

(2013) 07 BOM CK 0068
In the Bombay High Court
Case No : Writ Petition No. 3819 of 2002

Manohar

APPELLANT

Vs

Amravati Zilla Parishad Shikshak Bank Ltd. and Others

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2013) 6 ALLMR 697 : (2014) 3 BomCR 377 : (2013) 139 FLR 732 : (2013) 5 MhLj 249

Hon'ble Judges : R.Y. Ganoo, J

Bench : Single Bench

Advocate : S.S. Wandile, for the Appellant; M.R. Parkhi, for the Respondent

Judgement

R.Y. Ganoo, J.—The petitioner is challenging the Judgment and Order dated 16th June, 2001, passed by the Judge, Co-operative Court, Amravati, in Dispute No. 576 of 2000. The petitioner is also challenging the Judgment and Order dated 3rd May, 2002, passed by the Member, Maharashtra State Cooperative Court, Mumbai, Bench at Nagpur, in Appeal No. 56 of 2001.

Few facts necessary for the disposal of this petition are as under:--

The petitioner was appointed as a Clerk with respondent No. 1 on 6th January, 1980. In March, 1986, he was promoted as a Branch Manager. On 4th June, 1988, he was posted as a Branch Manager at Chandur (Bazar) Branch. On 30th October, 1999, the Managing Director of respondent No. 1 by name Shri Deshmukh paid a surprise visit to Chandur (Bazar) Branch, where the petitioner was working as a Branch Manager, and Shri R.R. Chaudhary, as a Cashier. At the relevant time of visit of said Shri Deshmukh, Shri Chaudhary, Cashier, was missing from the branch premises with the keys of the vault. Said Shri Chaudhary had signed the muster at 10.30 a.m., on 30th October, 1999 in token of having reported for duty.

2. As per the records, the last entry shown on 29th October, 1999 as regards cash was of Rs. 2,27,246/-. On 1st November, 1999, duplicate keys were called

from the Head Office and the locker was opened in the presence of the General Manager. On counting, the cash turned out to be deficit, thereby showing a shortfall of Rs. 1,31,700/-. According to the respondent No. 1, the petitioner was responsible for the deficit of cash and that is how a charge-sheet came to be issued to the petitioner as well as the cashier Shri Chaudhary on 27th November, 1999.

3. After following the normal procedure of calling upon the petitioner to show cause etc., the respondent No. 1 decided to conduct an enquiry against the petitioner. One Mr. Hedau was appointed as an Enquiry Officer and the said enquiry was accordingly conducted and completed. By Enquiry Report dated 9th March, 2000, the petitioner was held guilty for the charges in the nature of misappropriation of Bank's cash. On 27th March, 2000, a Show-cause-Notice was issued by the respondent's officer and ultimately, on 23rd April, 2000, the Board of Directors passed a Resolution to terminate the services of the petitioner. Accordingly, a Termination Letter dated 28th April, 2000 was issued.

4. The petitioner, therefore, filed a Dispute before the Co-operative Court, Amravati, on 28th July, 2000, being Dispute No. 576 of 2000, challenging the order of termination, and for reinstatement with back-wages.

5. By Judgment and Order dated 16th June, 2001, the learned Judge of the Co-operative Court dismissed the said dispute. The petitioner, therefore, filed Appeal No. 56 of 2001 in the Co-operative Appellate Court at Nagpur. That appeal was dismissed on 3rd May, 2002. Being aggrieved by the aforesaid two judgments, the petitioner has filed this Writ Petition under Article 227 of the Constitution of India.

6. Learned Adv. Mrs. Wandile appearing on behalf of the petitioner submitted that the findings recorded by the learned Judge of the Co-operative Court as well as the learned Member of the Co-operative Appellate Court as regards the Departmental Enquiry conducted by the respondent No. 1 are incorrect. According to her, the said enquiry was not properly conducted, and it is on that ground, the petitioner's claim for reinstatement with back-wages ought to have been granted.

