

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18692 of 2017

With

R/SPECIAL CIVIL APPLICATION NO. 14640 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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DEVENDRABHAI RAMALAL PATEL

Versus

MANAGER - MEHSANA DISTRICT COOPERATIVE BANK LTD. & ANR.

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Appearance:

MR G R MANAV(6064) for the Petitioner(s) No. 1

MR PRABHAKAR UPADYAY(1060) for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2

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CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date: 02/05/2024

ORAL JUDGMENT

- Captioned are cross petitions filed, challenging an order of Industrial Court, Ahmedabad dated 27.04.2017 in Appeal (IC) No.23 of 2014 in T. Application No.142 of 2008, wherein,

Industrial Court, Ahmedabad, by holding the order of dismissal as illegal, directed the employer-bank to pay 50% of backwages to the employee from 29.11.2005 (date of dismissal) till date of superannuation.

2. Since, both these petitions are filed challenging the same award, with consent of the learned advocates for the respective parties, they are heard and decided together by this common judgement.

3. For the purpose of this judgement, facts referred in Special Civil Application no.14640 of 2017 (filed by employer-bank) are considered.

3.1 Employer here is a Bank registered under the provisions of the Gujarat Co-operative Societies Act,1961 and functioning as per the provisions of the Banking Regulations. Employee was working as a Peon in the Dingucha Branch of employer bank. It was case of the employer-bank that while employee was on duty on 21.05.2005, he misbehaved with superior and other staff of the bank and on account of this serious misconduct, he was put under suspension, by order dated 13.06.2005. Inquiry officer was appointed and due opportunity was granted to the employee to lead the evidences and defend his case. After following due procedure under provisions of

law, the inquiry was concluded and Inquiry Officer gave his report dated 09.09.2005, holding charge as proved. Second Show Cause Notice along with inquiry report was served to the employee and employee replied on 22.09.2005. Upon consideration of reply to the Show Cause Notice, an order of dismissal dated 29.11.2005 was passed.

3.2 Aggrieved by order of dismissal, employee preferred T. Application No.7 of 2006 under Sections 78/79 of the Gujarat Industrial Relation Act, before Labour Court, Mehsana. Upon issuance of Notice, employer-bank filed its written statement. Employee also challenged the legality and validity of the inquiry proceedings initiated by the employer-bank. T. Application No.7 of 2006 was transferred to the Labour Court, Mehsana. Upon transfer, T. Application No.7 of 2016 was renumbered as T. Application No.142 of 2008. The Labour Court, Mehsana, thereafter passed an order dated 15.03.2012, holding inquiry proceedings as illegal, however, granted opportunity to the employer-bank to prove charges before it, by leading oral as well as documentary evidences. Upon adjudication, Labour Court Mehsana, passed final order dated 14.08.2014, below Exh-69 in T. Application No.142 of 2008, wherein the order of dismissal dated 29.11.2005, was modified into discharge. The Labour Court further directed to pay all the legal dues to the employee. Cost of Rs.5,000 was also

awarded.

3.3 Aggrieved by the order below Exh-69 dated 14.08.2014 in T. Application No.142 of 2008, an appeal was filed by the employee under section 84 of the Gujarat Industrial Relation Act,1946 before Industrial Court Ahmedabad, registered as Appeal (IC) No.23 of 2014. Upon adjudication, Industrial Court, Ahmedabad partly allowed the appeal of the employee, by quashing and setting aside the order of dismissal dated 29.11.2005 and the order dated 14.08.2014 of Labour Court, Mehsana in T. Application No.142 of 2008. The Industrial Court directed the employer-bank to pay 50% backwages from the date of dismissal till the date of retirement. Aggrieved by an order of Industrial Court Ahmedabad, dated 27.04.2017 in Appeal (IC) No.23 of 2014, the captioned petitions are filed.

3.4 Employer-bank has filed Special Civil Application No.14640 of 2017, against holding the order of dismissal as illegal and further directions to grant 50% backwages from the date of dismissal till date of retirement, whereas employee has filed Special Civil Application No.18692 of 2017, against non-grant of balance 50% backwages from the date of dismissal till the date of retirement.

4. Heard Mr.Prabhakar Upadyay, learned advocate for the

employer-Bank and Mr.G.R.Manav, learned advocate for the employee.

5. Mr.Prabhakar Upadyay, learned advocate for the employer-bank submitted that order of the Industrial Court, Ahmedabad dated 27.04.2017 is erroneous, on the following grounds:

5.1 Pursuant to the misconduct of employee, he was charge-sheeted by memorandum dated 16.06.2005. Inquiry was initiated and upon conclusion of inquiry, report dated 09.09.2005 was given holding the charges as proved. After giving second show cause notice, the employee was dismissed from service by an order dated 29.11.2005. Thus, due procedure was followed before passing an order of dismissal and principles of natural justice have been complied with.

