

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8971 OF 2022**

Ketan Kantilal Vhatkar

.. Petitioner

Versus

The Regional Manager State Bank of India

.. Respondent

...

Mr. Sandeep Koregave, Advocates for the Petitioner.

Mr. Abhijeet Joshi a/w Ms. Varsha Sawant, Mr. Advait Vaiputkar, Advocates for Respondents.

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CORAM : SANDEEP V. MARNE, J.

DATE : 11 OCTOBER 2023

P. C.

1. By this petition, Petitioner challenges Part-1 Award dated 12.01.2022 passed by the Labour Court No.1, Kolhapur in Reference (I.D.A.) No. 47/2016. By that Award, the Labour Court has held that the enquiry conducted against the Petitioner is fair, proper and in accordance with the principles of natural justice. The Labour Court has further held that the findings recorded by the Enquiry Officer are not perverse.

2. I have heard Mr. Koregave, the learned counsel appearing for the Petitioner and Mr. Joshi, the learned counsel appearing for the Respondent bank.

3. Petitioner working as an Assistant with the Respondent bank, was subjected to disciplinary enquiry by issuing the chargesheet dated 26.08.2013. In first charge, it was alleged that he entered the bank premises on 27th May 2012 (Sunday) with fraudulent intention without permission of Bank Manager. In the second charge, it was alleged that he did not obtain permission of the Bank Manager to operate the terminal on a non-working day. In the third charge, it was alleged that on 27th May 2022 he made a fraudulent cash transaction of Rs. 17,000/- in offline mode and credited the amount to his own account without depositing the cash in the cash drawer and without preparing a cash voucher. In the fourth charge, it was alleged that he made similar transaction of Rs.15,000/- without actually depositing cash in his account. In the fifth charge, it was alleged that he withdrew amount of Rs.47,000/- from various ATMs of other Banks without equivalent fund in his account and thereby misappropriated the amount of Rs.47,000/- for personal use. In the sixth

charge, it was alleged that the bank was likely to suffer loss of Rs. 47,000/-.

4. In pursuance of the chargesheet, the bank conducted enquiry against Petitioner and an enquiry report was submitted on 30.11.2013 holding all the six charges to be proved. Based on the findings in the enquiry report, the Respondent-bank passed order dated 09.01.2014 imposing the penalty of dismissal from service.

5. Petitioner has been acquitted in respect of the criminal case initiated in pursuance of complaint made by the Respondent bank vide Judgment and Order dated 14.04.2014.

6. At the instance of the Petitioner, the Government of India made a reference to the Labour Court, Kolhapur on the question whether Petitioner is entitled to reinstatement with continuity of service and full backwages. In that Reference numbered as (I.D.A.) No. 47/2016, the Presiding Officer has delivered Part-I Award dated 12.01.2022 holding that the enquiry conducted against the Petitioner is fair and proper and in accordance with the principles of natural justice. It is

also held that the finding recorded by the Enquiry Officer are not perverse.

7. So far as the finding with regard to the enquiry being conducted in fair and proper manner and in adherence to the principles of natural justice is concerned, I do not find any error in the conclusion drawn by the Labour Court. Instead of participating in the enquiry, Petitioner insisted upon keeping the enquiry proceedings in abeyance till conclusion of criminal trial. It is well established law that the purpose behind conducting the two sets of proceedings is entirely different. The standard of proof in domestic enquiry is preponderance of probability whereas the charge in criminal trial needs to be proved beyond any benefit of doubt. Therefore, there was no question of enquiry proceedings being suspended indefinitely till conclusion of the criminal trial.

8. However, the other conclusion drawn by the Labour Court to the effect that findings recorded by the Enquiry Officer are not perverse does not appear to be sustainable. The Respondent bank did not examine even a single witness in the Enquiry and the charge is held to be proved merely on the

basis of the three documents listed in Annexure 'A' to the chargesheet which is as under:-

1. Cash Report generated on 27/05/2012
2. Statement of Account No.30917882621
3. Photocopy of statement given by Shri. Nale, Bank Guard

9. To prove the charge of unauthorised entry into the bank on a Sunday, a pre-recorded statement of Shri. Nale, Bank Guard is relied upon. However Shri. Nale is not examined as a witness in the enquiry nor he was offered for cross examination by Petitioner. It is well settled law that pre-recorded statements cannot be relied upon in domestic enquiry, without examining the person making such statement as a witness in the enquiry. In **Roop Singh Negi v. Punjab National Bank**, (2009) 2 SCC 570, the Apex Court has held as under:

14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by

itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.

10. In *Lalita Prasad Vs. Union of India*, 2017 SCCOnline Bom 8317, a Division Bench of this Court held that prerecorded statements of complainants cannot be relied upon without examining them as witnesses. This Court held:

16. We find that the Enquiry Officer has relied upon the prerecorded statements of the complainants and the evidence of some witnesses to corroborate the version of the complainants. As indicated earlier the charge against the Petitioner is specific in as much as he attempted to dupe Shri Sitaram Gangurde and Smt. Laxmibai Shankar Gaikwad. During the course of the enquiry however, neither Shri. Sitaram Gangurde nor Smt. Laxmibai Shankar Gaikward is examined.