7. She pointed out that one Mr. R.K. Hedau issued the charge-sheet dated 27th November, 1999. She further pointed out that said Mr. Hedau was not in the employment of respondent No. 1, and he was appointed as an Enquiry Officer by the respondent No. 1 pursuant to Resolution at Sr. No. 8 passed by the Board of Directors of respondent No. 1 on 16th November, 1999. Learned Adv. Mrs. Wandile submitted that the respondent No. 1 has not placed on record either before the Co-operative Court, or the Co-operative Appellate Court, or even before this Court that the said Mr. Hedau was competent to issue a charge-sheet. According to learned Adv. Mrs. Wandile, this Court should hold that said Mr. Hedau was not competent to issue a charge-sheet, as he was not a competent authority to do so. Learned Adv. Mrs. Wandile submitted that though the

respondent No. 1 has framed what may be referred to as "Service Rules", no specific rule is found in those rules as to who shall issue a charge-sheet. Learned Adv. Mrs. Wandile further submitted that in the normal course, a charge-sheet ought to be issued by an officer of the employer, and in the present case, such an officer should have been the officer of respondent No. 1. According to her, Mr. Hedau, who was appointed as an Enquiry Officer, was not an employee of the respondent No. 1 and that he was an outsider "qua" the respondent No. 1 and, therefore, issuance of a charge-sheet by the respondent No. 1 was not by a person who was duly authorized to issue the same. She, therefore, submitted that if the charge-sheet is issued by a person who is not authorized to do so, then the entire enquiry gets vitiated and that the order of termination is required to be set aside. To substantiate her contention that a charge-sheet should be issued by a person who is competent to issue the same and that such a person should be in the employment of the Company or the Organization with which the employee against whom a Departmental Enquiry is being conducted, learned Adv. Mrs. Wandile relied upon the following two reported judgments of Hon'ble Apex Court:--

(a) Union of India (UOI) Vs. J.A. Munaff , and (b) Steel Authority of India, Succesor of Bokaro Steel Limited Vs. Presiding Officers, Labour Court at Bokaro Steel City, Dhanbad, and Another, .

8. Learned Adv. Mrs. Wandile, therefore, submitted that if her submissions are accepted with reference to the quality of the enquiry as well as the authority of Mr. Hedau to issue the charge-sheet, the proper order would be to quash and set aside the order of termination dated 28th April, 2000, and consequently, reinstatement of the petitioner with back-wages by setting aside the Judgments delivered by the Judge, Co-operative Court as well as the Member of the Co-operative Appellate Court.

9. On the other hand, learned Adv. Mr. Parkhi appearing on behalf of respondent No. 1 opposed the submissions advanced by learned Adv. Mrs. Wandile. He submitted that by Resolution dated 16th November, 1999 at Sr. No. 8, the Board of Directors of respondent No. 1 appointed Mr. R.K. Hedau as an Enquiry Officer, and that an order dated 18th November, 1999 appointing Mr. R.K. Hedau as an Enquiry Officer was also issued. Mr. Parkhi submitted that since Mr. Hedau was appointed as an Enquiry Officer, he had all the authority to act for and on behalf of respondent No. 1, including an authority to issue a charge-sheet. Mr. Parkhi further submitted that the argument advanced by learned Adv. Mrs. Wandile on the question of authority of respondent No. 1, and in particular, the charge-sheet issued by Mr. Hedau should be rejected.

10. As far as the nature of enquiry which was conducted by the Enquiry Officer and the findings recorded by the learned Judge of the Co-operative Court and the Member of the Co-operative Appellate Court are concerned, learned Adv. Mr. Parkhi submitted that there is a concurrent finding recorded by the Judge, Co-operative Court, as well as the learned Member of the Co-operative Appellate

Court that the enquiry conducted by Mr. Hedau was proper and findings in the said enquiry are not perverse. He, therefore, submitted that in the face of said concurrent finding, this Court should not upset the same and that the point should be decided in favour of respondent No. 1.

11. On the question of a prayer for reinstatement with back-wages, learned Adv. Mr. Parkhi relied upon the reported ruling of this Court in the case of Pralhad Vithalrao Pawar Vs. Managing Director and Another, , and submitted that since the petitioner was working as a Branch Manager, he could not be termed as a "workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947, or an employee as defined u/s 2(13) of the Bombay Industrial Relations Act, 1946. The petitioner is not, therefore, entitled to reinstatement with back-wages. It was argued by Mr. Parkhi that as the case of the petitioner does not fall in any of the three exceptional cases laid down by the Supreme Court in the case of Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi, , the petitioner is not entitled to reinstatement with back-wages. Mr. Parkhi submitted that since the petitioner is not entitled for reinstatement with back-wages, the petition filed by the petitioner should be dismissed.

