
(2016) 03 BOM CK 0021
In the Bombay High Court
Case No : Writ Petition No. 771 of 2015

Mr. Surendra J. Kalangutkar	Vs	APPELLANT
Goa State Co-operative Bank Ltd. & Another		RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311

Citation : (2016) 3 AIRBomR 642 : (2016) LIC 3365

Hon'ble Judges : F.M. Reis and K.L. Wadane, JJ.

Bench : Division Bench

Advocate : S.D. Lotlikar, Senior Advocate with C. Padgaonkar and M. Furtado, Advocates, for the Appellant; Girish K. Sardessai, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

F.M. Reis, J.(Oral) - Heard Mr. S.D. Lotlikar, learned Senior Counsel appearing for the petitioners and Mr. G.K. Sardessai, learned counsel appearing for the respondents.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. Mr. G. K. Sardessai, learned counsel waives service on behalf of the respondents.

4. Both the learned counsel point out that the legal proposition involved in both the above petitions are identical and as such they can be disposed of by a common judgment.

5. The above petitions inter-alia pray for quashing and setting aside the entire proceedings starting with the suspension of the petitioners, the subsequent service of the charge sheet against the petitioners, the proceedings of the inquiry officer, the inquiry report, the show cause notice issued to the petitioners and the office order dated 02.05.2015 dismissing the petitioners from the services.

6. Briefly, the facts of the case are that by orders dated 07.07.2010 and

21.08.2010, it was brought to the notice of the petitioners that the Respondent no.1 was intending to institute a domestic inquiry against the petitioners and the petitioners were placed in suspension with immediate effect. Thereafter, on 6.10.2010 and 12.10.2010, the charge sheets were issued to the petitioners and the petitioners were directed to submit their written explanation within a period of seven days. The petitioners accordingly submitted their reply on 19.10.2010 and 18.10.2010 disputing the allegations and inter-alia contending that the charge sheets itself were vague. Thereafter, on 19.03.2012 the Respondent no.2 furnished to the petitioners a copy of the inquiry report dated 28.12.2011 in the matter of charge sheet framed against them. The inquiry report inter-alia states that the petitioners were found guilty of all the charges framed against them. It is further contended by the petitioners that during the pendency of the said proceedings, the petitioners have brought to the notice of the inquiry officer that they have not been paid subsistence allowance. In response to the said inquiry report, the petitioners contended that such inquiry was conducted in violation of the principles of natural justice as no opportunity was granted to the petitioners to examine their witnesses in defence. There were also allegations by the petitioners that they were not allowed to cross examine the witnesses of the Management. It was also pointed out that the petitioners requested to reject the report of the inquiry officer as the charges against the petitioners had not been proved and inquiry was conducted in violation of the principles of natural justice. It was further pointed out that though the reply was submitted on 05.04.2012 only after a gap of almost three years, the notice was served on the petitioners in which it was stated that in view of the gravity of misconduct proved against the petitioners, it was decided to dismiss them from the services. It is further their case that the alleged dismissal by the respondents is disproportionate to the alleged default committed by the petitioners. Thereafter, vide office orders dated 02.05.2015, the petitioners were informed that it was decided that their services were being terminated. Being aggrieved by the said orders, the petitioners filed the present petitions for the reliefs stated herein above.

7. The respondents filed their reply and contended that the Respondent no.1 is a Co-operative Bank registered under the Maharashtra Co-operative Societies Act, 1960 and deemed to be registered under the Multi State Co-operative Societies Act, 2002 and is entrusted with delicate task of taking care of the public funds. It is further contended that the respondents are neither a State nor an other authority as envisaged under Article 12 of the Constitution of India and as such, no writ can lie against the respondents. It is further pointed out that the dispute raised by the petitioners of their termination is an industrial dispute within the meaning of the Industrial Disputes Act, and the dispute in the matter of termination can be raised by an individual workman under Section 2A of the said Act. It is further pointed out that as such the petitioners have an efficacious alternate remedy and consequently, this Court has no jurisdiction to proceed with the present petitions. It is also submitted that the present petitions suffer from disputed questions of fact which cannot be adjudicated in the writ petition. It is

further submitted that the inquiry officer had followed the well established principles and tested the evidence of both the parties and has come to the conclusion that the management has proved the charges. It is also submitted that the petitioners were paid subsistence allowance at the rate of 33% from July, 2010 to March, 2012 and 50% till the date of dismissal from their services. It is further denied that the petitioners were not paid subsistence allowance. It was also denied that the petitioners have sought for adjournment to defer the hearing of the witnesses.

