

BEFORE THE JUDGE, LABOUR COURT
CHANDRAPUR

Complaint (ULP) No.05/2022

(CNR NO.MHLC340000072022)

Sanjay Baburao Shende,

Aged about 54 Years, Occu : Service,

(Dismissed), R/o. Sant Ravidas Chowk,

Bramhapuri, Tah. Bramhapuri,

Dist. Chandrapur.

.... **Complainant.**

-:- VERSUS -:-

The Chief Executive Officer,

Chandrapur District Central

Co-operative Bank, Civil Line,

Chandrapur, Tah. & Dist. Chandrapur.

.... **Respondent.**

CORAM :- R. V. Mete, Judge.

Appearance :

Shri. N. I. Ganvir, Ld. Counsel for the complainant.

Shri. A. L. Labhe, Ld. Counsel for the respondent.

(ORDER BELOW EXH.U-2)

(Passed on 20th April, 2023)

The present application has been filed by employee under Section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act.

02. The case of the complainant in brief can be described as follows :-

The complainant was in the employment of the respondent since 04.04.1998 for the clerk of the Chandrapur District Central Co-operative Bank Branch. Since joining with the respondent bank, the complainant has discharged his routine duties as clerical in nature as per direction of the respondent. The work of the complainant was very proper, diligent and excellent one. The complainant joining at Mendaki Branch from 2015 and therefore he was joining at Gangalwadi Branch since then he was continued his such work under the control of Branch Manager of the said Branch. He was discharging the work for sent withdrawal of account holder of the respondent Bank. The complainant was done and discharged all the works attached to the said post as per by-laws, standing order and service rules of the respondent Bank. The complainant was not empowered to granting leave or issuing any show cause/memo to the employees of the respondent nor he was taken any part in the policy decision of the said bank and no any supervisory/administrative work/power was vested with him. The complainant was discharging his routine duties as clerical in nature through he was designated as Clerk and thus such designation of the complainant is nothing but nomenclature one and thus the complainant is a workman of the respondent bank As contemplated under section 2(s) of the Industrial Dispute Act, 1947.

03. The respondent Bank are carrying the business activities for providing service as per their bye-laws and Standing Order and as per the Co-operative Societies Act, 1960 for granting and disbursing recovering it and thereby gaining profit and income by employing the workers likewise the complainant also as such the respondent bank is an industry within the meaning of under Section 2(i) of Industrial Disputes Act, 1947 as such this Hon'ble Court has every power and jurisdiction to entertain and decide instant complaint under the provision of the Act as there being employer and employee relationship between the parties to litigation. While discharging duties with the respondent there was no any complaint in respect of his duties as he was never gave an opportunity if any grudge regarding his duties. Neither any show cause notice nor any charge sheet was issued to him and no any explanation was called thereby from the complainant by the respondent bank as he was discharged his duties very sincerely, honestly and faithfully with the respondent and thus his past service record was clean and unblemished one. The complainant has made efforts to increase working capital and business of the Bank by taking much pain and uplift the respondent Bank and its business. The complainant is a victim of a planned conspiracy against him to falsely implicate him in the embezzlement of funds of Rs.8,48,881/- from cendry creditors account, saving account, bachat gat loan account of various customers which has allegedly in the Mendaki Branch of respondent bank.

04. The respondent bank issued a letter dated 11.01.2019 and in the said letter, the enquiry of alleged irregularities to be conducted by Shri M. B. Burande and Shri S. M. Dongarwar and its report was alleged to be submitted to the respondent bank on 30.04.2019 and thereby alleged that complainant has misappropriation Rs.17,67,315.65 by using the user of complainant. At the time of enquiry, Shri Burande and Shri Dongarwar has not been involved to the complainant about the said enquiry. That no any explanation called from the complainant. That without proper inquiry, the respondent bank without issuing any notice or show cause notice suspended the complainant on dated 02.05.2019 of the alleged enquiry conducted by Shri Burande and Shri Dongarwar. The complainant has not responsible about the alleged misappropriation. That without show cause notice respondent bank was illegally issued suspension order dated 02.05.2019 by referring the so called enquiry report dated 30.04.2019, which was alleged to be made Shri Burande and Shri Dongarwar. In the said suspension order, the respondent bank was illegally alleged that complainant has misappropriation amount of Rs.17,67,315.65 and thereby illegally suspended complainant and he was posted at head office on deputation from such suspension dated 02.05.2010.

