

**(2016) 08 BOM CK 0099**

**In the Bombay High Court**

**Case No : Writ Petition No. 7294 of 2008**

Gangaram Nathu Satpute

APPELLANT

Vs

Ahmednagar Merchants Cooperative Bank Ltd.

RESPONDENT

**Date of Decision : 09-08-2016**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2017) 3 ALLMR 19 : (2016) LabLR 1156

**Hon'ble Judges :** Mr. Ravindra V. Ghuge, J.

**Bench :** Single Bench

**Advocate :** Shri D.V. Changede, Advocate, for the Management Bank; : Shri Nitin R. Bhavar, Advocate, for the Employee/Worker

**Final Decision :** Partly Allowed

## Judgement

Ravindra V. Ghuge, J.(Oral)&mdash;In both these petitions, the Management of the Bank and the Employee have challenged the judgment and order dated 30.06.2008 delivered by the Industrial Court, Ahmednagar. For the sake of brevity, the Bank is referred to as "the Management" and the Employee is referred to as the "Worker".

2. The Worker had joined duties with the Management as a Peon. He had resigned in 1984, but was reinstated in 1986. On 30.07.1992, he was issued with the charge sheet for remaining unauthorisedly absent for 48 days. After conducting an enquiry, he was dismissed from service on 27.05.1996.

3. The Worker challenged his dismissal through Complaint (ULP) No.143/1996. By the part-1 judgment dated 16.02.2005, the enquiry was held to be vitiated. The Management was permitted to prove the charges by conducting a denovo enquiry before the Labour Court. The charge of absenteeism for 48 days was proved and the Labour Court vide the judgment dated 07.03.2007 partly allowed the complaint and while granting reinstatement with continuity of service to the Worker, granted 50% back-wages from the date of the dismissal till the date of

reinstatement.

4. The Management as well as the Worker preferred Revision (ULP) Nos.21/2007 and 25/2007, respectively before the Industrial Court. By the impugned judgment dated 30.06.2008, the revision petition filed by the Worker seeking 100% back-wages has been dismissed. The Management's revision was allowed partly and by sustaining the order of reinstatement, the Industrial Court did not grant continuity of service. The direction to pay 50% back-wages as ordered by the Labour Court was sustained.

5. I have considered the submissions of the learned Advocates to the extent of the Management contending that the worker was absent for three years, unauthorisedly. Per contra, the learned Advocate for the Worker submits that he was absent only for 48 days.

6. It is trite law that neither the Enquiry Officer nor any Court can travel beyond the charge sheet. The charges set out in the charge sheet are to be proved. Subsequent events which are not a part of the charge sheet and in the face of there being no supplementary charge sheet, cannot be considered. The Enquiry Officer has to deal with the charges mentioned in the charge sheet only.

7. In the above backdrop, the impugned judgment of the Industrial Court is surprising. 48 days unauthorized absenteeism mentioned in the charge sheet was proved by the Management through the denovo enquiry before the Labour Court.

8. In Revision under Section 44, the Industrial Court considered the allegations of the Management that after the issuance of the charge sheet dated 30.07.1992 and prior to his dismissal from service on 27.05.1996, the Worker was absent for 141 days in 1993, 163 days in 1994, 190 days in 1995 and 76 days in 1996. The Industrial Court has, therefore, exercised jurisdiction not vested in it by law. These charges of absenteeism do not find place in any charge sheet, much less, subjected to any domestic enquiry. As such, the fact situation before the Industrial Court was that the Worker was absent only for 48 days as was proved by the Management and was awarded the punishment of dismissal.

9. In the light of the above, I concur with the conclusions of the Labour Court that the punishment of dismissal of service for 48 days unauthorized absenteeism, is shockingly disproportionate.

10. It is trite law that once the order of termination is held to be bad in law, normally continuity of service has to be granted. I do not find any justification in the impugned judgment of the Industrial Court in depriving the Worker of continuity of service. By conduct, the Management has acquiesced its right to proceed against the Worker for the alleged absenteeism in between 1993 and his dismissal on 27.05.1996 as no domestic enquiry was conducted.

11. Insofar as the grant of back-wages to the extent of 50% is concerned, there is no dispute that the Worker has not worked from 1996 to 2016. He has,

however, discharged his duties from 1979 onwards till his dismissal.

12. The Honourable Supreme Court in the matters of Gauri Shankar v. State of Rajasthan, 2015 (2) CLR 497 and Nicholas Piramal India Limited v. Hari Singh, 2015 (2) CLR 468, has held that the back-wages in between 25% to 50% would be an appropriate relief.

13. Considering the above, the impugned judgment of the Industrial Court stands modified to the extent of grant of continuity and 40% back-wages which the Management shall pay to the Worker. It is informed jointly by the learned Advocates that the Worker was reinstated in 2008 and he has superannuated on 31.05.2012. Therefore, there shall be continuity of service from the date of termination/dismissal till the date of reinstatement and 40% back-wages shall be calculated only for the period during which the Worker was out of employment.

14. Both the Writ Petitions are partly allowed. Rule is made partly absolute in the above terms.

15. No costs.