8. Mr. S.D. Lotlikar, learned Senior Counsel appearing for the petitioners has pointed out that the respondents are carrying public functions in terms of Article 12 of the Constitution of India. The learned Senior Counsel further submitted that the Respondent no.1 is also a State within the meaning of Article 12 of the Constitution of India as according to him the affairs of the Cooperative Societies have now been incorporated as being part of the Constitution itself. The learned Senior Counsel further submitted that the main grievance of the petitioners is that the whole inquiry conducted by the Inquiry Officer is in breach of the principles of natural justice as according to him a short adjournment sought by the petitioners was refused and the impugned orders were passed only in the year 2015 which by itself establishes malafide intention of the respondents. The learned Senior Counsel further submitted that it is well settled that even assuming that there is an alternate remedy, there is no bar for this Court to exercise jurisdiction under Article 226 of the Constitution of India as according to him the challenge by the petitioners is the breach of the principles of natural justice. The learned Senior Counsel further pointed out that the action of the respondents in terminating the services of the petitioners would affect the right to life under Article 21 of the Constitution of India as the livelihood of the petitioners would be severally jeopardised by an illegal action taken by the respondents. The learned Senior Counsel further pointed out that the contention of the respondents that even assuming that there is lack of evidence, it is always open to the respondents/Management to adduce further evidence in the proceedings before the Industrial Tribunal cannot be accepted as according to him, the petitioners are only seeking relief to quash the orders of the inquiry officer and proceed with the inquiry from the stage the adjournment came to be refused and the petitioners were precluded from taking part in the inquiry. The learned Senior Counsel further submitted that the petitioners are entitled to produce all evidence before the Inquiry Officer to establish the falsity of the claim of the respondents. The learned Senior Counsel further submits that the Respondents have not paid the subsistence allowance which itself would deprive the petitioners to effectively meet the allegations against them before the Inquiry Officer. The learned Senior Counsel thereafter has extensively taken us through the records to point out that the impugned orders passed by the Inquiry Officer are perverse and without any justification which would cause grave consequence to the petitioners which call for interference by this Court under Articles 226 and 227 of the Constitution of India.

9. On the other hand, Mr. Sardessai, learned counsel appearing for the respondents has vehemently brought to our notice that the Respondent no.1 is not a State within the meaning of Article 12 of the Constitution of India and as such no writ can lie against the said respondents. The learned counsel further submitted that the petitioners have an alternate remedy to pursue their case by raising dispute under the Industrial Disputes Act, 1947 and as such, as the petitioners have an efficacious alternate remedy, the question of filing the present Writ petitions would not arise. The learned counsel further pointed out that the petitioners by approaching this Court directly have deprived the respondents of their right under Section 11A of the Industrial Disputes Act, 1947 to justify any deficiencies by leading evidence before the Industrial Tribunal. The learned counsel further pointed out that the Inquiry Officer was justified to refuse the adjournment as the petitioners were delaying the proceedings without any justification. The learned counsel further pointed out that there are disputed questions of fact which cannot be decided in the present writ petitions. The learned counsel further pointed out that in case the Tribunal came to the conclusion that the proceedings were defective, the petitioners would have an opportunity to lead evidence to dispute such contention. The learned counsel further pointed out that there are no justifiable reasons for interference of this Court in the present petitions and consequently, both the petitions deserve to be rejected. In support of his submissions, the learned counsel has relied upon the judgment of the High Court of Himachal Pradesh, Shimla dated 14.05.2013 passed in CWP No. 3634 of 2012. The learned counsel has also relied upon the judgment of the Apex Court reported in (2013) 16 SCC 82 in the case of Thalappalam Service Cooperative Bank Limited and others v. State of Kerala and others, the judgments reported in 2000(85) FLR 354 in the case of Ram Kishan Singbal v. Presiding Officer and others, AIR 1993 Bombay 91 in the case of Shamrao Vithal Co-op. Bank Ltd. v. Padubidri Pattabhiram Bhat, 1965(II) LLJ 162 in the case of Workmen of Motipur Sugar Factory (Private) Ltd. v. Motipur Sugar Factory (Private) Ltd., AIR 1973 SC 1227 in the case of Workmen of Firestone Tyre & Rubber Co. of India P. Ltd., v. The Management and others, and 2002 (12) SCC 1 in the case of Engineering Laghu Udyog Employees Union v. Judge, Labour Court and Industrial Tribunal and another.

10. We have considered the submissions of the learned counsel and we have also gone through the records as well as the judgments relied upon by the learned counsels. Upon considering the contentions raised by the respective learned counsel, the points which come for consideration are :

(1) Whether this Court can exercise writ jurisdiction when the petitioner has an alternate remedy to raise the dispute under the Industrial Disputes Act, 1947.