22. From the record it appears that no attempt whatsoever was made by the Enquiry Officer to examine the complainants Shri Sitaram Gangurde and Smt. Laxmibai Shankar Gaikwad. The Enquiry Officer ought to have investigated the charges consistent with the requirement with situation in accordance with the principles of natural justice as the impugned order involves adverse penal consequences against the Petitioner. We may hasten to add that we have not arrived at any finding based on the sufficiency or insufficiency of the evidence before the Enquiry Officer, but we feel that a fair opportunity ought to have been granted to the Petitioner by examining the complainants. We are also conscious of the fact that in disciplinary proceedings taken against public servants, the technicalities of criminal law cannot be invoked, and the prescribed act may not be applied with equal vigour; but even in disciplinary procedure, the charge framed against a public servant must be held to be proved before any punishment could be imposed on him.

11. Therefore, the pre-recorded statement of Shri. Nale could not have been relied upon. Once the pre-recorded statement of the Bank Guard is ignored, there is no evidence to prove the charge of making any entry in the bank on a Sunday. The findings recorded in the enquiry about proof of charge of making entry in the bank on a Sunday, is therefore rendered perverse.

12. The charge of failure to deposit of amount Rs. 17,000/- and Rs. 15,000/- in the cash drawer is sought to be proved only on the basis of statement of Bank Account No.30917882621 of Petitioner and a printout of cash report generated on 27.05.2012. Though the charge is in respect of two fraudulent entries of cash deposits of Rs. 17,000/- and Rs.15,000/- on 27th May 2012 and 26th May 2012, only one cash report of 27.05.2012 is produced in the enquiry in respect of amount of Rs.17,000/-. No evidence is produced to prove non deposit of cash of Rs. 15,000/- in the account on 26.05.2012. Thus, there is no evidence on record to prove the charge of making unauthorized entry in the bank on 27.05.2012 or of operating the terminal making unauthorized entry or operating terminal on 27.05.2012 (Sunday). This

charge could easily be proved by examining the security guard, whose pre-recorded statement is relied upon in the enquiry. Similarly there is no evidence in support of Charge No.4 that amount of Rs. 15,000/- was not actually deposited in the cash drawer on 26.05.2012. It is also questionable as to whether non deposit of cash of Rs.17,000/- on 27.05.2012 can be proved merely on the basis of unsigned report generated on 27.05.2012, without examination of any witness to prove that statement. The bank ought to have examined some witness to prove the said cash report.

13. I therefore hold that the findings of proof of charge recorded in the enquiry are not supported by evidence and are in fact based on 'no evidence' and therefore suffer from the vice of perversity. The findings of the Labour Court in that regard are unsustainable.

14. Since findings recorded by the enquiry officer are held to be perverse, the respondent bank is required to be given an opportunity to lead evidence before the Labour Court. The respondent bank can accordingly lead, whatever evidence that it proposes to adduce, before the Labour Court. Since some time has elapsed from the date of the incident, it

may be possible that all the witnesses may not be available. This could be particularly true about the bank guard, whose statement has been relied upon, and who may or may not be available for being examined as a witness at such a distant date. The bank can therefore produce such evidence, as may be available with it to prove the charge of entry into the bank on a Sunday. The bank may also produce evidence to prove the charges of making any false entry of deposit of cash in the bank account by the petitioner without actually depositing the cash. Such additional evidence to be produced before Labour court need not be confined to the three documents which were annexed at Annexure A to the chargesheet and the bank would be at liberty to produce such evidence as may be required for proving the charges against petitioner. It must be borne in mind that petitioner suffered serious charge of misappropriation of money by making false entry of credit of cash and withdrawing the same through ATMs of other banks. The bank had all the evidence to prove that charge in the domestic enquiry. However, the casualness and haste, with which the enquiry is conducted, has made the inquiry findings susceptible to challenge before Courts. It is in view of such a

serious charge levelled against petitioner that the bank must make all efforts to lead evidence before the Labour Court to prove the same.

15. Accordingly, the petition succeeds. I proceed to pass the following order:

- i) Judgement and Order dated 12.01.2022 passed by the Labour Court in reference IDA No.57/2016 is partly set aside only to the extent of its conclusion that findings recorded by Enquiry Officer are not perverse.
- ii) The finding of the Labour Court about conduct of enquiry in fair and proper manner and in accordance with the principles of natural justice is not disturbed.
- iii) Since the findings recorded in the enquiry are held to be perverse, the Respondent bank shall have liberty to lead evidence before the Labour Court to prove the charges.

16. Rule is made partly absolute. Writ Petition is accordingly partly allowed.

SANDEEP V. MARNE, J