IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4870 OF 2007

The General Manager,
The Solapur Janata Sahakari Bank Ltd.
Solapur } ***...Petitioner***

: Versus :

Shri. Nandkumar Ramchandra Bidri
Age : 42 yrs, Occ. Nil, R/o. 50, Sakhar
Peth, Solapur } ***...Respondent***

Mr. Sumedh Modak *i/by. Mr. Vijay Killedar, for the Petitioner.*
Mr. Neel Helekar *i/by. Ms. Anjali N. Helekar, for the Respondent*

CORAM : SANDEEP V. MARNE, J.
Judgment Reserved on : 3 April 2025.
Judgment Pronounced on : 16 April 2025.

JUDGMENT:

1) Petitioner-Bank has filed this petition challenging the judgment and order dated 31 August 2005 passed by the Presiding Officer, First Labour Court, Solapur allowing Application BIR No.1/2003 filed by the Respondent declaring that the termination order dated 21 December 2002 and 26 December 2002 are illegal. Petitioner is directed to reinstate the Respondent with continuity and full backwages. The order passed by the Labour Court has been

confirmed by the Industrial Court, Solapur by dismissing Appeal BIR No.4/2005 preferred by the Petitioner-Bank. The Appellate Court has however granted liberty to the Petitioner-Bank to recover amount of Rs.90,000/- sanctioned to the Applicant as an advance through his monthly salary by way of installments.

2) Brief facts of the case are that Petitioner is a Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and also carries on banking business. Respondent functioned as Senior Clerk and was assigned duties of the post of Cashier. While functioning as a Cashier on 9 March 2002, a suitcase containing cash amount of Rs. 90,000/- was stolen from the Respondent's cabin. The Respondent apparently admitted negligence on his part and showed willingness to repay the stolen amount. He applied for sanction of advance of amount of Rs.90,000/-, which was sanctioned and accordingly Rs.90,000/- was recovered from him. He was supposed to repay the said advance of Rs.90,000/- through installments by deductions from his salary. Respondent was served with chargesheet dated 6 April 2002 under Clauses-23(i), (xiii), (xvii) and (xix) of the Standing Order. After the charge was held to be proved in the departmental enquiry, the Respondent was dismissed from service by order dated 21 December 2002. He filed application BIR No.1/2003 in the Labour Court, Solapur challenging the dismissal order, as well as order directing deposit of Rs.90,000/- and sought reinstatement with full backwages. The Application was resisted by the Petitioner-Bank by filing Written Statement. The Labour Court proceeded to allow the application by judgment and order dated 31 August 2005. It held that the order of dismissal dated 21 December 2002, as well as the order dated 26 December 2002 directing refund of

amount of Rs.90,000/- were illegal. The Petitioner was directed to reinstate the Respondent in service with continuity and full backwages.

3) Petitioner-Bank challenged judgment and order dated 31 August 2005 passed by the Labour Court by filing Appeal BIR No.4/2005 before the Industrial Court. The Industrial Court has however dismissed the Appeal by judgment and order dated 7 April 2007. The Industrial Court has however granted liberty to the Petitioner-Bank to recover the amount of Rs.90,000/- granted to the Respondent as advance from his monthly salary through installments. The Petitioner-Bank has filed the present petition challenging the orders passed by the Labour and the Industrial Courts.

4) By order dated 16 July 2007, this Court admitted the petition and stayed the order passed by the Labour and Industrial Courts subject to the condition of Petitioner-bank depositing the backwages, less Rs.90,000/- in this court. Accordingly, Petitioner has deposited amount of Rs.4,20.576.13/- in this Court on 17 September 2007. The petition is called out for final hearing.

