

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

WRIT PETITION NO. 4410 OF 2025

Satara District Central Co-Operative Bank
Ltd Thr Its Chairman And Anr

.... *Petitioners*

: *Versus* :

Asha Subhash Shinde

.... *Respondent*

Mr. Kiran Bapat, Senior Advocate *i/by. Ms. Mitali Dhoble and Ms. Druti Datar, for the Petitioners.*

Respondent-Ms. Asha Subhash Shinde in person.

CORAM : SANDEEP V. MARNE, J.

DATED : 17 April 2025.

P.C.:

1) The petition challenges the judgment and order dated 8 November 2024 passed by the Labour Court, Satara on preliminary issues of fairness in the enquiry and perversity in the findings of the Enquiry Officer. By impugned judgment and order dated 8 November 2024, the Labour Court has held that the enquiry conducted against the Respondent is not legal and fair and that findings of the Enquiry Officer are perverse. The Revision preferred by the Petitioner-Bank before the Industrial Court under the provisions of Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 has been dismissed by the Industrial Court vide judgment and

order dated 27 January 2025, which is also the subject matter of challenge in the present petition.

2) I have heard Mr. Bapat, the learned senior advocate appearing for the Petitioner-Bank and the Respondent who appears in person.

3) It appears that by chargesheet dated 12 October 2022, the Petitioner-Bank levelled three charges against the Respondent. The first charge related to the complaint filed by the Petitioner's husband with NABARD Bank with reference to the master circular under the subject '*Frauds-Classification & Reporting*'. It is alleged that the Respondent connived with her husband, disclosed confidential information of the Bank and assisted her husband in making baseless complaints against the Petitioner-Bank. The second charge is about the complaint with regard to the transfer at a place not having basic facilities of toilet. The third charge was about the negligent conduct of the Petitioner where shortage of Rs.50,000/- was detected in bank cash while she was functioning as a Cashier in Shivaji Circle Branch on 8 September 2021. It appears that during the conduct of enquiry, a supplementary chargesheet dated 23 November 2022 was issued to the Respondent for an additional charge of her behaviour during the course of enquiry on 5 November 2022, where Respondent's husband entered the venue of enquiry and interfered in the enquiry proceedings.

4) At the end of the enquiry, Enquiry Officer has submitted a Report holding all charges levelled against the Respondent to be proved. Based on the findings of the Enquiry Officer dated 10 February 2023, the Petitioner-Bank has proceeded to terminate the services of the Respondent by order dated 24 February 2023. Respondent has

challenged the termination order before the Labour Court by filing complaint of unfair labour practice.

5) The Labour Court framed preliminary issues relating to fairness in the enquiry and perversity in the findings of the Enquiry Officer. By impugned judgment and order dated 8 November 2023, the Labour Court has proceeded to answer both the issues in favour of the Respondent and against the Petitioner.

6) Perusal of the order passed by the Labour Court on preliminary issues would indicate that it has broadly recorded following reasons for holding the enquiry to be unfair:

- (i) imposition of punishment of stoppage of increment of one year and imposition of fine of Rs.100/- for charge of detection of shortage of Rs.50,000/-.
- (ii) non-payment of subsistence allowance during conduct of enquiry proceedings.
- (iii) denial of permission to engage an advocate to defend the Respondent in the enquiry.
- (iv) examination of Respondent before commencing evidence of the management witnesses.
- (v) Enquiry Officer playing dual roles of prosecutor and Judge.
- (vi) the incident of payment of fixed deposit in excess of Rs. 20,000/- in cash not being included in the chargesheet but figuring in the enquiry report.

7) Mr. Bapat, on instructions makes a statement that since the Respondent is already punished with respect to misconduct of detection of shortage of Rs.50,000/-, the Petitioner-Bank would not press Charge No.3 in the chargesheet dated 12 October 2023. So far as

the incident of payment of fixed-deposit in excess of Rs.20,000/- in cash is concerned, he would further clarify that though the same appears to be reflected in the enquiry report, the same does not form part of the chargesheet and that Respondent has not been punished in respect of the said incident.

8) So far as the issue of non-payment of subsistence allowance during pendency of enquiry is concerned, it appears that the Labour Court has not conducted any factual enquiry about payment of subsistence allowance during pendency of enquiry proceedings. The Court has merely taken into consideration the claim of the Respondent without undertaking the exercise of determining the exact quantum of subsistence allowance paid to her. Perusal of the findings recorded by the Labour Court in para-13 of the judgment would indicate that subsistence allowance was being paid to the Respondent during pendency of the enquiry. However, what is done by the Bank is deduction of loan installments from subsistence allowance. Entitlement of subsistence allowance cannot be confused with liability to repay loan. Whether the employee draws salary/subsistence allowance or not, his liability to repay loan through installments continues. Therefore, mere deduction of loan installments from subsistence allowance would not mean that no subsistence allowance is paid to the Respondent. If there is any short payment of subsistence allowance, the same would not *ipso-facto* vitiate the entire enquiry. No prejudice is demonstrated by the Respondent in defending herself in the enquiry on account of non-payment of full subsistence allowance or on account of deduction of loan installment from the subsistence allowance. In my view, therefore the reason for short payment of subsistence allowance recorded by the Labour Court for vitiation of enquiry is clearly unsustainable.

