

(1996) 07 BOM CK 0014
In the Bombay High Court
Case No : Writ Petition No. 281 of 1984

Shri Balaji Maroti Gadegaonkar	Vs	APPELLANT
Managing Director, M.S. Co-op. Land Development Bank and Others		RESPONDENT

Date of Decision : 31-07-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1)(c), 12(5)

Citation : (1997) 3 BomCR 503

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

Bench : Single Bench

Advocate : S.R. Sankaye, for A.H. Joshi, for the Appellant; V.N. Upadhye, for respondent No. 1, S.K. Shelke and S.K. Kadam, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

R.G. Deshpande, J.—Reference u/s 10(1)(c) read with section 12(5) of the Industrial Disputes Act was made by the Deputy Commissioner of Labour Court, Aurangabad to the Presiding Officer, Labour Court, Aurangabad, vide Case No. 22/1980. The point under reference was: "Shri B.M. Gadegaonkar, Ex-Supervisor, who has been terminated from the employment of Maharashtra State Co-op. Land Development Bank Limited, Bombay, Branch Nanded, should be reinstated with back wages, and continuity of service w.e. from 29-12-1976."

2. The facts of the present case, which are necessary to be narrated for the purposes of decision of the present case are that the employee Shri B.M. Gadegaonkar, who has been titled as a Second Party in the reference proceedings was working as a Junior Supervisor with the First Party i.e. the Maharashtra State Co-operative Land Development Bank Limited, Bombay, Branch Nanded (hereinafter referred to as "the Bank" for the purposes of brevity). From the record, it is clear that the petitioner was employed some time in the month of January, 1972 and as is stated by the petitioner himself that he was confirmed in the month of January, 1974. It is material to note that he had

hardly spent two years of service in the Bank on the post of Junior supervisor. In the year 1974, it appears that, immediately some time after his confirmation, the petitioner was charge-sheeted for alleged misconduct and necessary domestic enquiry was held against him. On the basis of the enquiry report in the domestic enquiry, the petitioner was dismissed from service by order, dated 20th December, 1976, which had come into effect from 28th December, 1976. Naturally, industrial dispute was raised by the present petitioner and since the conciliation proceedings failed, the matter was referred to under the Industrial Disputes Act 1947, to the Labour Court, Aurangabad. In short, it was the case of the respondent-employer that the petitioner was concerned with the money transactions in the Bank and from the inquiry conducted against him, it was clear that money receipts Exhs. 29, 30, 33 and 34 were issued along with three more receipts in Article "A" i.e. the receipt book indicating that on 13-1-1975 the employee i.e. the petitioner did receive Rs. 500/- from Balaji Gyanba towards the payment of loan for engine and gave him receipts one of Rs. 100/- dated 9-1-1975 and another of Rs. 350/- dated 13-1-1975. It is further noted that in the original receipt of Rs. 100/- the figure was changed to Rs. 150/- and the original receipt was given to Balaji Gyanba. It is obvious from the record that the employee misappropriated the amount of Rs. 50/- by such a trick. A charge of having kept Rs. 500/- with him till 15-1-1976 by the petitioner was also against him and thereby the petitioner was charge-sheeted and proved to have been temporarily misappropriated an amount of Rs. 500/- for a period of one year. It is the case of the respondent - employer that it did indicate the criminal mentality and criminal mind of the employee concerned and the preparation of the false bills and receipts by him did definitely indicate that the petitioner could be proved to be an employee dangerous to the management, particularly when the management is concerned with the public money and further more when most of the customers of the Bank are agricultural labourers who are majority of them illiterate. The activity of the petitioner has also exposed from the fact that the original receipt to which a reference is made is of the year 1975, and a duplicate of the same appears to have been changed in the year 1976. The management, therefore, did conduct departmental enquiry on the basis of the charges levelled against him and charge having been proved and the petitioner having been found guilty has been awarded punishment of dismissal from service from 28-12-1976.

3. It is the case of the petitioner that in fact, he after having noticed that there was mistake committed by him, he offered an apology and wanted to rectify the said mistake. He expressed that he did deposit subsequently the amount for which he was charge-sheeted. The petitioner tried to suggest that it was the mistake occurred sheerly through inadvertence and he immediately having noticed tried to remedy the same.

4. The matter having gone before the Labour Court under reference made above, the learned Member of the Labour Court, who dealt with the matter, by his award, dated 20th June, 1983 answered the reference in negative, thereby

indicating that the petitioner did not deserve reinstatement and that the punishment awarded could be said to be just and proper. It is this order, which is challenged before this Court by the petitioner-employee.