12. I have heard learned Advocates on both the sides. The respondent No. 1 alleged that the petitioner had indulged in misappropriation of funds of respondent No. 1 and that is how the respondent No. 1 intended to conduct a Departmental Enquiry against the petitioner. A charge-sheet came to be issued under the signature of Mr. Hedau, being charge-sheet dated 27th November, 1999. The record indicates that the said Mr. Hedau was not at all concerned with the respondent No. 1 by way of employment and he was an outsider. Said Mr. Hedau came in picture on account of his appointment as an Enquiry Officer by order dated 18th November, 1999 pursuant to the resolution dated 16th November, 1999 at Sr. No. 8, duly passed by the Board of Directors of Respondent No. 1. It is in these circumstances it was necessary for the Court to consider whether the charge-sheet issued by Mr. Hedau could be treated as a charge-sheet duly, properly and legally issued by the respondent No. 1. Judgments have been cited by learned Adv. Mrs. Wandile in the cases of Union of India and others (supra) and Steel Authority of India (supra). A perusal of those Judgments would go to show that a charge-sheet should be issued by a person who is competent to issue the same, and in the normal course, such a person should be in the employment of the organization which intends to initiate a Departmental Enquiry. In the present case, though the respondent No. 1 has framed what may be referred to as "Service Rules", there is no specific rule which provides that a particular person or a particular officer should issue a charge-sheet. If this be so, it became necessary for the Court to consider whether Mr. Hedau was authorized to issue a charge-sheet. In this connection, it was sought to be argued by learned Adv. Mr. Parkhi that because the Board of Directors appointed Mr. Hedau as an Enquiry Officer, the Board of Directors also authorized said Mr. Hedau to issue a charge-sheet to the petitioner. Insofar as this aspect is concerned, a true copy of the Resolution dated 16th November,

1999 was made available by learned Adv. Mr. Parkhi. A perusal of the same would go to show that it was resolved by the Board of Directors that Mr. R.K. Hedau was appointed as an Enquiry Officer and that it was expected that the enquiry report would be submitted within a span of one month. Said Resolution No. 8 nowhere authorizes Mr. Hedau to issue a charge-sheet. Resolution No. 8 only indicates that Mr. Hedau was appointed as an Enquiry Officer, which means Mr. Hedau would come in picture only when the charge-sheet is issued by the appropriate officer of respondent No. 1 and then he handed over relevant papers for Departmental Enquiry to Mr. Hedau. Considering these facts, I am inclined to observe that said Mr. Hedau had no authority to issue a charge-sheet. Consequently, this Court finds and holds that the charge-sheet was not issued in accordance with the provisions of law and the service rules by which the petitioner was governed. Once it is held that the charge-sheet was issued by a person who was not authorized to issue the same, it will have to be held that the Departmental Enquiry conducted by Mr. Hedau and the consequential orders based on the said enquiry report are illegal. It is for this reason, I hold that Mr. Hedau issued the charge-sheet without any authority and, therefore, the enquiry conducted by him will have to be treated as an illegal enquiry and, therefore, the order of termination dated 28th April, 2000 based on the resolution passed by the Board of Directors on 23rd April, 2000 will have to be treated as illegal and it needs to be set aside.

13. The next question is whether the claim of the petitioner for reinstatement with back-wages can be granted. Insofar as this aspect is concerned, the argument advanced by learned Adv. Mr. Parkhi based on the Judgment in the case of Pralhad Vithalrao Pawar (supra) will have to be accepted. The evidence on record goes to show that the petitioner was a Branch Manager at the time of alleged misconduct. If that is so, surely, he cannot be termed as a "workman" as understood under the Industrial Disputes Act, or the Bombay Industrial Relations Act. As such, the petitioner would not be entitled for a relief of reinstatement with back-wages. Hence, the submission of learned Adv. Mrs. Wandile that the petitioner is entitled for reinstatement with back-wages cannot be accepted.

14. Learned Adv. Mrs. Wandile submits that the age of superannuation for the petitioner in the normal course was fifty-eight years and he has reached the said age on 30th April, 2013. Having observed that on account of the post held by the petitioner, namely a Branch Manager, he is not entitled for reinstatement, now the question as to when he attained the age of fifty-eight years is not relevant.

