

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 4806 OF 2025

THE ZONAL MANAGER, BANK OF INDIA
VERSUS
MANIKRAO BASAPPA KAMBLE (DECEASED) THROUGH LEGAL
HEIRS LAXMI MANIKRAO KAMBLE AND OTHERS

...
Advocate for Petitioner : Mr. Kuldeep U. Nikam
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CORAM : SACHIN S. DESHMUKH, J.

DATE : 30-04-2026

PER COURT:-

1. The petitioner/employer raises two fold challenge in the petition, firstly, the order on preliminary issue/award dated 17.12.2022 declaring that the departmental inquiry conducted against the respondent/employee was not legal, fair and proper *vis-a-vis*, the order/award dated 22.02.2023, directing to re-instate the respondent in service with continuity in service and full back wages from the date of termination till actual date of reinstatement, rendered by the learned Industrial Tribunal, Pune in reference (IT) No.15 of 2012.

2. The Petitioner, a nationalized bank, initiated disciplinary action against the Respondent, who served as a Head Cashier-II, following allegations of misappropriation involving a cash

discrepancy in February 2008. Based on the findings of a domestic inquiry, the Petitioner passed an order on 9 November 2009, imposing the punishment of compulsory retirement from service with superannuation benefits. This action was subsequently challenged by the Respondent before the learned Industrial Tribunal, which rendered the awards/orders under challenge. Hence, this Petition is presented before this Court.

3. The learned counsel for the petitioner, submits that the impugned order is unsustainable, as the Tribunal erroneously shifted the burden of proving the legality of the enquiry onto the petitioner. It is contended that the Tribunal failed to appreciate crucial admissions of the respondent during cross-examination, which sufficiently established that the domestic enquiry was conducted in a fair and proper manner. Given that the respondent had already placed the charge sheet, reply, and show-cause notice before the court, the onus of production remained with the party challenging the findings, yet the Tribunal penalised the petitioner. Since the misconduct was established through the respondent's own admissions and the existing record of the departmental enquiry, no additional evidence was required to be adduced. Consequently, prayed to allow the petition.

4. After hearing the submissions putforth and perusing the

record, it is evident that the preliminary issue regarding the validity of the enquiry was decided via the order dated 17.12.2022. The said order, which declared the enquiry to be neither legal nor proper, has attained finality as it remained unchallenged by the petitioner and the challenge is raised at a belated juncture.

Having accepted the findings on the preliminary issue regarding the validity of the inquiry, the same has further culminated into subsequent order dated 22.02.2023. Therefore, the challenge raised, at a belated juncture, does not warrant any consideration and the effect of the same cannot be effaced at the subsequent juncture while raising challenge to the eventual order of the Tribunal directing the reinstatement of the respondent in service in continuity.

5. Having accepted the same, the petitioner is bound by the findings of the order under challenge, recorded in paragraphs 9 to 10. which reads as under:

"9. In view of the order dated 17.12.2022, now it is duly proved that the inquiry conducted against the Second Party is not legal, fair and proper. It is also decided that the findings of the Inquiry Officer are not based on the evidence brought before him. There is nothing on record to show that said order is challenged by the First Party. Hence, the order dated 17.12.2022

attained finality and the findings given below preliminary issue became final.

10. The First Party failed to lead any evidence in Court to prove the misconduct of the Second Party even after grant of reasonable chances. Thus, there is absolutely no evidence on record to prove the misconduct of the Second Party. On the other hand, the Second Party i.e. Manikrao Kamble deposed in his evidence at Exh. U29 that management of the First Party issued show cause notice dated 21.10.2009 for imposing punishment of compulsory retirement, which was replied by him by reply dated 03.11.2009. He deposed that without considering his reply, the First Party issued him the punishment order dated 09.11.2009. He specifically deposed that the punishment issued to him is disproportionate and liable to be set aside.

11. It is already proved and decided that the departmental inquiry held against the delinquent i.e. Second Party was not fair, legal and proper and the findings of the Inquiry officer are perverse and not based on evidence brought before him. So, obviously, the punishment of compulsory retirement from service imposed on Second Party based on such departmental inquiry which is not fair, proper and legal and when the findings of the Inquiry Officer are not based on evidence brought before him, is shockingly disproportionate. As already discussed that no evidence lead by the First Party in Court to prove the misconduct of Second Party. So, certainly, the misconduct of the Second Party is not proved though alleged. Therefore, in such

circumstances, when misconduct is not proved then question of imposing any punishment for misconduct did not arise. Therefore, the First Party is not justified in imposing the punishment of compulsory retirement from service with superannuation benefits on Second party for the alleged misconduct which is not proved to be committed by the Second party. Hence, in such circumstances, the Second party is certainly entitled for reinstatement with continuity of service and full back wages as prayed by him. I, therefore, answered Issue Nos. 3 and 5 in the affirmative and the issue No.4 in the negative."

6. In view of the above, the petitioner is now not open for the petitioner from re-agitating the fairness of the initial enquiry or the validity of the resulting punishment, having already accepted the judicial determination that the enquiry was vitiated. In the absence of any credible evidence on record to sustain the charges, the Tribunal's decision to direct reinstatement with continuity of service and back wages is legally sound and suffers from no infirmity.

7. As such, the findings under challenge do not warrant any interference and the writ petition is dismissed, accordingly.

[SACHIN S. DESHMUKH]
JUDGE