

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

WRIT PETITION NO.8989 OF 2018

Salim Mohammad Patil

....Petitioner

V/S

The Chairman,

Solapur District Central

Co-operative Bank Ltd. & Anr.

....Respondents

Mr. Sushil A. Inamdar *for the Petitioners.*

Mr. Suhas S. Inamdar *for Respondent Nos.2 and 3.*

CORAM: SANDEEP V. MARNE, J.

DATE : 11 FEBRUARY 2025.

P.C.:

1. The Petition challenges judgment and order dated 2 Janaury 2018 passed by Industrial Court, Solapur, dismissing Revision Application No.13 of 2015 filed by the Petitioner. The Revision Application was filed challenging the order dated 29 January 2015 passed by learned Judge, Labour Court, Solapur answering the preliminary issues of fairness in the enquiry and perversity in the findings of the Enquiry Officer against the Petitioner. It appears that Petitioner had also preferred a review before the Industrial Court which has also been rejected by order dated 12 April 2018.

2. I have heard Mr. Sushil Inamdar, the learned counsel appearing for the Petitioner and Mr. Suhash Inamdar, the learned counsel appearing for Respondent Nos.2 and 3.

3. After having heard the learned counsel appearing for parties, it is seen that after service of the memorandum of charge-sheet a preliminary enquiry was conducted on 29 December 2004 in which the Petitioner was asked a specific question as to whether he was admitting the charges. The Petitioner answered in the affirmative. Thus the specific admission of the charges was made before the Enquiry Officer by the Petitioner on 29 December 2004. Though now it is sought to be vaguely contended that the admission was secured by way of misrepresentation and coercion, admittedly Petitioner did not address any representation contemporaneously after 29 December 2004 alleging that there was any force or coercion exercised on him by the Bank for admitting the charges. He levelled the allegation of forcible admission for the first time in the Complaint filed by him on 29 December 2006 i.e. after lapse of period of 2 years from the date of making the admission.

4. The Division Bench of this Court in ***Employees' State Insurance Corporation, New Delhi and others vs. A.V. Tungare and others***, 2014 (5) Mh.L.J. 219 has discussed the law on the subject of admission made during the course of domestic inquiry and has held as under:

“17. The 1st respondent in writing had admitted to the charges and hence as a legal requirement such admission becomes relevant. The charges which are admitted by the 1st respondent were not required to be proved and the inquiry can be said to be rightly closed. Pertinently the 1st respondent agreed to close the enquiry.

18. It is necessary to advert to the following judgments of the Supreme Court:

The Judgment of the Supreme Court in the case of ***Additional District Magistrate (city) Agra v. Prabhakar Chaturdevi*** (supra) dealt with a case arising out of misappropriation of money by an employee who had admitted the fact in writing. After a disciplinary inquiry, the employee was dismissed from service. His statutory appeal also failed. In a Writ petition filed by the employee before the High Court of Judicature at Allahabad, the same was allowed by the learned Single Judge on the ground that the authorities had not given adequate opportunity to the employee to defend as he was not permitted to examine witnesses nor he was supplied the documents, the dismissal order was quashed and set aside and the employee was directed to be reinstated with full back wages. In a challenge to the said order of the Allahabad High Court before the Supreme Court, the Supreme Court observed as under:

“4in our view, the High Court has erred in ignoring the salient features of the case namely that Respondent himself by his statement dated 14-12-1984 admitted to have received an amount of Rs. 21,000/- and odd and which could not be deposited by him along with his associate on account of their carelessness and fault. It is difficult to appreciate how the said statement could be said to have been brought about by any coercion as tried to be submitted on behalf of the respondent. But even apart from that the order sheet of the Enquiry Officer clearly shows that Respondent Prabhakar as well as Sajjan Kumar had submitted that they have not to give any documentary or oral evidence and that is how their evidence was closed. Under these circumstances the subsequent request by Respondent to examine four more witnesses was rightly considered by the Enquiry Officer to be an afterthought and accordingly such request was rightly rejected. In fact, on account of the clear admission contained in writing given by Respondent on 14-12-1984 the charge against him stood proved on admission and the only question that remained to be considered was about the nature of punishment to be imposed on him.”

