



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8544 OF 2024

M/s The Beed District Central Co Op Bank LtdPetitioner

VERSUS

Narayan Eknath DongareRespondent

Mr. V. N. upadhye, Advocate holding for Mr. D. J. Choudhary,
Advocate for the Petitioner.

Mr. V. P. Golewar, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 11th SEPTEMBER, 2025.

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. This Petition takes exception to the judgment and order dated 01.03.2024 passed in the Revision Application ULP No. 23/2016 by the Industrial Court, Aurangabad whereby the order passed by the Labour Court of dismissal of complaint ULP No. 13//2012 came to be set aside. It is held by the Industrial Court that the findings of the Enquiry Officer are perverse. The proceeding was remanded back to the Labour Court to decide the remaining issues.

3. It is the case of the Petitioner/bank that Respondent No. 1 joined the services with the Petitioner has a Clerk and worked in various capacities including Clerk, Agent cum Cashier etc. It is stated that at the relevant time he was working as an Agent/Branch Manager. On 22.08.2011, he was served with a charge-sheet which was preceded by a show cause notice alleging mis-conduct of mis-appropriation, fabrication of record and accounts of the customers, causing damage to the property of the bank etc. Respondent/employee submitted explanation denying the charges. Departmental Enquiry was conducted against him. The Enquiry Officer submitted report of the enquiry dated 25.10.2011 wherein it is held that the Respondent/Employee has not committed mis-appropriation by himself. However, it is observed that he has indirectly assisted the act of commission of mis-appropriation by another employee. On the basis of this report, the Respondent came to be dismissed from by order dated 19.01.2012.

4. Respondent filed complaint ULP No. 16/2012 challenging the said order of dismissal. The Petitioner/bank filed written statement denying the contents and case sought to be made out by the Respondent/employee. It was specifically averred therein that

the Respondent is not a workman within meaning of Section 3(13) of Bombay Industrial Relations Act and Section 3(5) of MRTP and PULP Act. The Labour Court decided the issues with regard to the fairness of the enquiry and perversity of the findings. Both the issues were decided in favour of the Bank and complaint came to be dismissed. Respondent/employee, being aggrieved by the said judgment, preferred revision ULP No. 23/2016. Learned Industrial court caused interference in the said order and held the findings of the Enquiry Officer to be perverse. Bank being not in agreement with the said judgment, has preferred the present Petition.

5. Learned counsel for Petitioner at the outset submits that though the issue of maintainability of complaint was raised and it was specifically claimed that the Respondent herein is not a workman within meaning of Section 3(5) of the MRTP and PULP Act, the Labour Court has failed to frame the said issue and to decide the same. It is his contention that this issue goes to the root of the jurisdiction of the Court and hence it is directed to be decided. On merit of the order passed by the Industrial Court, it is his submission that the Industrial Court has committed error in not taking into consideration the charges levelled against the Respondent

and the evidence led in the enquiry proceeding. He further submits that the charge-sheet issued to the employee indicates description of the charges.

6. Learned counsel for Respondent submits that the evidence led by the Respondent/employee before the Labour Court indicates that he is a workman. He however does not dispute the fact that said issue has not been framed or decided by the Labour Court. With regard to the findings recorded by the Industrial Court, it is his submission that the Industrial Court has rightly taken into consideration the charges of mis-conduct levelled against the Respondent and the findings of the Enquiry Officer are held to be perverse for the reason that there was no mis-conduct charged against the Respondent of failure to control the subordinate staff or any negligence in discharge of his duties. He, however, concedes to the fact that the issue of workman was raised and it was not decided by the Labour Court.

7. At the outset, it needs to be recorded that the Labour Court has committed error in not framing the issue with regard to the maintainability of the complaint though specifically raised by the

Petitioner herein. Even if it is accepted for the sake of argument that the parties were conscious of the said issue in view of the evidence led by the Respondent and his cross-examination, admittedly, the same issue has not been dealt with and decided by the Labour Court. It is not open for this Court in exercise of writ jurisdiction to record finding of fact for the first time. On this ground alone, the complaint ULP No. 16/2012 deserves to be relegated back to the Labour Court for decision on this issue. Needless to say that if the issue is decided against the Respondent/employee, the same would result into dismissal of the complaint. However, if it is held otherwise, the question will arise as to the cause of action to be adopted by the Labour Court.

8. At this stage, it would be relevant to take note of the charges levelled against the Respondent/employee which read thus:-

16(D) :- Attempting to committing of theft, fraud or dishonesty in connection with the business or property or affairs of the bank or its customers;

16(E) :- Failure to account for or deliver up when they come in to his hands or concealment, misappropriation or conversion of cash, securities, bonds deed or other property of the bank or its customers.

16(T) :- Willful damage to any property of the bank or its customers, and

16(A)n :- Destroy or attempt to destroy official record or to manipulate the record against the interest of bank or customers or to take ledgers and other important records outside the premises of the bank or its offices.

9. On these charges of mis-conduct, enquiry was conducted against him. Though it is argued on behalf of Petitioner that the description of the charges indicates the negligence and failure to control the subordinate staff, perusal of charge-sheet does not show the charge of mis-conduct against him contemplate so. Hence, this Court finds no reason to accept the said contention of learned counsel for Petitioner. The Enquiry Officer has categorically held that the Respondent/employee has not done any mis-appropriation however, he has failed to discharge his duties. It is also held that he has indirectly helped another employee to commit mis-appropriation. In this regard, the Industrial Court, while passing the impugned order, has held that there is no charge about mis-conduct regarding failure to control the subordinate staff or gross negligence in discharge of duties against the Respondent/employee. In this

backdrop, it is held that the findings recorded by the Enquiry Officer are perverse.

10. Having regard to the nature of charges of mis-conduct alleged against the Respondent/employee and findings recorded by the Enquiry Officer, it can safely be said that without there being any charge of mis-conduct regarding failure to control the subordinate staff or gross negligence in discharging of duties, it is said to have been proved so. Similarly, the observations made by the Enquiry Officer with regard to the indirect help by the Respondent/employee to the co-employee to commit mis-appropriation is also not consistent with the charge so also the evidence on record. This is nothing but the surmises and conjectures drawn by the Enquiry Officer. In such circumstances, this Court finds no reason or justification to cause interference in the impugned order passed by the Industrial Court in Revision ULP No. 23/2016.

11. Since it is held that the issue of workman ought to have been framed and decided by the Labour Court, the proceedings are relegated back to the Labour Court for framing of the said issue and decision thereupon after giving an opportunity of leading evidence to

both sides. Needless to say that if Labour Court finds that the Respondent is not a workman, the complaint would get dismissed. However, in case of otherwise, the Complaint to be considered by the Labour Court for deciding remaining issues as directed by the Industrial Court. Petition therefore stands disposed of in above terms.

(R. M. JOSHI)
Judge

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