

(1993) 07 BOM CK 0015

In the Bombay High Court

Case No : Writ Petition No. 3121 of 1991

Ashok Krishnaji Bocharé

APPELLANT

Vs

Nagpur Dt. Central Co-op. Bank Ltd.

RESPONDENT

Date of Decision : 22-07-1993

Acts Referred:

Citation : (1994) 68 FLR 231 : (1994) 2 LLJ 142

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : P.C. Marpakwar, for the Appellant; D.K. Khamborkar, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, J.—In this petition, the order passed by the Industrial Court, Nagpur allowing the revision filed on behalf of the Nagpur District Central Co-operative Bank Limited, Nagpur (hereinafter called "the Bank") against the order of reinstatement passed by First Labour Court, Nagpur is in challenge.

2. The petitioner Ashok Bocharé at the relevant time was working as a Clerk with the afore-mentioned Bank since 1977. While he was so serving, huge misappropriations came to the light and consequently, a charge-sheet was given to him dated August 13, 1988. In the charge-sheet very serious charges came to be levelled. The said charges related to the misappropriation of about Rs. 12,535/-. As many as four charges came to be levelled and it was alleged that the petitioner received in all Rs. 12,535/- from 14 persons for depositing the same in the bank and while the petitioner entered these transactions in the individual ledgers and the pass-books and also gave the counter-slips to the customers, he did not credit these amounts in the cashier's scroll, the day-book or the cash-book, and thus misappropriated Rs. 12,535/-. By the second charge, it was alleged that the petitioner had taken false entries, in all 14, amounting to Rs. 15,360/- in the balance book and thus had committed the misconduct as defined in Nos. 11(J) & 11(2). The third charge was that he used Rs. 2000/-

which belonged to the Bank from December 4, 1987 to February 29, 1988 and ultimately, the said amount had to be recovered from him from his salary. The charge No. 4 was of the continuous absenteeism on his part from the duties.

3. The petitioner filed his written statement before the Manager and admitted that he had accepted Rs. 12,535/- from the customers but had not accounted them in the cash, so also the other three charges that false entries were made in the pass-books and that he had used the amount belonging to the bank between December 4, 1987 to February 29, 1988 as also the last charge that he was absent from time to time. Thus, he completely admitted the charges levelled against him. He also showed his readiness to return the misappropriated amount of Rs. 12,535/- by monthly installments. On the basis of all this, the respondent Bank dismissed the employee from service.

4. As against the dismissal, a complaint came to be filed before the First Labour Court, Nagpur and in this complaint it was brought out that the punishment of dismissal was shockingly disproportionate to the charges proved. It was further contended that the Enquiry Officer has assured him that if he admitted the misconduct, he would be dealt with leniently and since this leniency was shown to the similarly circumstanced employees like Dixit, Khedkar and Bhivankar, he admitted his guilt but instead of being dealt with leniently, a harsh punishment of dismissal was imposed. He claimed that his past service is clean and the punishment, therefore, was disproportionate to the charges levelled. Strangely enough, the employee/petitioner did not challenge the enquiry or the findings therein on merits.

5. On the basis of this complaint, a notice was sent to the respondents who appeared and opposed the complaint. They claimed that the enquiry was fair and proper. They claimed that no such assurance was in fact given by the Enquiry Officer and reiterated that the petitioner was rightly dismissed. The learned Labour Court on consideration of this material and on the basis of the evidence of the Enquiry Officer who was examined on behalf of the Management, came to the conclusion that the charges were duly proved. He relied upon the admissions made by the petitioner. However, the learned Labour Court has made certain observations to the effect that this appears to be a clerical mistake even in the wake of the statement of the petitioner that he was prepared to return back Rs. 12,535/-. All the record of the enquiry was in fact before the Labour Court which included the written statement of the petitioner wherein the petitioner had shown the readiness to return back the misappropriated amount and in fact on the face of this clear-cut brazen admission, the Labour Court made a fleeting observation in its order that this only appears to be a clerical mistake and in fact there was no misappropriation. The Labour Court fortunately felt bound by the admission and did not choose to record a finding in favour of the petitioner on the question of misappropriation. It is thereafter that the Labour Court proceeded to observe that since the respondent failed to produce the enquiry records of some persons called Dixit and Khedkar, there was a reason to believe that the assurances were