5) Mr. Modak, the learned counsel appearing for the Petitioner-Bank would submit that the Labour Court has grossly erred in setting aside the penalty of dismissal. He would submit that the charge of negligence was admitted by the Respondent. The enquiry was held to be fair and proper and the findings of the enquiry were also held to be not perverse by order dated 31 December 2004. That once misconduct is held to be established, the Labour Court could not have set aside the penalty imposed on the Respondent. That the

Labour Court has erred in holding that consideration of past misconduct amounts to double jeopardy. He would submit that the past misconduct was considered only for the purpose of indicating the gravity of misconduct for imposition of penalty. That the punishment imposed is not for the past misconduct. That therefore the Labour Court has erred in holding that the punishment is not in accordance with the provisions of Section 78 of the Bombay Industrial Relations Act,1949 **(BIR ACT)**. He would further submit that the Industrial Court has infact disagreed with the findings of the Labour Court on the issue of discrimination in the matter of punishment. He would submit that recovery of loss of Rs.90,000/- from the Respondent is an independent act and cannot be mistaken as an act of punishment. In support of his contention that mere recovery of lost amount does not amount to punishment, Mr. Modak would rely upon judgment of the Apex Court in ***Commissioner for Rural Development Versus. A.S. Jaganathan***[1]. Mr. Modak would accordingly pray for setting aside the impugned orders passed by the Labour and Industrial Courts.

6) The petition is opposed by Mr. Helekar, the learned counsel appearing for the Respondent. He would submit that the Labour and Industrial Courts have concurrently held the punishment imposed on the Respondent to be illegal and that such concurrent findings based on evidence on record, do not warrant interference in exercise of jurisdiction by this Court under Article 227 of the Constitution of India. He would submit that there is no allegation of misappropriation or theft against the Respondent and that mere loss of amount of Rs.90,000/- from the cabin of a cashier does not *ipso-facto* constitute a misconduct. He would submit that the evidence on record

[1] 1999 2 SCC 313

bears out the fact that cashier is responsible for loss of cash and was merely directed to reimburse the loss caused to the bank and was let off with minor penalties. In the present case as well, what is committed by the Respondent is not a positive act of misconduct. That there is nothing on record to indicate that any particular act of the Respondent has contributed any loss of cash from his cabin. That once the bank has recovered the amount of Rs.90,000/- from the Respondent, it was impermissible for the Bank to subject him to disciplinary enquiry and punish him with harsh penalty of dismissal. In support of his contentions, he would rely upon judgment of this Court in ***Ramesh Gopinath Tidke Versus. Divisional Controller, MSRTC***[2]. The Labour Court had rightly held that the Respondent was discriminated by imposition of harsh penalty of dismissal while similarly placed employees were let off with insignificant penalties. In support, he would rely upon judgment of the Apex Court in ***KVS Ram Versus. Bangalore Metropolitan Transport Corporation***[3]. He would pray for dismissal of the petition.

7) Rival contentions of the parties now fall for my consideration.

8) The Respondent faced the charge of loss of suitcase containing bank cash of Rs.90,000/- from his cabin where he was functioning as a cashier on 9 March 2002. The misconduct was thus of negligent conduct in not being vigilant about protection of cash of the bank. The charge is held to be established in the domestic enquiry. In Part-I Award, the enquiry is held to be fair and proper and the findings were held to be not perverse by order on preliminary issue dated 31

[2] 2009 2 Mh.L.J. 394
[3] 2015 12 SCC 39

December 2004. The Respondent did not challenge the findings on preliminary issues of fairness in the enquiry and perversity in the findings of the enquiry report. Thus, the charge is established against the Respondent.

9) Having held that the charge against the Respondent was proved in the enquiry, the Labour Court has proceeded to set aside the punishment of dismissal imposed vide order dated 21 December 2002 on the ground that the same was in violation of provisions of Section 78 the BIR Act. The issue for consideration is whether the Industrial Court could have interfered in the penalty once the charge is held to be established? It would therefore be necessary to consider the reasons recorded by the Labour Court for interfering in the punishment of dismissal.

10) Perusal of the findings recorded by the Labour Court would indicate that it has gone all over places while deciding the issue of legality of punishment of dismissal imposed on the Respondent. The first aspect taken into consideration by the Labour Court is the willingness expressed by the Respondent on 9 March 2002 to repay the loan amount of Rs.90,000/- and his application for cash advance for the said purpose. It appears that on 9 March 2002 itself, the bank sanctioned cash advance of Rs.90,000/- to the Respondent and this is how recovery of lost amount of Rs.90,000/- was made by the Bank. The Labour Court has unnecessarily gone into the manner in which the loan advance was made to the Respondent. Once the Respondent himself applied for cash advance for making good the lost amount of Rs.90,000/-, it becomes unnecessary to go into the manner in which the cash advance was sanctioned and disbursed.