19. In the case of ***Channabasappa Basappa Happali v. State of Mysore***, (1971) 1 SCC 1 the Supreme Court has held as under:

4. "The pleas of the petitioner are quite clear. In fact he admitted all the relevant facts on which the decision could be given against him and therefore it cannot be stated that the enquiry was in breach of any principle of natural justice. At an enquiry facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence. In this case, the facts were two-fold that he had stayed beyond the sanctioned leave and that he had proceeded on a fast as a demonstration against the action of the authorities and also for what he called the upliftment of the country etc. These facts were undoubtedly admitted by him. His explanation was also there and it had to be taken into account. That explanation is obviously futile, because persons in the police force must be clear about extension of leave before they absent themselves from duty. Indeed this is true of everyone of the services, unless of course there are circumstances in which a person is unable to rejoin service, as for example when he is desperately ill or is otherwise reasonably prevented from attending to his duties. This is not the case here. The petitioner took upon himself the decision as to whether leave could be extended or not and acted upon it. He did go on a fast. His later explanation was that he went on a fast for quite a different reason. The enquiry officer had to go by the reasons given by him. On the whole therefore the admission was one of guilty insofar as the facts on which the enquiry was held and the learned Single Judge in the High Court was, in our opinion right in so holding."

20. In the case of ***Delhi Transport Corporation v. Shyam Lal*** (supra) their Lordships of the Supreme Court have observed as under:

"7. We find that the Tribunal's conclusions are prima facie not correct. The statement made by the passenger who had paid excess money to the checking officer is not in the nature of hearsay evidence. Additionally, the effect of the admission regarding guilt as contained in the letters dated 13-1-1989 and 24-2-1989 have not been considered in the proper perspective. It is a fairly settled position in law that admission is the best piece of evidence against the person making the admission. It is however, open to the person making the admission to show why the admission is not to be acted upon."

21. The judgment of the Supreme Court in ***Chairman and Managing Director v. Goparaju Sri Prabhakar Haribabu*** (supra) dealt with an issue arising out of disciplinary proceedings. A charge-sheet was issued to the delinquent employee, for absence without leave for a period of 53 days, the employee had admitted the charges and promised to

be regular. In the disciplinary proceedings the employee had accepted his guilt whereupon the inquiry proceedings were closed recording the admission of the charges as made by the employee. The disciplinary authority upon consideration of the inquiry report held the employee guilty of all the charges and ordered removal from service. In this context, the Supreme Court observed as under:

“16. He in his explanation in answer to the charge-sheet pleaded guilty admitting the charges. In terms of section 58 of the Evidence Act, charges having been admitted were not required to be proved. It was on that premise that the enquiry proceedings was closed. Before the enquiry officer, he did not submit the explanation of his mother being ill. He despite opportunities granted to report to duty, did not do it. He failed to explain even his prior conduct.”

18. It was observed that judicial admissions can be made the foundation of the rights of the parties.

19. A subsequent explanation before another authority, which had not been pleaded in the departmental proceedings, cannot by itself be a ground to hold that the principles of natural justice had not been complied with in the disciplinary proceedings,

22. In a recent judgment of the Supreme Court in the case of ***Manoj H. Mishra v. Union of India*** (supra) Their Lordships of the Supreme Court in para 35 have observed as under:

“35. In our opinion, the learned Single Judge and the Division Bench have not committed any error in rejecting the submissions made by the learned counsel for the appellant. We are not inclined to examine the issue that the actions of the appellant would not constitute a misconduct under the Rules. In view of the admissions made by the appellant, no evidence was adduced before the enquiry officer by either of the parties. Once the enquiry officer had declined to accept the conditional admissions made by the appellant, it was open to him to deny the charges. But he chose to make an unequivocal admission instead of reiterating his earlier denial as recorded in preliminary hearing held on 26-12-1994. The appellant cannot now be permitted to resile from the admission made before the enquiry officer. The plea to reopen the enquiry has been rejected by the appellate as well as the revisional authority.”

23. Learned counsel on behalf of the petitioner is also justified in relying on the judgment of the learned Single Judge of this Court Mr. Justice R.M. Lodha, (as His Lordship then was) in case ***of Canara Bank v. H.T. Koli***.(supra). Dealing with a case arising out of admission of the guilt in paras 6, 7 and 8 the following observations were made:

“6. Once the defence of the employee that his statement made on May 20, 1982 and May 21, 1982 was recorded under duress or force or pressure is not accepted, the admission of the employee in unequivocal term proves his misconduct. I have already observed above that the facts and circumstances of the case do not justify the conclusion that the statement made by the employee on May 20, 1982 and May 21, 1982 was not voluntary or was recorded under pressure or force and therefore, the only conclusion that can be drawn on the basis of the employee's admission is that the charge against him is proved.