(2) Whether the Inquiry Proceedings stand vitiated in breach of the principles of natural justice and the effect, if any, for alleged non payment of subsistence allowance.

(3) Whether writ can be issued to the Respondent no.1.

11. With regard to the first contention of Mr. Sardesai, learned Advocate appearing for the Respondents that the Petitioners have an alternate remedy and, as such the present Petition is not maintainable, we find that it is noteworthy to record that there is no absolute prohibition in law to entertain a Writ Petition on the ground that there is an alternate remedy available to the Petitioners. Disposing off a Writ Petition on the ground that it has an alternate remedy, is more than a rule of convenience which would have to be applied in the facts and circumstances of each case. There are cases in which a Petition can be entertained even though alternate and efficacious remedies are available when there are good grounds to interfere, for instance when a challenge is raised to the termination of the services of workmen without issuing a show cause notice or without conducting any disciplinary proceedings and without affording an opportunity of being heard. The Apex Court in the Judgment reported in (2010) 1 SCC 126 in the case of *Satwati Deswal v. State of Haryana and Ors.*, has observed at Para 5 thus :

"5. In our view, the High Court had fallen in grave error in rejecting the writ petition on the aforesaid ground. First, such an order of termination was passed without issuing any show cause notice to the appellant and without initiating any disciplinary proceedings by the authorities and without affording any opportunity of hearing. It is well settled that a writ petition can be held to be maintainable even if an alternative remedy is available to an aggrieved party where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right; or if there had been a violation of a principle of natural justice; or where vires of the Act were in question."

12. Keeping in mind the said observations of the Apex Court, we shall examine the objections raised by the learned Counsel appearing for the Respondents on that count to ascertain the nature of the right claimed by the Petitioners and claimed to have been infringed by the Respondents.

13. The Orders challenged in both the above Petitions are Orders whereby the services of the Petitioners have been terminated on the ground of disciplinary misconduct. The Inquiry Officer was appointed to proceed with the inquiry and though the Petitioners had participated in such inquiry, they were forced to seek an adjournment on 09.12.2011 when the Petitioners requested for an adjournment for the following week on specific grounds. The request of the Petitioners was rejected and the Petitioners were asked to cross examine MW2 and also to lead evidence in defence. But, however, the Petitioner declined to do so in the absence of CSE and, as such, the inquiry was concluded and the matter came to be disposed of by report dated 28.12.2011 whereby the charges were held to have been proved. It is also to be noted that though such report was submitted way back in December 2011, the Respondents did not take any action on such report until March 2012 when a reply was filed by the Petitioners. Only after a gap of nearly three years, the Respondents proceeded to pass the impugned Order terminating the services of the Petitioners. The delay in taking

such action has not been satisfactorily explained by the Respondents. During the said proceedings, it was also contended by the Petitioners that they were not paid the correct subsistence allowance and that some amounts were allegedly deposited in the accounts which were allegedly not within the reach of the Petitioners. Considering the inordinate delay in taking the impugned action by the Respondents, we find that the Inquiry Officer was not justified to refuse an adjournment sought by the Petitioners on 09.12.2011. The Petitioners had also alleged that they were facing financial difficulties and this cannot be excluded as a grievance was raised that the Respondents had not paid in the hands of the Petitioners the subsistence allowance. Though the Respondents contend that the subsistence allowance has been duly paid, nevertheless, there is no material produced on record to ascertain the veracity thereof. Apart from that there is a specific mention of the aspect in the inquiry report.

14. Looking into the contention of the Petitioners and the records, the main grievance of the Petitioners, as such appears to be that the impugned Order of termination was passed in gross breach of the principles of natural justice and that such Order would have a grave impact in the Petitioners' employment. The Apex Court has held in a catena of cases that the word "life" under Article 21 of the Constitution of India includes the right to livelihood and so may include other facets of life. As such, based on the Order under challenge stated to have been passed in breach of the principles of natural justice, the Petitioners would be deprived of their livelihood as they are the bread earners of their family and this employment would be severely jeopardised and as such we find that there is no bar for interference in such Orders under Article 226 of the Constitution of India. Thus, the right to livelihood which is an essential and integral part of the right of life, guaranteed under Article 21 of the Constitution of India, cannot be taken away otherwise then by a procedure established by law. Thus, the Order of dismissal from service directly and adversely impacts the Petitioners' right to life under Article 21 of the Constitution of India. The Petitioners' complaint of the violation of the principles of natural justice would mean that it is the contention of the Petitioners that the Respondents have not followed the procedure established by law to deprive them of their employment.