11) The Labour Court has thereafter held that what is committed by the Respondent was merely a mistake and that he corrected the mistake by repaying the lost amount of Rs.90,000/-. The Labour Court took into consideration the fact that there was no allegation of theft. The Labour Court thereafter went into the aspect of similar incidents in the past when there was theft of Rs.15,000/- where the Respondent was working at Mangalvaar Peth, Solapur Branch and he was punished with permanent stoppage of two increments. The Labour Court held that at the time of theft of Rs.15,000/-, the Petitioner-bank did not recover the same from the Respondent but claimed insurance. The Labour Court thereafter considered the evidence of the witness wherein he stated that even *qua* the loss of amount of Rs.90,000/- insurance could have been claimed. It took into consideration other past incidents where insurance was claimed by the Bank when cash was found to be stolen. It took into consideration incident of Dilip Janardhan Sutar from whose custody Rs.1,00,000/- was found to be stolen from cash counter and he was let off with punishment of stoppage of one increment. It also took into consideration incident of Mahesh M. Patrudkar from whom cash of Rs.2,00,000/- was stolen from the cashier counter in the year 2003-04 and punishment of stoppage of one increment was imposed. The Labour Court thereafter held that while imposing the punishment, the bank had considered earlier incident also and has invoked the principle of double jeopardy for holding that Respondent could not have been punished twice for the same misconduct. The Labour Court held that the punishment imposed on the Respondent in the year 1992 could not be taken into consideration while imposing the punishment of dismissal.

12) On the above broad reasonings, the Labour Court proceeded to set aside the punishment of dismissal. In my view, the Labour Court erred in considering the twin aspects of recovery of amount of Rs.90,000/- and past punishment imposed in the year 1992 for arriving at the conclusion that Respondent was punished twice for same misconduct. Recovery of lost amount does not amount to punishment. Reliance by Mr. Modak on judgment of the Apex Court in ***Commissioner of Rural Development*** (supra) in this regard is apposite. The apex Court has held in para-5 of the judgment as under :

> 5. The Tribunal clearly had no jurisdiction to interfere with the punishment imposed by the disciplinary authority under the order of 4-6-1991. The Tribunal has purported to pass the order on the ground that three punishments cannot be imposed for the same charge. Now, the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules prescribe various penalties that may be imposed under Rule 8. One of the penalties under Rule 8 is of withholding of increments. Another penalty which can be imposed under Rule 8(v)(a) is recovery from pay of the whole or part of any pecuniary loss caused to the State Government by negligence or breach of orders. Under the Tamil Nadu Pension Rules, Rule 9(1)(6), such pecuniary loss can also be recovered from the pension of the employee if the pecuniary loss is caused by negligence or grave misconduct while in service and the employee has been found guilty of such misconduct or negligence. In the present case, the disciplinary authority has clearly found that there were serious charges against the respondent which were established against him in a disciplinary enquiry which was properly conducted. The disciplinary authority has rightly observed that looking to the serious nature of the charges proved, a minor punishment of only stoppage of two increments without cumulative effect has been imposed on the respondent by taking a lenient view since he is about to retire. **The order for recovery of the loss caused on account of the respondent's negligence and misconduct is also permissible under the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules as also under the Tamil Nadu Pension Rules, the former permitting recovery from pay and the latter permitting recovery from pensionary benefits after retirement. The Tribunal is wrong in holding that if an order is passed for recovery of the amount lost from the employee, no punishment**

can be imposed on him. The disciplinary authority, in the present case, was entitled to impose the punishment of stoppage of two increments without cumulative effect. At the time of passing the final order, the disciplinary authority was also entitled to pass order relating to the suspension period pending enquiry. It has directed that the period during which the respondent was under suspension be treated as service period but without pay. The order must be read as a whole. In the present case, the disciplinary authority has awarded punishment and given directions looking to the nature of the charges proved. The Tribunal was not entitled to interfere with the punishment so accorded.