given to the petitioner and it was only because of the assurances given to him that he had admitted his guilt. The Labour Court proceeds on this premise that it was because of assurances given to the petitioner that the petitioner admitted the guilt. The Labour Court also considered one more circumstance in favour of the petitioner and that was the readiness shown by the petitioner to return Rs. 12,535/- which were admittedly misappropriated. It is told at the Bar that the amount has still not been returned. The Labour Court thereafter went on to show that the petitioner proceeded under the provisions of the Bombay Industrial Relations Act, he could have even been reinstated on this material. Fortunately, the Labour Court did not press the point too long and proceeded to hold that the whole discussion on the aspect of the Bombay Industrial Relations Act had no relevance. Probably the Labour Court wanted to show that the petitioner had really a very good case for the honourable exoneration and the consequent reinstatement. Thereafter in paragraph 11 which is the only para where there is some evidence on the fact that the Labour Court considered the matter. The Labour Court proceeded to hold that the misconduct which was proved against the petitioner was such for which the punishment of dismissal was shockingly disproportionate. The Labour Court, therefore, ordered the reinstatement of the petitioner. The Labour Court also proceeded to award the continuity in service but did not grant the back wages from the date of dismissal till his reinstatement.

6. The Management filed a Revision against the order and the Revisional Court has allowed the Revision and set aside the order of the Labour Court and has upheld the action of the management in dismissing the petitioner. Aggrieved by this order, the present petition is filed.

7. Shri. P.C. Marpakwar, the learned Counsel for the petitioner, contended that the Industrial Court has set aside the order of the Labour Court only on the ground that there were no reasons given by the Labour Court in support of the view that it has taken. Shri Marpakwar, therefore, invited my attention to the said reasons and contended that if it is shown that the Labour Court's order is passed on some reasons, then the Industrial Court could not have in its revisional jurisdiction interfered with the order of the Labour Court. My attention was invited more particularly to paragraph No.7 where the learned Labour Court has deduced that there was in fact no misappropriation from the bank but it was only a clerical mistake. He also invited my attention to the observations in paragraph No. 8 wherein the Labour Court has observed that though the bank was directed to produce the enquiry papers of Dixit and Khedhar, the bank desisted from producing them and, therefore, there was every reason to hold that an assurance was given to the petitioner that he would be dealt with leniently, were he to admit his guilt. Shri Marpakwar submits in fairness that the reasons may not be clinching but if it is shown that the Labour Court has given some reasons in support of its findings, then the Industrial Court could not have observed that no reasons were given by the Labour Court and on that ground could not have interfered with the order of the Labour Court. It must be said that the whole order of the Labour Court is not only erroneous, illegal but is in fact a

perverse order. The observations made by the Labour Court are not only irrelevant but are wholly uncalled for. The effort on the part of the Labour Court to view the act of the petitioner as a clerical mistake and not a misappropriation really shocks the judicial conscience. If the employee in his written statement has agreed to pay Rs. 12,535/- which he had misappropriated and if he had prayed for the monthly installments which were to be deducted from his monthly salary, there indeed the matter had ended. There was no scope whatsoever for the Labour Court to have found out a defence for the employee which even the employee had not ventured to raise. Such effort on the part of the Labour Court is extremely distressing. If in addition to it the Labour Court proceeded to draw an inference that an assurance was given to the employee that he will be leniently dealt with as the same assurance was given to Dixit and Khedkar and they were actually leniently dealt with, indeed there is no evidence on record to substantiate this inference at all. In the first place Dixit and Khedkar are not examined by the complainant bank. There is nothing to show as to what actually the charges against them were or whether there at all were any charges. The petitioner had entered the witness-box and had not chosen to state as to what actually the charges against Dixit and Khedkar were and how and who gave the assurance to Dixit and Khedkar. In fact one fails to understand as to why at all a direction was given to the respondent bank to produce the records and enquiry papers of Dixit and Khedkar and what was the propriety thereof. The inference thus drawn by the Labour Court that because the Bank failed to furnish the enquiry papers of Dixit and Khedkar, it was proved as a gospels's truth that an assurance was given to the petitioner that if he admitted his guilt, he would be leniently dealt with has no basis either in facts or in law. This reason is perverse, irrelevant and improper. If these were the two reasons given, then indeed the Industrial Court was more than right in holding that the Labour Court had failed to give any reasons. When irrelevant, inadmissible and improper reasons are given, they do not amount to the reasons in law.

8. In fact, the admitted misappropriation was of such seriousness that the petitioner could have been prosecuted and can still be prosecuted. Under such circumstances, to order his reinstatement amounted to mockery of justice. If the Industrial Court saw through this and set aside the order, nothing could be said against the Industrial Court's order, much less at the instance of the petitioner.

9. Shri Marpakwar thereafter invited my attention to the fact that the previous record of the complainant/petitioner was clean. Be that as it may, as a matter of fact, the petitioner was working with the bank from 1977 and in spite of his working for 11 years he chose to misappropriate the huge sum of Rs. 12,535/-, the sheer seriousness of this charge brings a total cloud on the previous good record of the petitioner. The Industrial Court has rightly dealt with this aspect also.

10. In the result, there is no merit in the petition and the petition deserves to be dismissed with costs. Rule stands discharged.