



IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 498 OF 2014

Shaikh Anissoddin Shaikh Shahbuddin .. Petitioner

versus

The General Manager .. Respondent

Mr. A. S. Shelke, Advocate for the Petitioner.  
Mr. S. V. Dankh, Advocate for the Respondent.

**CORAM : R. M. JOSHI, J.**

RESERVED ON : 8<sup>th</sup> SEPTEMBER, 2025.

PRONOUNCED ON : 10<sup>th</sup> SEPTEMBER, 2025.

PER COURT :

1. This Court, by order dated 31.07.2025 has held that the enquiry conducted against the Petitioner is fair and proper and findings of the Enquiry Officer are not perverse. Consequently, part (ii) of the award passed by the Labour Court in Reference (IDA) No. 9/1990, is held to be not deserving any interference.

2. Learned counsel are heard on proportionality of the punishment imposed by employer on the basis of proved misconduct.

3. Learned counsel for Petitioner/employee submits that this is not a case of any mis-appropriation and the punishment imposed upon the Petitioner is shockingly dis-proportionate. It is contended that while dismissing the Petitioner from service, his past record was not considered by the Respondent/employer. He further argued that the past service record is also required to be given due weightage as per the certified standing orders. According to him, neither the gravity of the charge nor the mitigating circumstances are considered/taken into account while imposing punishment. To support his submissions he placed reliance on judgment in case of Indu Bhushan Dwivedi vs. State of Jharkhand and another, **2010 ALL SCR 2043**. It is his further submission that though charge-sheet was issued against the Petitioner and departmental enquiry was conducted, there is no criminal offence registered against him inspite of the allegations of mis-appropriation of the property, criminal breach of trust etc. This also according to him, indicates that the charges of mis-conduct are not serious, to attract extreme punishment of dismissal from service.

4. Learned counsel for Respondent/employer contended that the mis-conduct proved against the Petitioner is serious in

nature and the punishment of his dismissal from service cannot be termed as shockingly dis-proportionate in order to cause interference therein. It is his submission that this is not a case of discrimination being done by the employer as the other employee against whom allegations are made of fabrication of record is also removed from service. In support of his submission that in case of grave misconduct, there was no question to consider past record, reference is made to the judgment of the Supreme Court in case of Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) and others vs. Secretary, Sahakari Noukarara Sangha and others, (2000) 7 Supreme Court Cases 517.

5. There is no dispute about the fact that it was alleged against the Petitioner/employee that on 06.10.1988 he approached one Tajne, Cashier, and asked him to prepare a new bill of Rs. 21/-. There is further allegation that said Cashier was threatened with dire consequences when he question motive of the Petitioner. There is further allegation that the Petitioner made him to tamper with the bills/cheques and did make the bill 15247 appear as 15047. It is also alleged that the Cashier was called upon to tear off the top portion carrying serial number 15047 on the original bill and pasted

it on the bottom portion of the audit copy of food cheque No. 15247 and these things have been made by the Petitioner himself. On issuing threat to the Cashier, the Petitioner extracted Rs. 507/- and that the Cashier was also forced to manipulate the account and figures in the food cheque and summary statement of sales.

6. It is held by learned Labour Court in Reference that the charge of mis-conduct against the Petitioner/employee is duly proved in the departmental enquiry conducted against him. The enquiry is already held to be fair and proper. Even perusal of the certified standing orders indicates that acts committed by the employee amounts to serious/grave mis-conduct attracting major penalty. Further, there is no dispute about the fact that the Petitioner was given an opportunity of hearing before imposition of punishment. Thus, this is not a case wherein the principles of natural justice are flouted in any manner.

7. Insofar as contention of learned counsel for Petitioner with regard to non-consideration of past record is concerned, even if it is accepted that the Petitioner was having clean past record, the proved mis-conduct against the Petitioner is certainly serious/grave

in nature. Once such grave mis-conduct is proved it becomes immaterial as to whether the Petitioner was having any antecedents or not. No employer would take risk of continuing such an employee on the establishment. The acts done by Petitioner/employee are more serious than mis-appropriation by himself. Here is the case where the employee could dare to compel/force another employee to manipulate record extract money. The previous clear record, therefore, in such circumstances become irrelevant for decision on punishment. The Hon'ble Supreme Court in case of Janatha Bazar (supra) has clearly held that in case of grave mis-conduct there was no question of considering past record.

8. It is settled position of law that in order to cause interference in the punishment, the punishment must be shockingly dis-proportionate. Having regard to the facts of the case and the nature of mis-conduct committed by the Petitioner, the punishment imposed upon the Petitioner does not shock the conscience of this Court in order to term it as shockingly dis-proportionate punishment and to consequently cause interference therein.

9. As a result of above discussion, the Petitioner has failed to make out any case to cause interference in the impugned order. Accordingly, the Petition stands dismissed.

( R. M. JOSHI)  
Judge

dyb