(emphasis added)

13) The Apex Court thus held that order for recovery of lost amount because of employee's negligent conduct is permissible, in addition to imposition of punishment of stoppage of two increments. Applying the ratio of the judgment to the present case, mere recovery of amount of Rs.90,000/- from the Respondent did not put any fetter on the Bank to punish the Respondent.

14) So far as the past punishment imposed on the Respondent in the year 1992 when he was held responsible for theft of Rs.15,000/-, it cannot be held that consideration of past punishment amounts to double jeopardy. It is well settled established position of law that employer is entitled to consider past punishments for deciding the penalty to be imposed. To illustrate, if the employee repeatedly remains absent and has been punished in the past, the past punishment can be taken into consideration for deciding the quantum of punishment to be imposed for the last misconduct of absenteeism. Therefore, the Petitioner-Bank was entitled to take past misconduct for considering the quantum of punishment. In ***Govt. of A.P. v. Mohd. Taher Ali***[4], it is held:

[4] (2007) 8 SCC 656

> 5. Learned counsel appearing on behalf of the respondent submitted that in fact, the disciplinary authority while passing the order has taken into consideration the earlier absence of the respondent from the duty. He submitted that this could not have been taken into consideration as the respondent was not aware about these incidents and those were not the part of the charges levelled against him. In support of his submission learned counsel for the respondent has invited our attention to the judgment of this Court titled State of Mysore v. K. Manche Gowda [AIR 1964 SC 506 : (1964) 4 SCR 540] but in the present case we are satisfied that in fact the respondent deliberately absented himself from duty and did not offer any explanation for his absence from election duty. It is not the respondent's first absence. He also absented himself from duty on earlier occasions also. **In our opinion there can be no hard-and-fast rule that merely because the earlier misconduct has not been mentioned in the charge-sheet it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often only to reinforce the opinion of the said authority.** The police force is a disciplined force and if the respondent is a habitual absentee then there is no reason to ignore this fact at the time of imposing penalty. Moreover, even ignoring the earlier absence, in our opinion, the absence of 21 days by a member of a disciplined force is sufficient to justify his compulsory retirement.

15) In my view, therefore the Labour Court had grossly erred in setting aside the punishment of dismissal imposed on the Respondent. The Industrial Court did not agree with the findings of the Labour Court on the issue of discrimination in the matter of penalty and held that *'I conclude that the punishment of dismissal awarded to the Applicant cannot be made to be illegal or improper on the ground that the other employees were given lesser punishment'.* The Industrial Court however fell in grave error by holding that since recovery of loss is also one of the permissible punishments, second punishment of dismissal could not be imposed. The findings recorded by the Industrial Court are in the teeth of the ratio of judgment of the Apex Court in ***Commissioner for Rural Development*** (supra). Therefore, the order passed by the Industrial Court is also erroneous. In my view, therefore the Petitioner-Bank was entitled to punish the Respondent for proved misconduct of

negligence even after recovery of amount of Rs.90,000/-. Also in the present case, the recovery was through the mode of loan advanced to the Respondent, which he never repaid and the Industrial Court directed its recovery.

16) The next issue for consideration is whether the punishment of dismissal was proportionate to the gravity of misconduct. Though, theft of Rs.90,000/-from his cabin is neither disputed and has been proved in the enquiry, it is equally true that Respondent is not held responsible for any overt act leading to the loss of bank cash. The Respondent has not misappropriated the said amount. True it is that being a cashier, the cash was kept in his custody and it was his duty to protect the same. However, inability of the Respondent to take all possible measures to prevent theft of bank's cash by itself would not amount to grave misconduct warranting punishment of dismissal from service. Reference in this regard can be made to the judgment of the Apex Court in ***Union of India Versus. J. Ahmed***[5] in which the Respondent/Deputy Commissioner therein had faced the charge of showing lack of leadership when disturbances had broken out and that he was accused of displaying complete inaptitude, lack of foresight, lack of firmness and capacity to take firm decisions, when riots had broken out. The Apex Court considered whether such conduct constituted '*misconduct*' and held that there may be negligence in performance of duty and lapse in performance of duty or error of judgment in evaluating the development situation amounting to negligence in discharge of duties, but the same would not constitute misconduct. It is therefore held that failure to attain the highest stand of efficiency