7. Thus, the finding recorded by the Industrial Tribunal that the charge against the employee is not proved cannot be sustained.

8. Looking to the serious and grave nature of misconduct of fraud and forgery committed by the employee defrauding the employer-bank and causing substantial monetary loss, it cannot be said that the punishment of dismissal inflicted by the employer-bank was unjustified or shockingly disproportionate to the charge which has been held proved.”

24. Learned counsel for the petitioner is also justified in relying upon a similar view taken by the learned Single Judge of this Court by Dr. Justice D.Y. Chandrachud (as His Lordship then was) in the case ***Kolhapur Zilla Sahakari Dudha Utpadak Sangh v. Shivaji Shankar Pharakate*** (supra) wherein the delinquent employee had admitted the charges where the Industrial Court despite admission of the charges had ordered reinstatement, it was observed in paras 9 and 10 as under:

“9. The record of the enquiry discloses that the workmen were permitted to be defended by an Advocate. After the enquiry had commenced upon the issuance of a charge-sheet, the evidence of the managements' witness, the Managing Director of the petitioner, was recorded on 11th June, 1990. On 27th February, 1991 proceedings took place in the course of the enquiry. The Enquiry Officer noted that the workmen had submitted a representation accepting the allegation of misconduct contained in the charge-sheet dated 8th August, 1989. The Enquiry Officer posed several questions to the workmen to verify as to whether the representations were addressed by the workmen; whether they were voluntary or otherwise and whether the allegations of misconduct were accepted to the workmen. To this the answer was in the affirmative. In the letter addressed by the First respondent to the Enquiry Officer, the incident which took

place on 1st April, 1989 was not denied. There was an acceptance of the fact that the workmen were apprehended when they had filled a privately owned tanker on the night of the date of the incident but it was stated that this was all done at the behest of a superior. The workmen prayed that they may be reinstated in service.”

10. Now there can be no dispute about the fundamental principle of law that an admission of misconduct, in order to be acceptable as a ground for holding that the charge is proved, must not be qualified or conditional. The record of the enquiry dated 27th February, 1991 would in fact reveal that the incident which took place on 1st April, 1989 was not disputed. The presence of the workmen at 1.30 a.m. on 1st April, 1989, the presence of a private tanker which was brought into the premises of the chilling plant and the role of the workmen in actually assisting and facilitating the filling up of 10, 000 litres of milk in the tanker is not in dispute. It must be noted that it was not the defence of the workmen that the incident did not take place or that they were falsely implicated. The defence of the workmen at all material times was that they had acted thus in compliance with the direction of the superior. In these circumstances, the Enquiry Officer made due enquiries with the workmen on whether the statement was voluntarily furnished and it was only upon his satisfaction that this was so that the enquiry was closed. The Labour Court noted that in the enquiry proceedings both the complainant workmen as well as their Advocate put down their signatures. Once this was the case, the Labour Court was justified in coming to the conclusion that the charge of misconduct stood proved.”

25. Having considered the aforesaid settled position in law that once an employee has admitted to the charges and that there is no cogent material to show that the admission of the charges was recorded under duress or force or pressure and that the admission was unconditional and in unequivocal terms, no fault can be found in the Inquiry Officer closing the inquiry proceedings. In the present case the disciplinary authority on the basis of the inquiry report which recorded the admission of the 1st respondent held that the charges have been proved. In our view, there was nothing unlawful on the part of the disciplinary authority proceeding on such admission made by the 1st respondent to pass the order of dismissal considering the seriousness of the charges.”

5. In the present case, since the Petitioner made an unequivocal admission of the charge before the Enquiry Officer on 29 December 2004, there was no necessity of conducting any

formal enquiry against him. Therefore, there is no question of either an element of unfairness in the manner of conduct of the enquiry or perversity in the findings recorded by the Enquiry Officer.

6. The impugned orders do not suffer from any error for this Court to interfere in exercise of extraordinary jurisdiction under Article 227 of the Constitution of India. The Petition is devoid of merits and it is accordingly **rejected**.

(SANDEEP V. MARNE, J.)

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