15. It cannot be disputed as such that the domestic Tribunal has to follow the Rules which apply in the process of conducting such inquiries. Any adverse verdict would jeopardise the future prospects of rendering services. It is the contention of the Petitioners that the conclusions drawn by the Inquiry Officer are without any basis and without giving an adequate opportunity to the Respondents to meet the contentions. It is also contended that there is no legal evidence on record to prove the alleged charges against the Petitioners. On perusal of the inquiry report, we find that such report has been submitted without giving an adequate opportunity to the Respondents to cross examine the witnesses of the Respondents and giving the Petitioners an adequate opportunity of being heard and, in such cases, the interference of this Court under Article 226 of the Constitution of India would be justified even in case the Petitioners

have an alternate remedy under the Industrial Dispute Act as contended by Shri Sardesai, learned Counsel appearing for the Respondents. Even though the Rules of evidence and procedure may not be strictly available to domestic inquiries, nevertheless, there has to be fairness and reasonableness in such inquiries to meet the ends of justice in view of the consequences thereof. Though the onus of proof also does not strictly lie upon the employer, but depends upon the nature of the charge and the nature of the explanation rendered. On perusal of the charges in the present case, there were serious allegation against the Petitioners with regard to the non-performance of their duties and not reporting the factual position of the work assigned and the lapse to scrutinise properly their loan proposals received by the Mormugao Port and Railway Works Credit Society Limited as well as recommending loans beyond borrowing capacity. Such allegations would cause a stigma on the Petitioners in case they are held proved and, consequently, would result in grave consequences in the ability of the Petitioners in performing their duties. On perusal of the report of the Inquiry Officer, we find that the charges are held to have been established essentially on the ground of factual position of misappropriation committed by the Petitioners has not been disputed by the defence as no evidence was recorded. Even the other charges are held to be proved essentially on the ground that there is no evidence rebutting the documents produced by the Presenting Officer though he had admitted in the cross that he was not working at Sada Branch when the Petitioners were on duty. It is well settled that the High Court whilst exercising jurisdiction under Article 226 of the Constitution of India does not act as an Appellate Authority and its jurisdiction is circumscribed and confined to correct errors of law or procedural errors, if any, resulting in a manifest miscarriage of justice or violation of the principles of natural justice. Judicial review is not akin to adjudication on merits by re-appreciating the evidence as an Appellate Authority. Judicial review of proceedings before an Authority is not an Appeal from a decision but a review of the manner in which the decision has been arrived at. The power of judicial review is meant to ensure that the individual receive fair treatment and not to ensure that the conclusions the authorities reached are necessarily correct in the eyes of law. Thus, when inquiries are held on charges of misconduct of an employee, the Court is concerned to determine whether the inquiry was held by observing the rules of natural justice. In the present case, the refusal of an adjournment to the Petitioners as pointed out herein above, has seriously affected the right of defence of the Petitioners and, as such, there was a serious breach of the principles of natural justice which resulted in the impugned report by the Inquiry Officer which led to the termination of the services by the Petitioners. The veracity of the evidence of the witnesses of the Respondents could not be tested in the touchstone of the cross examination of such witnesses as the Petitioners did not get an opportunity thereof on account of the refusal of the adjournment. The cardinal principles of labour jurisprudence enjoin upon an employer to hold a domestic enquiry against a workman honestly and bona fide with care and caution that such an enquiry does not become an empty formality. It is an elementary principle of labour law

that while holding domestic enquiry rules of natural justice must be faithfully followed and fair play strictly ensured. In such circumstances, taking note of the facts of the present case wherein the Petitioners were not afforded adequate opportunity to lead evidence nor to cross examine the witnesses of the Respondents, we hold that the inquiry against the Petitioners was in flagrant violation of the principles of natural justice and was not just, fair and proper. Consequently, the decision to dismiss the Petitioners from services is also not justified. In such circumstances, we find that there are reasons to interfere in the impugned order dismissing the Petitioners by exercising jurisdiction under Article 226 of the Constitution of India. In this connection, the Division Bench of this Court in a Judgment reported in 1987 SCC OnLine Bom 502 in the case of Kumar Ram Nandan v. Fluid Power (Private), Ltd. & Ors., has observed at Paras 6 and 7 thus :

"6. On consideration of the record produced before us, we are of the opinion that the action of the first respondent in dismissing the petitioner was not justified and the domestic enquiry held against him was a mere farce and an empty formality. Further, the impugned awards passed by the second respondent were not in accordance with law and suffered from errors apparent on the face of the record. In our view, the findings of the second respondent that the domestic enquiry was fair and proper and the petitioner deserves a punishment of discharge simpliciter, are perverse. The cardinal principles of labour jurisprudence enjoin upon an employer to hold a domestic enquiry against a workman honestly and bona fide with care and caution that such an enquiry does not become an empty formality. It is an elementary principle of labour law that while holding domestic enquiry rules of natural justice must be faithfully followed and fair play strictly ensured. But nothing that is fair, just, proper and in accordance with the principles of natural justice was ensured and observed here. We thus find in this case that the action of the first respondent of dismissing the petitioner from service which was converted by the second respondent into an order of discharge simpliciter has got to be set aside and the petitioner should be reinstated in his original position with full back wages and continuity of service.