[5] 1979 AIR SC 102

in performance of duty permitting an inference of negligence would not constitute misconduct. The Apex Court held:

> 11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pierce v. Foster [17 QB 536, 542]). A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle (Indicator Newspapers [(1959) 1 WLR 698])]. This view was adopted in Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur [61 Bom LR 1596] , and Satubha K. Vaghela v. Moosa Raza [10 Guj LR 23] . The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:
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> "Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."
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> In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik [AIR 1966 SC 1051 : (1966) 2 SCR 434 : (1966) 1 LLJ 398 : 28 FJR 131] in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In S. Govinda Menon v. Union of India[(1967) 2 SCR 566 : AIR 1967 SC 1274 : (1967) 2 LLJ 249] the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P.H. Kalyani v. Air France, Calcutta [AIR 1963 SC 1756 : (1964) 2 SCR 104 : (1963) 1 LLJ 679 : 24 FJR 464] wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. **It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct** unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or

> malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationery train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see Navinchandra Shakerchand Shah v. Manager, Ahmedabad Coop. Department Stores Ltd. [(1978) 19 Guj LR 108, 120]). **But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.**
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> *(emphasis added)*

17) In the present case, being a Cashier it was undoubtedly the duty of the Respondent to remain vigilant and protect the cash of the Petitioner-bank. He himself has not misappropriated the money and there is no allegation of any malafide intention. In my view, therefore the negligence exhibited by the Respondent in letting bank's cash of Rs.90,000/- being stolen would not constitute a grave misconduct so as to attract the punishment of dismissal from service. The Petitioner-bank therefore ought to have imposed some other punishment on the Respondent.

18) Having held that the punishment of dismissal is not commensurate with the proved misconduct against the Respondent, the next issue for consideration is the nature of relief that can be granted in favour of the Respondent. The Respondent was dismissed from service on 21 December 2002 and by now, period of 23 long years has elapsed. The age of the Respondent at the time of filing of the complaint in the year 2003 was 48 years and by now, he must have crossed the age of retirement. Therefore, there is no question of remitting the proceedings to the Disciplinary Authority for imposition of lesser punishment. In my view, therefore award of

lumpsum compensation to the Respondent in lieu of reinstatement and backwages would meet the ends of justice.

19) Petitioner-bank has deposited in this Court amount of Rs.4,20,576.13/- towards backwages less the amount of Rs.90,000/-. The amount of Rs.90,000/- represents the advance amount sanctioned to the Respondent for recovery of the lost cash. It appears that the Respondent had not paid the same. Since the amount of Rs.90,000/- is deducted from the amount of backwages, recovery of loan amount is already ensured. The backwages of Rs.4,20,576.13/- have been invested in interest bearing deposits by the Registry. In my view, the said deposited amount together with accrued interest would be the adequate compensation to the Respondent in lieu of reinstatement and backwages.

20) The petition succeeds partly and I proceed to pass the following order:

(i)Judgment and Order dated 31 August 2005 passed by the First Labour Court, Solapur in Application No.BIR-1/2003 and judgment and order dated 7 April 2007 passed by the Industrial Court, Solapur in Appeal No.BIR-4/2005 are set aside.

(ii)The Respondent is held entitled to lumpsum compensation in lieu of reinstatement and backwages.

(iii)The amount deposited by the Petitioner-bank in this Court together with accrued interest shall represent the lumpsum compensation payable to the Respondent in lieu of reinstatement and backwages.

(iv)The Respondents would be at liberty to withdraw the deposited amount alongwith accrued interest.

(v)Beyond the lumpsum compensation so paid, the Respondent shall not be entitled to any other service related benefits from the Petitioner-Bank.

21) With the above directions, the petition is **partly allowed.** Rule is made partly absolute. There shall be no order as to costs.

NEETA SHAILESH SAWANT
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Date: 2025.04.17 16:30:05 +0530

[SANDEEP V. MARNE, J.]