9) So far as denial of opportunity to the Respondent to engage advocate to defend herself is concerned, there is nothing on record to indicate that the management representative was a practicing advocate or a legally trained mind. Therefore, the Respondent was not entitled to be represented by an advocate for defending herself in the enquiry. This Court also notices the fact that the Respondent has appeared before this Court and has personally argued the present petition. If the Respondent feels confident to defend herself before this Court, I do not see any reason why she could have faced any difficulty in defending herself in the domestic enquiry before the Enquiry Officer. Therefore, denial of opportunity to engage an advocate could not have been a ground for holding enquiry to be unfair.

10) Coming to the aspect of recording Respondent's statement before commencement of evidence of management witnesses is concerned, no prejudice is shown to have been caused to the Respondent by such course of action adopted by the Enquiry Officer. It is well settled position of law that mere technical violation of procedure during the course of conduct of enquiry does not *ipso-facto* vitiate the enquiry unless the delinquent employee is in a position to demonstrate cause of prejudice. In the present case, no prejudice is caused to the Respondent only on account of recording of her statement before commencing evidence of the management witnesses. The Respondent was well within her right not to record her statement before commencement of evidence of the management witnesses. At no point of time, she ever raised any objection to recording of her statement before commencement of evidence of the management witnesses. Even otherwise, no prejudice is caused to her on account of recording of her statement by the Enquiry Officer before commencement of evidence of the management witnesses.

11) So far as the finding of Enquiry Officer playing the dual roles of a prosecutor and of a judge is concerned, the same is misconceived. Enquiry Officer never plays role of a judge. He merely records evidence and renders his opinion, which does not bind the appointing authority. It is seen that the preliminary statement of the Respondent was recorded on 30 November 2022. During the course of the preliminary enquiry, the Enquiry Officer has asked several questions to the Respondent. The Respondent has participated in such questioning enquiry and has answered the questions put by the Enquiry Officer, without raising any objection to the enquiry officer questioning her. It appears that the Petitioner-Bank had engaged management representative to put forth their case before the Enquiry Officer. Ideally therefore, the Management-Representative ought to have put questions to the Respondent, rather than the enquiry officer doing so. Therefore, putting questions by the Enquiry Officer in the light of availability of management representative does not appear to be in order. Issue is whether such an act would vitiate the enquiry? The Enquiry Officer merely conducts departmental enquiry and is not empowered to take any decision relating to punishment to be imposed on the delinquent employee. At the end of the enquiry, the Enquiry Officer is empowered merely to give his recommendations on each articles of charge with reference to the evidence available on record. The findings of the Enquiry Officer do not bind the employer, who is entitled to disagree with the findings of the Enquiry Officer. In that view of the matter, mere technical violation committed by the Enquiry Officer, in the facts and circumstances of the present case, in questioning the Respondent despite availability of the management representative has not caused any serious prejudice to the Respondent in the matter of her defence. In my view, therefore the Labour Court has erred in

holding the enquiry to be unfair only on account of Enquiry Officer putting questions to the Respondent.

12) Thus, the findings recorded by the Enquiry Officer on the first issue of fairness in the enquiry do not appeal to this Court. The same are unsustainable and are liable to be set aside.

13) So far as the issue of perversity in the findings of the Enquiry Officer are concerned, the Labour Court has not discussed the issue separately and has held that since the enquiry itself is vitiated, the findings of the Enquiry Officer are perverse. Since this Court has arrived at a finding that the enquiry is fair and proper, the Labour Court will have to weigh the findings with regard to Charge Nos.1 and 2 in the chargesheet dated 12 October 2022 and additional charge in the supplementary chargesheet dated 23 November 2022 and then record a finding as to whether the findings of the Enquiry Officer are perverse or not. For that purpose, the proceedings are required to be remanded before the Labour Court for deciding the issue of perversity in the findings of the Enquiry Officer.

14) As observed above, the Petitioner-Bank is not pressing Charge No.3 in the chargesheet dated 12 October 2022. Accordingly, the Labour Court will have to examine whether there is evidence available on record for sustaining the findings of the Enquiry Officer on Charge Nos.1 and 2 on the chargesheet dated 12 October 2022 and additional charge in the supplementary chargesheet dated 23 November 2022. I accordingly proceed to pass the following order :

- (i) Judgment and order dated 8 November 2022 passed by the Judge, Labour Court, Satara as well as the judgment

and order dated 27 January 2025 passed by the Member, Industrial Court, Satara are set aside.

- (ii) The inquiry is held to be fair and proper.
- (iii) The proceedings are remanded to the Labour Court for answering Issue No.2 relating to perversity in the findings of the Enquiry Officer. Since the Petitioner-Bank is not pressing Charge No.3, the issue relating to perversity shall be answered *qua* Charge Nos.1 and 2 in the chargesheet dated 12 October 2022 and additional charge in the supplementary chargesheet dated 23 November 2022.
- (iv) The Labour Court shall proceed to decide Issue No.2 in an expeditious manner, preferably within a period of 3 months.

15) With the above directions, the petition is **partly allowed and disposed of.**

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[SANDEEP V. MARNE, J.]