7. The following are our reasons and conclusions as a result of the examination of the material on record for arriving at a decision that the petitioner deserves the reliefs he has sought for in this petition:

(a) After he was served with the charge-sheet, the petitioner by his letters dated 14th Nov., 1975 and 8th Dec. 1975 requested the first respondent that, at the domestic enquiry, he may be permitted to defend himself with the help of a person of his choice and/or a union representative. This most reasonable request of the petitioner was not acceded to by the first respondent and, on the contrary, a person by name D.K. Kapadia was imposed upon him as his defender and another person by name P.S. Joshi was appointed as an observer. This is very unusual feature of a domestic enquiry. One" fails to understand that when Kapadia was appointed to defend the petitioner, where was the necessity of

appointing Joshi as an observer? The first respondent alone can answer this query. The petitioner deposed in categorical terms in the Labour Court that he had not called Kapadia and Joshi either to defend him or to observe the proceedings on his behalf. It is pertinent to note here that the first respondent was represented at the enquiry by a competent and experienced person M. G. Barve, Administrative Officer. It is, therefore, but natural to expect that the petitioner should also be defended by an equally competent person. The request of the petitioner here was the minimum. All that he wanted was to be defended by a person of his choice or a union representative i.e. by a friend who can protect his interests. Every person whose interests are likely to be adversely affected at any given proceeding, is entitled to be heard in such proceeding and be aided and assisted by a friend. Adequate and proper legal assistance to a workman at a domestic enquiry is a must. The fight here is between two unequals. One is a high and mighty employer and the other is a poor workman suffering from the miseries of loss of job. His back is already broken and he cannot withstand the situation without proper and adequate legal assistance. In not permitting the petitioner in the present case to be defended by a person of his choice, the first respondent defeated and violated the principles of natural justice thus denying social justice to the petitioner to which he was very much entitled.

(b) The petitioner at the outset in his letter dated 8th Dec. 1975 requested the first respondent that the enquiry may be conducted either in Marathi or in Hindi. But to his misfortune and dismay, the enquiry was conducted in English, the language unknown to him. He did not understand Marathi properly and therefore it was imperative to conduct the enquiry only in Hindi which was not done. Although the Enquiry Officer deposed in the Labour Court that the enquiry was conducted in Hindi, the record produced before us does not show that. In fact, the evidence was recorded in English and supposedly explained to the petitioner in Hindi. The use of English language at a domestic enquiry when the workman does not know English should be avoided and discouraged. Such an enquiry should be held in the language understood by him. Only then can one feel confident that the workman was given reasonable opportunity of being heard and to defend himself. An enquiry otherwise would be an empty formality and its validity open to grave doubt.

(c) It appears that the Administrative Officer M.G. Barve had received a report from one Pinto the effect that the petitioner had damaged wooden cases containing Power Pack Units by throwing them away. The petitioner was charge-sheeted on the basis of the said report. However, a copy of that report was not furnished to the petitioner and it was produced for the first time only at the enquiry. Further, the copies of the proceedings were also not given to the petitioner. Enquiry Officer Dholakia deposed in the Labour Court that it was not his duty to supply copies of the documents produced in the enquiry to the workman and the copies of the enquiry notes were also not supplied to him. He further testified that he did not explain the procedure of the enquiry to the

workman. All this is indeed shocking to a judicial mind. In the premises, can it at all be said that the instant domestic enquiry was conducted in accordance with the principles of natural justice? The answer is obvious. It is simple "no" which vitiates the entire enquiry proceeding.

(d) More disquieting and disturbing feature of this case is the fact that the Administrative Officer Barve who represented the first respondent at the domestic enquiry and acted as a prosecutor, himself gave evidence in the enquiry proceeding and the Enquiry Officer merely recorded his statements and made use thereof to hold the petitioner guilty of the charges levelled against him. The involvement of Barve in his manner at the enquiry blatantly violated the principles of natural justice.