5.2 Order of dismissal dated 29.11.2005, was challenged before Labour Court under Sections 78/79 of the Gujarat Industrial Relation Act, along with legality and validity of the inquiry proceedings. Labour Court after holding an inquiry as illegal, permitted the employer to lead the evidences and to prove the charges. Upon adjudication, Labour Court passed an order dated 14.08.2014, converting dismissal into discharge. Labour Court further awarded all legal dues to be paid within

a period of 30 days from the date of receipt of the order dated 14.08.2014 and therefore, there being no error in the order, no interference is called for.

5.3 In the order dated 14.08.2014, evidence led by the bank has been correctly appreciated and thereafter, the charges were held to be partly proved. By partly proving the charges, the order of dismissal was converted into discharge and the same being appropriate, no interference is called for.

5.4 By placing reliance on bank witnesses, below Exh-59, 61 and 63, Learned Advocate submitted that witnesses have confirmed that the behavior of the employee was unbecoming of a public servant and he used to misbehave with other co-workers as well as customers. The charges being proved, interference by the Industrial Court was erroneous.

5.5 Further, the findings recorded by the Industrial Court under order dated 27.04.2017, is beyond the evidence led and therefore erroneous. The scope of judicial interference in the penalty proceedings being limited and when the charges were proved by the employer, the order of Industrial Court directing 50% of backwages being erroneous, deserves to be quashed and set aside. In support, he relied upon following decisions:

- (i) **New Shorrock Mills V/s. . Maheshbhai T. Rao** reported in **1996(6) SCC 590;**
- (ii) **Mahindra and Mahindra Limited V/s. N.B.Naravade etc.** in **2005(3) SCC 134;**
- (iii) **Madhya Pradesh Electricity Board V/s. Jagdish Chandra Sharma** reported in **2005(3) SCC 401.**

6. On the other hand, Mr.G.R.Manav, learned advocate for the employee submitted that Industrial Court considering the evidences lead before the inquiry officer, held inquiry proceedings to be illegal and permitted the employer to lead the evidences. Further, the Industrial Court held that since the inquiry proceeding was held illegal, the evidences lead before the inquiry officer are to be ignored and the fresh evidences lead before Labour Court, are only to be considered, which the Industrial Court Ahmedabad appropriately considered by holding the charges as not proved.

6.1 In the evidences lead by the employer before the Industrial Court at the time of proving the charges, bank witnesses have stated that the work, entrusted to the employee, was completed by him. Labour Court in the order dated 14.08.2014 has held that upon asking the bank witnesses, they confirmed that the work, entrusted to the employee, was completed by him.

6.2 More so, no complaint was filed, for the allegation of beating Manager of the Bank. Labour Court therefore held the charges as allegations only. Despite that Labour Court, Mehsana under order dated 14.08.2014 converted dismissal to discharge and therefore, the appeal was filed.

6.3 Placing heavy reliance on the order dated 27.04.2017 in Appeal (IC) No.23 of 2014, learned advocate submitted that Industrial Court has rightly held that all were allegations only and not being proved the order of dismissal was rightly held as illegal and accordingly quashed and set aside. Once the dismissal has been quashed and set aside, the workman would be entitled to 100% backwages, which has not been awarded and therefore, Special Civil Application No.18692 of 2017 is filed with prayer to award balance 50% backwages.

6.4 In support, he relied upon the decision of the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya & others** reported in **2013(10) SCC 324** and decision of this Court in Letters Patent Appeal No.1512 of 2019 decided on 07.08.2023. Learned Advocate submitted that once the order of dismissal was held illegal, he would be entitled to 100% backwages from the date of dismissal till the date of superannuation. Therefore, the award of the Labour Court deserves to be modified

accordingly.

7. Considered the submissions and the decisions relied upon. Revisitation of facts would reveal that the workman upon charges being proved, was dismissed from service by an order dated 29.11.2005. Charges were of misbehaviour with superior, co-workers and customers, as also beating the Manager during working hours. For charges levelled, inquiry was initiated and upon conclusion of the inquiry, order of dismissal was passed. Against challenge to the order of dismissal dated 29.11.2005, by filing an application under Section 78/79 of the Gujarat Industrial Relation Act, the Labour Court held inquiry proceedings as illegal and permitted the employer to lead evidences to prove the charges. Upon opportunity being provided, employer-bank led the evidences and examined the witnesses, wherein, all the witnesses of the bank have states that the work entrusted to employee was completed by him. Therefore, the findings of Industrial Court Ahmedabad, that when work entrusted to the employee was over, the question of indisciplined behavior on 21.05.2005 would not arise, in the opinion of this Court found to be appropriate. The order dated 14.08.2014, modifying the penalty of dismissal in to discharge was not challenged by employer-Bank, wherein the employer Bank was directed to pay all legal dues within 30 days, despite the same have not been paid till date. The said approach of

the bank is condemned.

