. In the disciplinary enquiry, Petitioner admitted the charge. I have gone through the statement given by Petitioner on 3 February 1995 before the Enquiry Officer, in which he specifically admitted that Rs.1,400/- was handed over by the depositor to him and he deposited only Rs.400/- in his account and misappropriated the balance amount of Rs.1,000/-. Once the charge was admitted, there was nothing left to be proved in the enquiry. Despite this, the Labour Court erroneously answered preliminary issues in favour of Petitioner by Order dated 3 April 2000. However, the Bank did not challenge the Order dated 3 April 2000 and instead proceeded to lead evidence before the Labour Court. Perusal of evidence led by the Respondent-Bank before the Labour Court would indicate that the concerned depositor Pandit Bhaju Rathod has given specific evidence that he had handed over Rs.1,400/- to Petitioner for being deposited in his account and only Rs.400/- got deposited. Though, Mr. More has sought to highlight an admission given by the depositor in his cross examination that the Petitioner had not made any changes or overwriting in the chalan, in my view the said admission does not affect clear evidence given by the witness of having handed over Rs.1,400/- to the Petitioner. Thus, the Bank led sufficient and direct evidence before the Labour Court by examining the depositor.

Additionally, the Petitioner had himself admitted the charge of having pocketed Rs.1,000/-. In my view therefore sufficient evidence was available on record. Considering the test of preponderance of probability applicable in domestic enquiry, the Labour Court had erred in setting aside the punishment of dismissal. The Labour Court ought to have appreciated that Petitioner was working as peon in the Bank and the concerned customer had handed him over Rs.1,400/- by trusting him as a Bank Employee. The Applicant however breached the trust of the concerned customer possibly because the Bank Customer was illiterate and misappropriated Rs.1000/-. In my view, the misconduct committed by Petitioner is of grave nature and the punishment of dismissal from service imposed on him was commensurate with the misconduct proved.

9) Therefore, though the reasoning adopted by the Industrial Court for setting aside the Order of the Labour Court is not convincing, I am unable to set aside the Order of the Industrial Court or to uphold the Order passed by the Labour Court. Writ Petition must meet the fate of dismissal. Writ Petition is accordingly dismissed. Rule is discharged. There shall be no orders as to cost.

[SANDEEP V. MARNE, J.]