



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.5757/2023

Pandhari Bhagwan Pohankar

Vs.

Vidarbha Konkan GraminBank and Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. H. V. Thakur, Advocate for Petitioner.
Ms Radhika Bajaj, Advocate for Respondents.

CORAM : NITIN W. SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.

DATED : 27/03/2025.

Alleging misappropriation by the petitioner in the capacity of Office Assistant cum Cashier for which recruitment was of the year 1989, the petitioner came to be chargesheeted post suspension dated 16.07.2019. The charge was that of unauthorized withdrawal from 68 bank account holders to the tune of Rs.25,23,174/-.

2. So as to prove the charge against the petitioner, the Branch Manager was examined, however, petitioner was not permitted to cross-examine the witnesses.

3. Similarly, the departmental proceedings were not scheduled for recording of the evidence in defence of the petitioner delinquent.

4. Based on the above, the challenge is sought to be substantiated not only to the enquiry proceedings but also to the punishment imposed.

5. As against above, the learned Counsel for the respondents would urge that since the departmental proceeding proceeds on the principle of preponderance of

probability, sufficient opportunity was offered.

6. Having considered the submissions, it is borne out of the record that the petitioner was offered an opportunity, however, he was not permitted to examine the main witness of the Bank i.e. Branch Manager. The failure of the Enquiry Officer to permit the petitioner to cross-examine the Officer of the Bank, whose testimony was taken into account so as to record finding of the guilt of the petitioner being proved viz. act of misappropriation will certainly be without giving a reasonable opportunity of hearing to the petitioner. The failure to provide the opportunity of cross-examination is one of the important elements of an opportunity of hearing to be offered under Article 14 of the Constitution of India.

7. Similarly, the proceedings were never posted for recording the evidence of the petitioner delinquent and as such, it can also be inferred that there is a denial of opportunity at the said stage. As such it can not be said that enquiry was conducted by the respondent in reasonable manner.

8. In this background, since we are of the view that substantial prejudice is caused to the petitioner as reasonable opportunity for hearing was not offered, we grant the prayer to the extent of quashing of the impugned order dated 21.10.2022 at Annexure – XII and the order of the Appellate Court dated 31.12.2022 at Annexure – XVI.

9. Let there be an enquiry afresh from the stage of recording of evidence.

10. As regards the issue of the reinstatement and the back wages are concerned, since the petition is allowed by observing denial of an opportunity of hearing to the petitioner, we deem it appropriate to observe that the intervening period from the date of dismissal to the date of reinstatement is required as to be considered as a period of suspension. Depending on the outcome of *de novo* enquiry, the decision shall be taken as regards to how the period of suspension should be treated.

11. Let the enquiry be concluded within a period of six months from today.

12. The petition accordingly stands allowed in above terms.

13. Needless to clarify that the petitioner shall be entitled for the suspension allowance as per the service Rules.

(MRS. VRUSHALI V. JOSHI, J.) (NITIN W. SAMBRE, J.)