15. Once it is observed that the petitioner is not entitled for reinstatement, the question is what relief the petitioner should get on the basis of the finding that the order of termination dated 28th April, 2000 is bad in law. Once this Court holds that the order of termination dated 26th April, 2000 is bad in law, the judgment delivered by the Co-operative Court, as mentioned aforesaid, as well as that of Co-operative Appellate Court will have to be set aside and the dispute will have to be restored to the file of the Judge, Co-operative Court, for

appropriate orders in that behalf.

16. At this stage, learned Adv. Mrs. Wandile, upon instructions from the petitioner, states that the petitioner would be interested in amending the Dispute No. 576 of 2000 and he would be interested in praying for damages for wrongful termination, as this Court has observed that the petitioner is not entitled for reinstatement. She further submits that if such an amendment is granted, the petitioner would like to lead evidence on the question of damages and request the learned Judge of the Co-operative Court at Amravati for determining the claim of the petitioner for damages. Learned Adv. Mr. Parkhi states that if such an application is granted, the respondent No. 1 should be permitted to file its Written Statement to oppose the claim for damages.

17. Considering the aforesaid submissions of Mrs. Wandile and Mr. Parkhi I am inclined to observe that if the petitioner is not entitled for reinstatement, in the normal course, he would be entitled to claim damages in lieu of reinstatement, and for this, the petitioner will have to place appropriate material before the Court by leading relevant evidence to that effect. Of course, the respondent No. 1 will also get an opportunity to controvert the said evidence by an appropriate cross-examination of the witnesses examined by the petitioner, and by examining its witnesses as may be desired by it. In such a situation, I am inclined to pass an order, thereby allowing the petitioner to make an application for amendment of the dispute to claim damages and calling upon the learned Judge of the Co-operative Court to decide that application in accordance with the provisions of law. If that application is granted, further course shall be adopted by the learned Judge of the Co-operative Court in accordance with the provisions of law and in the light of this order. For the reasons mentioned aforesaid, following order is passed to dispose of this petition:--

(a) It is hereby observed that the charge-sheet issued by Mr. R.K. Hedau dated 27th November, 1999 cannot be termed as a charge-sheet issued in accordance with the provisions of law and that it is a charge-sheet which could not have been acted upon by the respondent No. 1.

(b) The order of Termination dated 28th April, 2000 issued by the respondent No. 1 is set aside.

(c) The Judgment and Order dated 16th June, 2001 passed by the learned Judge of the Co-operative Court, Amravati, in Dispute No. 576 of 2000 is set aside.

(d) Similarly, the Judgment and Order dated 3rd May, 2002 passed by the Member, Co-operative Appellate Court, Nagpur, in Appeal No. 56 of 2001 is also set aside.

(e) The Dispute No. 576 of 2000 is restored to the file of the Judge, Co-operative Court, Amravati.

(f) If the petitioner applies for amendment of the said Dispute so as to incorporate necessary averments as regards prayer for damages in lieu of

reinstatement with back-wages, and for appropriate prayers, on or before 30th September, 2013, the learned Judge of the Co-operative Court shall decide the said application on merits by giving appropriate opportunity to the petitioner as well as respondent No. 1 to advance their respective contentions before the Judge of the Co-operative Court.

(g) If that application is finally granted, the petitioner would be permitted to lead necessary evidence in support of such a prayer for damages, so also the respondent No. 1 shall be in a position to lead evidence in order to oppose the claim of the petitioner. The learned Judge of the Co-operative Court shall dispose of the said dispute within a period of six months from the date of final order by which the dispute is permitted to be amended.

(h) If the petitioner fails to apply for appropriate amendment as aforesaid on or before 30th September, 2013, the learned Judge of the Co-operative Court at Amravati shall pass appropriate orders to dispose of the said Dispute No. 576 of 2000.

(i) In the facts and circumstances of the case, there shall be no orders as to costs.

(j) The records and proceedings of the Co-operative Court as well as the Co-operative Appellate Court were called by this Court. Presently, the said records are with this Court. Registrar (Judicial) shall, therefore, arrange to send the same back to the Judge, Co-operative Court, Amravati, within ten days from signing of this order.