(e) One Keshave Ram Yadav was working as a watchman with the first respondent at the relevant time. He and one Naresh Lad were the alleged eye witnesses to the incident in question. But the first respondent examined the convenient witness Keshav alone at the enquiry and for reasons best known to them, kept back Naresh Lal. Indeed, the evidence of Naresh was important so as to corroborate the testimony of Keshav especially when the incident was disputed by the petitioner. Therefore, it was quite necessary for the first respondent to have Keshav evidence corroborated by examining Naresh. We are inclined to draw an adverse inference against the first respondent that had they examined Naresh at the domestic enquiry, his evidence would have gone against them and in favour of the petitioner. In withholding and suppressing this material evidence from coming on record, the first respondent did not act bona-fide.

(f) Considering the matter on merits, we are of the view that the incident as alleged must not have taken place. Thus, it was the case of the first respondent that the petitioner lifted the wooden boxes and threw them away causing damage to the goods therein. But there is nothing on the record to show that any damage was caused to any of the boxes or goods therein. In the absence of any evidence whatsoever in this regard, we feel that the defence of the petitioner that he removed the boxes and kept them aside with a view to clear his way to the locker, appears to be more probable. Further, the record shows that the weight of each of the boxes was about 65 kilograms. In that case, it is difficult to accept the evidence of watchman Keshav that the petitioner lifted the boxes like any ordinary man who throws away things which would mean lifting these heavy boxes upto the height of about 3 to 4 feet regard being had to these facts and circumstances, one can reasonably infer that in all probability the petitioner must have only cleared the boxes from his way. That is the only reasonable inference. In any event, benefit of doubt should, in all the circumstances, go to the workman here.

(g) We are also of the considered view that for whatever was done by the petitioner, he could not have been visited with the extreme penalty of loss of job either by way of dismissal or discharge simpliciter. For impugned conduct, if at all proved, the petitioner could have been at the most given a warning to be more

careful in future.

16. Apart from that, as stated above, it was also pointed out by Shri Lotlikar, learned Senior Counsel appearing for the Petitioners, that the subsistence allowances payable to the Petitioners has not been duly paid in the hands of the Petitioners. Though Mr. Sardesai, learned Counsel appearing for the Respondents has submitted that amounts have already been deposited in the account of the Petitioners, nevertheless, we find that there is no cogent material produced on record to substantiate such contention. Mr. Lotlikar, learned Senior Advocate has also submitted that the alleged amounts have been deposited in an Account which is not accessible by the Petitioners. As such, it cannot be accepted prima facie that the Respondents have duly complied with their obligation to pay subsistence allowance as such grievance is also noted in the Inquiry Report. Thus, in any event, considering the view we propose to take, this aspect would have to be examined by the Inquiry Officer in accordance with law. In this connection, the learned Single Judge of this Court in the judgment reported in 1995(2) Bom. C. R. 438 in the case of Bharat Petroleum Corporation Ltd. v. Ramnath Jagdish Tiwari and another, has observed at para 15 thus :-

"15. ?.....The principle is that the workman has to be paid a reasonable amount. In the absence of any provision, the Tribunal seized of the matter can determine the amount. But when section 10-A(1) of the Industrial Employment (Standing Orders) Act, 1946 makes a specific provision for payment of subsistence allowance to the workman pending enquiry at the rate of 50% of the wages for the first 90 days of suspension and at the rate of 75% of wages for the remaining period of suspension, if the delay in completion of the enquiry is not directly attributable to the conduct of such workman, there is no necessity of making any further enquiry as to what would be a reasonable amount. The Legislature by enactment has statutorily determined this aspect. As such, the management was obliged to pay the subsistence allowance at the rate of 75% of the wages and only such payment could be held to be reasonable. Anything short cannot be held to be reasonable inasmuch as not only it would be contrary to the very object and intention of the aforesaid 1946 Act, but also to the express provision of section 10-A(1) thereof. In the facts of the present case, as observed by the Tribunal, the workmen did demand payment at the enhanced rate as per his entitlement under section 10-A(1) and the Inquiry Officer, in fact, directed the management to do so. If the management failed to do so, it has to thank itself for the consequences. As I am in complete agreement with the Tribunal that in the facts of the case, there is no question of any dispute regarding the rate at which the subsistence allowance has to be paid and the material on record is absolutely clear to show that even remotely the workman cannot be held responsible for the delay in completion of disciplinary proceedings, I am also of the opinion that the enquiry has to be held to be vitiated on the ground that the principles of natural justice are breached. In the result, award part-I dated 5.10.1990 is hereby confirmed."