7.1. Further, it is also noticed that despite having allegation of beating Manager, no complaint was filed. Though charges refer to incident of 07.06.2005, no evidence was lead. Therefore, in the opinion of this Court, the findings of Industrial Court that merely on allegations the order of dismissal was modified to discharge is found correct. Therefore, once the charges were not proved and they were merely the allegations, reliance placed by the employer-bank on the said decision, is of no consequences. Moreover, in the impugned order dated 27.04.2017, Industrial Court has held that none of the witnesses have stated that the incident had occurred in their presence. Industrial Court noted that incident of beating the Manager was not referred in the suspension order.

7.2. Further, bank witnesses Chinubhai Patel at Exh-11/5, refers to incidence dated 21.05.2005, whereas one of the bank agents refers to the incidence dated 25.05.2005 and therefore, so far as allegation of beating of the Manager, Industrial Court held that there being discrepancy in the date, the said allegation is not proved. Moreover, it cannot be ignored that, bank-witnesses have stated that all the work, which was entrusted to the employee was completed and therefore, no

occasion would have occurred to misbehave with the Superior, as alleged by the bank. More so, the employee was working with the bank since last 13 years and prior to the date referred in charge-sheet, no incident was earlier occurred and the employee cannot be stated to be habitually misbehaving with the Superior and therefore, Industrial Court awarded 50% backwages from the date of dismissal till date of superannuation.

7.3. In the decision relied by learned advocate for the employer in the case of **New Shorrock Mills V/s. Maheshbhai T. Rao (supra)**, the Hon'ble Supreme Court while taking into consideration several occasions and incidences, on which, the employee was punished, has held that indisciplined behaviour by the employee is appropriate and no interference is called for. In the present case, facts are not similar particularly, in the services of past 13 years, not a single incident had happened earlier, therefore, the said decision would not be applicable in the facts of this case.

7.4. In the case of **Mahindra and Mahindra Limited V/s. N.B.Naravade (supra)**, the Hon'ble Supreme Court on the aspect of punishment disproportionate to the misconduct, has held that punishment of dismissal is cannot be stated to be disproportionate. The same is not being the case here,

particularly when the charges were held to be not proved, in the opinion of this Court, the decision would not be applicable to the facts of this case.

7.5. In the case of **Madhya Pradesh Electricity Board V/s. Jagdish Chandra Sharma (supra)**, the issue was in relation to punishment disproportionate to the misconduct, wherein charges were held to be proved. In this case, it cannot be ignored that the Court below had held that charges as not proved and there are merely allegations and therefore, in the opinion of this Court, the said decision would not be applicable.

7.6. On the aspect of 100% backwages, this Court is of the opinion that since the workman had not worked for the said period, he would not be entitled to wages for the period, he had not worked. Moreover, during pendency of the proceedings, employee had attained the age of superannuation and therefore, in the opinion of this Court, the order of Industrial Court, Ahmedabad dated 27.04.2017 being appropriate, no interference is called for.

8. In relation to grant of 100% backwages and the decisions relied by learned advocate for the employee, this Court is of the opinion that it is not that in all cases of reinstatement, 100% backwages are to be followed. In this case, it cannot be

ignored that for the alleged misconduct the employee was put under suspension and thereafter, after conducting inquiry, he was dismissed. Therefore, he has not worked for the period till the date of his superannuation. Considering the fact that since the employee has not worked for the said period, in the opinion of this Court, grant of 50% backwages for the period from date of dismissal till the date of superannuation being appropriate, no interference is called for. The award of Industrial Court Ahmedabad, dated 27.04.2017 in Appeal (IC) No. 23 of 2014 is confirmed. Both the petitions are accordingly dismissed.

9. Considering dismissal of both these petitions and considering that despite order of Labour Court Mehsana dated 14.08.2014, directing payment of all legal dues within 30 days from the award and not paid till date, following order is passed: -

(i) The petitioner bank is directed pay all legal dues as directed by Labour Court under order dated 14.08.2014, within 6 weeks from the copy of this order.

(ii) Considering that an order dated 05.04.2019, was passed by co-ordinate bench of this Court, wherein the employer-bank was directed to deposit 50% of backwages, as awarded.

Pursuant to which, an amount of Rs.8,77,284/- has been deposited before registry of this Court. Since, the order of Industrial Court, Ahmedabad dated 27.04.2017 has been confirmed, it is open for the employee to seek disbursement of the said amount. The registry shall disburse the said amount after due verification within eight weeks from the date of receipt of this order.

10. Rule discharged.

(MAUNA M. BHATT,J)

DIPTI PATEL