5. Shri Sanakaye, the learned Counsel appearing on behalf of the petitioner fairly conceded on the point of guilt having been proved against his client and, therefore expressed that he did not want to say anything about the same. However he tried to argue only on the point of the punishment, as according to him, the punishment was absolutely disproportionate to the charge levelled and proved against the petitioner. Taking into consideration this aspect, Shri Sanakaye restricted his arguments in the matter only on the point of punishment. Shri Sanakaye brought to my notice a decision reported in 1994 1 CLR 592, in the case of P. Balachandra Reddy v. Depot Manager, A.P.S.R.T.C. Anantapur and ors. Shri Sanakaye relied on this judgment just to show that the High Court while exercising the jurisdiction vested in it under Article 226 of the Constitution of India has a power to modify or alter the punishment imposed by the Labour Court or the Industrial Court. Shri Sanakaye, however, admitted that this petition is filed under Article 227 of the Constitution of India and not under Article 226 of the Constitution of India. Even otherwise, the question would be whether the punishment, which is said to have been imposed, could be said to be totally disproportionate? Taking into consideration, the seriousness of the charge levelled against the petitioner and which is held to have been proved against the petitioner, about which there is no grievance before the Court, whether, could the petitioner deserve reinstatement in the matter or whether the punishment of dismissal could be said to be just and proper.

6. Shri S.K. Shelke, the learned Counsel for the respondent-Bank brought to my notice three decisions, one of which reported in (1995) 1 CLR 920, in the case of Rajasthan State Road Transport Corporation, Alwar v. Kailash Chand Sharma and anr. Shri Shelke, the learned Counsel also cited two more decisions before this Court, one reported in (1995)2 CLR 569 , in the case of D. Padmanabhudu v. Bank of India and anr., and another reported in D.C. Roy Vs. The Presiding Officer, Madhya Pradesh Industrial Court, Indore and Others, . Shri Shelke cited all these judgments to show that since the matter relates to the misappropriation of funds of the Bank, the matter being serious one, wherein money of public is concerned and particularly money of peasants, who are the only customers of the Bank. In such circumstances, according to Shri Shelke, it appears that, taking undue advantage of the illiteracy of the customers of the Bank, the petitioner played mischief by creating false and fabricated receipts, thereby defrauding not only to the Bank but also to the customers of the Bank. Shri Shelke, therefore, relying on the decisions referred to above suggested that the matter being of serious nature, the petitioner does not deserve any leniency in the matter even on the point of punishment also. Shri Shelke relied precisely on the observations in para 10 of the judgment reported in (1995) 1 CLR 920, cited supra, which deals with the reproduction of a paragraph from the judgment reported in the case of R.S.R.T.C. and another v. Presiding Officer, Labour Court,

Kota. In this judgment, it is clearly observed that :

"It cannot be ignored that a conductor in the service of the Corporation plays an important role in collecting the revenue which ultimately constitute the part of fund on which the Corporation can carry on its business, industry and undertaking. Employee belonging to the cadre of conductors or any other cadre who is found responsible for making holes in the fabric which constitutes the foundation of the petitioner Corporation, constitutes a serious threat to the entire industry. In fact it is true of all employees who may be serving the Government, the other public employers or even the private employers in addition to this, so far as the employees engaged in the public employment are concerned, they constitute a class which carries a more onerous responsibility on their shoulders. They are public servants and not the masters of public. They are trustees of the public at large in the institutions of public importance, corporations, companies and undertakings. These public bodies have been created, established and constituted to serve the masses, to serve the common man of the State. If by their actions, they commit breach of the trust or commit theft or misappropriation, there is absolutely no justification for showing any compassion or leniency with such employees in the matter of quantum of punishment. A public servant who is found guilty of misappropriation of public funds, corruption, dishonesty, fraud or theft, has no right whatsoever to serve the public and the public who is its real master and who is represented by the employer, has a right to see the ouster of such, an employee by due process of law."

I have no hesitation to agree with the argument advanced by Shri Shelke, muchless the observations made in the judgments referred to above. It is no doubt true that the present petitioner, who was in the employment of Bank was definitely and directly concerned with the public money i.e. customers of the Bank, who, as already pointed out, are the peasants of the State, majority of whom are illiterate. Taking undue advantage of their illiteracy and utilizing the post for his own benefit by the petitioner, in fact, could not be tolerated, particularly, when it is a matter directly concerning money transaction. In fact, these Banks are created for the benefit of the customers, who are the peasants or agriculturists and if misuse of the position is made by the employees concerned, it is the matter, which should be looked at with all seriousness. Taking into consideration, the charge having been proved against the petitioner and further taking into consideration the submissions made by the learned Counsel for the petitioner before this Court, that he is only concerned with the quantum of punishment, I do not find that it is a fit case where leniency should be shown or the present case would demand any compassion or leniency with such an employee in the matter of quantum of punishment. In fact, an employee, who is found guilty of misappropriation of public funds corruption, dishonesty, fraud or theft has no right whatsoever to serve in such public institution where public at large is concerned and where money of public is involved.

7. Taking into consideration, the observations made by the learned Presiding

Officer, Labour Court, Aurangabad in his award, I do not find that the said award deserves any interference at the hands of this Court under Article 227 of the Constitution of India. I fully agree with the observations of the learned Presiding Officer that it is not a fit case wherein any leniency could be shown in the matter of punishment u/s 11(A) of the Industrial Disputes Act, 1947.

8. In the result, the petition fails. Rule is discharged. However, in the circumstances of the case, no order as to costs.