

(2015) 01 BOM CK 0126
In the Bombay High Court
Case No : Writ Petition No. 4558/2004

Sadhana Sahakari Bank Ltd.

APPELLANT

Vs

Dwarka Lekhraj Jaggyashi

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Citation : (2015) 6 ALLMR 32 : (2015) 145 FLR 280 : (2016) 1 MhLj 423

Hon'ble Judges : R.K. Deshpande, J.

Bench : Single Bench

Advocate : Shantanu Ghatge, Counsel, for the Appellant; J.L. Bhoot, Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

R.K. Deshpande, J.—In Complaint ULP No. 595 of 1999, the Labour Court recorded the finding that the enquiry conducted against the respondent-complainant in respect of the charges of misconduct including that of misappropriation of amount, was fair, proper and legal. It has also been held that the findings recorded by the Enquiry Officer are not perverse. However, the order of dismissal passed on 30.08.1999 was set aside holding that the punishment of dismissal was totally disproportionate to the charges of misconduct proved against the complainant. The complainant was directed to be reinstated in service with continuity and the claim for backwages was rejected.

2. Revision ULPA No. 230 of 2002 and Revision ULPA No. 227 of 2002 preferred by the employee and the employer were dismissed by the Industrial Court, Nagpur, by its judgment and order dated 11.08.2004. The Industrial Court concurred with the findings recorded by the Labour Court on merits and it has further been held that the sympathy shown by the Labour Court does not call for any interference. The employer is, therefore, before this Court in this writ petition, which was admitted on 01.12.2004 and interim stay was granted to the reinstatement of the respondent in service, which is continued till this date.

3. Undisputedly, the respondent was working as Cashier in the petitioner Bank and was holding Saving Bank Account No. 3885, Ledger No. 21, Folio No. 1718. While transferring the account Folio No. 19, the respondent increased the balance in his own account by Rs.6000/- and made it to Rs.7934.20 instead of Rs.1934.20, which was shown on 01.08.1990. He burnt ledger No. 21, Folio No. 1718 so that the Bank could not know the transfer entry of Rs.1934 on Folio No. 19, which was increased by Rs.6000/-. The amount of Rs.6000/- was withdrawn by the respondent from the said account on 06.10.1990, which he utilized till 04.09.1991 when he redeposited that amount in response to the show cause notice issued to him on 31.08.1991. For this act, the punishment of stoppage of one increment was inflicted upon him.

4. The respondent-complainant did not stop there, but again withdrew an amount of Rs.6000/- on 26.08.1993 from the said account and redeposited it on 26.08.1993, itself when it was brought to his notice that he has illegally withdrawn the said amount. The enquiry was held against the respondent-complainant and a charge was held to be proved.

5. The Labour Court as well as Industrial Court have concurrently held that such charge has been established and the enquiry held against the complainant was found to be fair, legal and proper. The Labour Court has held that the amount of Rs.6,000/- withdrawn on 26.08.1993 was redeposited on the very same day by the complainant and hence it was not a case where the complainant has utilized the said amount and there is no evidence to that effect. The Industrial Court has held that there was total inaction on the part of the Bank Manager to take any action to debit the amount of Rs.8,000/- from the account of the complainant.

6. In the decision of the Apex Court relied upon by Shri Shantanu Ghate, the learned counsel for the petitioner, in the case of U.P. State Road Transport Corporation Vs. Vinod Kumar, , the Apex Court has held in paragraph 10 as under;

"10. As stated in the preceding paragraphs, the respondent had confined his case only to the conclusions reached by the enquiry officer as well as the quantum of punishment. Therefore, since the respondent had not challenged the correctness, legality or validity of the inquiry conducted, it was not open to the Labour Court to go into the findings recorded by the enquiry officer regarding the misconduct committed by the respondent. This Court in a number of judgments has held that the punishment of removal/dismissal is the appropriate punishment for an employee found guilty of misappropriation of funds; and the courts should be reluctant to reduce the punishment on misplaced sympathy for a workman. That, there is nothing wrong in the employer losing confidence or faith in such an employee and awarding punishment of dismissal. That, in such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forum and interfering with the quantum of punishment. Without burdening the judgment with all the judgments of this Court on this point, we may only refer to a recent judgment in Divisional Controller, N.E.K.R.T.C. v. H. Amaresh, wherein this Court,

after taking into account the earlier decisions, held in para 18 as under :(SCC p.193)

"18. In the instant case, the misappropriation of the funds by the delinquent employee was only Rs.360.95. This court has considered the punishment that may be awarded to the delinquent employee who misappropriated the funds of the Corporation and the factors to be considered. This court in a catena of judgments held that the loss of confidence is the primary factor and not the amount of money misappropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of misappropriating the Corporation's funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in Karnataka SRTC v. B.S. Hullikatti was also relied on in this judgment among others. Examination of the passengers of the vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a misconduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum". 7. In view of the aforesaid law laid down by the Apex Court, both the courts having recorded concurrently the finding about the charges held to have been proved against the complainant, and that the enquiry against him was held to be legal, fair and proper, committed a serious error in setting aside the order of dismissal and directing reinstatement of the complainant in service.

8. Shri Bhoot, the learned counsel appearing for the respondent-employee has tried to justify the order passed by both the courts below by urging that on first occasion, the punishment of stoppage of increment was imposed and on second occasion, the amount though withdrawn was not utilized by the complainant. The argument needs to be rejected by merely stating that it is a misplaced sympathy.

9. In the result, the writ petition is allowed. The judgment and order dated 20.07.2002 passed by the Labour Court in Complaint ULP No. 595 of 1999, as has been confirmed in Revision ULPN Nos. 227 of 2002 and 230 of 2002, decided on 11.08.2004, by the Industrial Court, is hereby quashed and set aside to the extent it sets aside the order of dismissal and directs reinstatement with continuity in service of the complainant.

Rule is made absolute in these terms. No order as to costs.