Taking note of the said observations the facts of the present case also disclose that there was a grievance raised by the Petitioners of non payment of the subsistence allowance during the inquiry which is also noted in the report of the Inquiry Officer. Besides, that there was a long delay in passing the impugned order dismissing the Petitioners after the report was submitted. In case the subsistence allowance is not duly paid in the hands of the Petitioners, the inquiry proceedings itself would stand vitiated. But however, as pointed out herein above, this aspect would have to be examined by the Inquiry Officer considering the view we propose to take in the above petition.

17. With regard to the contention of Mr. Sardesai, learned Advocate appearing for the Respondents that this Court cannot set aside the inquiry report and direct the reinstatement of the Petitioners as according to him the Petitioners have a right to lead evidence before the Industrial Tribunal to justify the charges, we may note that the Apex Court in the judgment reported in 2001(5) SCC 433 in the case of Karnataka SRTC v. Lakshmiddevamma, has observed at para 8 thus :

"8. Before we proceed to examine this question any further, it will be useful to bear in mind that the right of a management to lead evidence before the Labour Court or the Industrial Tribunal in justification of its decision under consideration by such tribunal or court is not a statutory right. This is actually a procedure laid down by this Court to avoid delay and multiplicity of proceedings in the disposal of disputes between the management and the workman. The genesis of this procedure can be traced by noticing the following observations of this Court in Workmen v. Motipur Sugar Factory (P) Ltd.: (SCR pp. 597 G-H and 598 A)

"If it is held that in cases where the employer dismisses his employee without holding an enquiry, the dismissal must be set aside by the Industrial Tribunal only on that ground, it would inevitably mean that the employer will immediately proceed to hold the enquiry and pass an order dismissing the employee once again. In that case, another industrial dispute would arise and the employer would be entitled to rely upon the enquiry which he had held in the meantime. This course would mean delay and on the second occasion it will entitle the employer to claim the benefit of the domestic enquiry given. On the other hand, if in such cases the employer is given an opportunity to justify the impugned dismissal on the merits, the employee has the advantage of having the merits of his case being considered by the Tribunal for itself and that clearly would be to the benefit of the employee. That is why this Court has consistently held that if the domestic enquiry is irregular, invalid or improper, the Tribunal may give an opportunity to the employer to prove his case and in doing so the Tribunal tries the merits itself."

18. Thus, as observed by the Apex Court, the right of the employer to lead evidence is essentially to avoid further delay and multiplicity of proceedings and not a statutory right. Hence, merely on this ground, it would not be appropriate to refuse the relief to the Petitioners when it has been essentially established that the inquiry conducted by the Inquiry Officer stands vitiated for gross

violation of the principles of natural justice.

19. The next contention of Mr. Sardesai, learned Advocate appearing for the Respondents is that no writ lies against the Co-Operative Bank as it is not a State, cannot be accepted in the facts of the present case. In this connection, the Full Bench of the learned High Court of Himachal Pradesh at Shimla in the case of *Vikram Chauhan v. The Managing Director & Ors*, dated 14.05.2013 in CWP No. 3634 of 2012-D, it has been observed at paras 12, 13 and 15 thus:

"12. That takes us to the second part of the question formulated by the Division Bench, as to whether a writ would lie against the stated Cooperative Banks? This question, essentially, touches upon the scope of power of the High Courts to issue certain writs as predicated in Article 226 of the Constitution of India. This is completely independent issue. In a given case, in spite of the opinion recorded by the Court that the respondent concerned in a writ petition, filed under Article 226 of the Constitution of India, is not a State within the meaning of Article 12 of the Constitution of India. Even then, the High Court can exercise jurisdiction over such respondent in view of the expansive width of Article 226 of the Constitution of India. It is well established position that the power of the High Courts under Article 226 is as wide as the amplitude of the language used therein, which can affect any person ? even a private individual ? and be available for any other purpose ? even one for which another remedy may exist (*Rohtas Industries Ltd. and another v. Rohtas Industries Staff Union and others* AIR 1976 SC 425). In the case of *Engineering Mazdoor Sabha and another v. Hind Cycles Ltd.* AIR 1963 SC 874, the Court opined that even if the Arbitrator appointed under Section 10-A is not a Tribunal for the purpose of Article 136 of the Constitution in a proper case, a writ may lie against his Award under Article 226 of the Constitution. In the case of *Praga Tools Corporation v. C.A. Imanuel and others* AIR 1969 SC 1306, the Apex Court held that it was not necessary that the person or the Authority on whom the statutory duty is imposed need be a public official or an official body. That a mandamus can be issued even to an official or a Society to compel him to carry out the terms of the statute under or by which the Society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. Further, a mandamus would lie against a Company constituted by a statute for the purposes of fulfilling public responsibilities. In the same decision, the Apex Court examined the amplitude of the term "Authority" used in Article 226 of the Constitution. The Court opined that it must receive liberal meaning unlike the term in Article 12 of the Constitution. It went to observe that the words "any person or authority" used in Article 226 cannot be confined only to statutory authorities and instrumentalities of the State. It may cover any other person or body performing public duty irrespective of the form of the body concerned. It is emphasised that what is relevant for exercising power is the nature of the duty imposed on the body which must be a positive obligation owned by the person or Authority. Depending on that finding, the Court may invoke its authority to issue writ of mandamus. In the case of *Life Insurance Corporation of India v. Escorts*

Ltd. And others (AIR 1986 SC 1370) the Constitution Bench opined that the question must be "decided in each case" with reference to particular action, the activity in which the State or the instrumentality of the State is enacted when performing the action, the public law or private law, character of the Constitution and most of the other relevant circumstances. In a given case, it may be possible to issue writ of mandamus for enforcement of public duty which need not necessarily to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract, as noted by Professor de Smith, which exposition has found favour with the Apex Court.

13. The Apex Court after referring to catena of decisions and authorities in the case of UP State Cooperative Land Development Bank Ltd. v. Chandra Bhan Dubey and others (AIR 1995 SC 753) has succinctly delineated the scope of authority under Article 226 of the Constitution. In para 27 of this decision, the Court opined that Article 226 while empowering the High Court for issue of orders or direction to any Authority or person does not make any difference between public functions or private functions, but did not go to elaborate that question in the fact situation of that case. It is unnecessary to multiply the authorities on the point except to observe that a writ would lie against even a Cooperative Society or Company. But that does not mean that the Court is bound to issue such a writ. It is the prerogative of the High Court to issue writ to any person or authority, which is not a State or an instrumentality of the State. The Court would do so with circumspection and keeping in mind the well defined parameters. Whether in the fact situation of a given case, the Court ought to exercise its authority to issue writ or order in the nature of writ under Article 226 of the Constitution, will have to be answered on the basis of the settled principles, on case to case basis. Thus, it will be inapposite to put it in a straight jacket manner that every writ petition filed against the Cooperative Banks must be dismissed as not maintainable or otherwise.

15. For the view taken by us on both facets of the referred questions, we proceed to answer the Reference as under:

(1) The question as to whether Kangra Bank is a State within the meaning of Article 12 of the Constitution of India, is no more *res integra*. It has been authoritatively answered by the Apex Court in S.S. Rana's case (*supra*).

(2)

?.....

(3)

?.....

(4) As regards the second part of the question as to whether a writ would lie against the stated Cooperative Banks, we hold that it is not appropriate to give a definite answer to this question. For, it would depend on several attending factors. Further, even if the said Banks were held to be not a State within the

meaning of Article 12, the High Court in exercise of powers under Article 226 of the Constitution of India, can certainly issue a writ or order in the nature of writ even against any person or Authority, if the fact situation of the case so warrants. In other words, writ can lie even against a Corporative Society. Whether the same should be issued by the High Court would depend on the facts of each case."

Taking note of the said observations laid down therein, the contention of Mr. Sardessai, learned Counsel appearing for the Respondents that the Petitioners are not entitled for any reliefs in the above Writ Petition as it is not a State within the meaning of Article 12 of the Constitution of India, cannot be accepted. It is also stated by Mr. Lotlikar, learned Senior Counsel appearing for the petitioners that the State Government has substantial share in the respondent Co-operative Bank and is performing the public functions in giving loans and taking deposits from the different persons. As such, a writ can lie even against such Co-operative Society.

20. In view of the above, we find that the Order passed by the Inquiry Officer refusing an adjournment and all consequent orders passed thereafter deserve to be quashed and set aside and inquiry against the Petitioners would have to proceed from the said stage after giving an opportunity to the Petitioners to lead evidence in accordance with law.

21. In view of the above, we pass the following :

ORDER

(i) The impugned orders dated 02.05.2015 and the inquiry report dated 28.12.2011 as well as the order dated 09.12.2011 for refusal of the adjournment are quashed and set aside.

(ii) The Respondents are accordingly directed to proceed with the inquiry from the stage when the adjournment was refused after giving the petitioners an opportunity of being heard and cross examining the witnesses and to lead evidence in support of their stand in accordance with law.

(iii) The Respondent no.1 is directed to pay the subsistence allowance which has not yet been paid within three months from today with all the arrears thereof payable to the petitioners. Needless to say that the inquiry officer shall also examine the dispute with regard to the quantum of the subsistence allowance after hearing both the parties in accordance with law.

(iv) Rule is made absolute in the above terms.

(v) The inquiry shall be completed within six months from the date of receipt of the order.

(vi) The Petitions stand disposed of accordingly.