05. As per the norms of the balance sheets were strictly audited every year and have been approved by the authorities of the Bank and the State Government through its minister of textiles. No objection has been raised that time about any

entry in the balance sheet or any amount in the bank records from 2015 to 2019. That NABRD also no objection about the same. Complainant was not shown or enquired about any alleged misappropriation of funds. No complaint from any customers was lodged with the bank or other authorities during this period. That without issuing any show cause notice and without any explanation called from the complainant, the respondent bank issued a charge sheet and thereby shown so called defalcations amount of Rs.15,26,074/- by referring so called enquiry report dated 30.04.2019. The respondent bank was never issued any documents in respect of the so called allegation of alleged defalcations amount along with the charge sheet and neither the list of witness was provided to the complainant and thereby falsely charges was leveled against the complainant.

06. When the departmental enquiry was held, proper procedure was not followed. Complainant was not given any adequate fair opportunity to present his side of the case. Even the witness who has certified the alleged re-audit was not examined. The document of re-audit balance sheet made by auditor was not examined. The enquiry committee relied solely on the re-audited document which was not proved before the enquiry committee and committed a grave error in eyes of law and fact. Thus, it is clear that the so called enquiry was only a fuss. The proceeding was conducted in bias manner and predetermines condition to hold complainant guilty. It is unfair from its very inception therefore report was wrong and

illegal and the complainant services cannot be terminated on such based and predetermined one side report. The one side order passed by the enquiry officer is arbitrary and in violation of principles of natural justice. After completion of departmental enquiry, the respondent bank first time issued a letter dated 10.08.2021 under the subject for repayment of alleged defalcation amount Rs.3,56,198/-. The said letter was explained by the complainant on dated 23.08.2021 and narrated that, the complainant is innocent and nothing was recoverable and there was no any defalcation and or misconduct or misappropriation of the allegation made therein. However, respondent bank did not consider the same. The complainant was suspended on 02.05.2019 and thus 6 months of his suspension was completed on 02.11.2019, but he was not made payment as required as per the service rules of the respondent bank. The complainant requested to release full wages but it was not considered and neither it was decided and no such payment was made to him, but very surprisingly dismissal order dated 18.10.2021 was issued to him on 08.11.2021 with the same set of false allegation, wherein it was narrated that, the enquiry report of the Shri Shirbhaiyye was reached to the respondent bank of 10.12.2020 and it was hold responsible for the allegation made in the charge sheet given to the complainant alleging that, the explanation dated 23.08.2021 is unsatisfactory. The respondent bank was never provided any list of witnesses and or list of documents and was never informed about the management representative doe the so called enquiry, which constitute that, the respondent was

victimize the complainant on the basis of so called preliminary enquiry alleged to be made by Shri Burande and Shri Dongarwar. The alleged enquiry report of Shri Shirbhaiyye was never provided to the complainant along with dismissal order dated 18.10.2021. The enquiry was made against the complainant illegally and improperly and thereby perverse and erroneous finding was recorded by enquiry officer and on the basis of such finding no second show cause notice was issued to the complainant except letter dated 10.08.2002, which was replied by the complainant 23.08.2021 but without considering it, the services of the complainant was dismissed by the respondent bank in view of their impugned dismissal order by adopting unfair practices by way of victimization which is not in good faith but in colorable exercise of employers right by falsely implicating complainant in false charges and concocted evidence and with false reason with utter disregard of the principles of natural justice by under haste without considering his past clean and unblemished and thereby the respondent has awarded shocking disproportionate punishment which covers under schedule IV of the Act and same is required to be quashed so by this Court and therefore it is required to be quashed and set aside by directing the respondent to complainant and desist therefrom forthwith in the interest of justice with consequential benefit as he was nowhere engaged in any gainful employment and thus became unemployed till the date. Lastly, prayed to allow the application – (Exh.U-2).

07. The learned Counsel of respondent has filed reply vide (Exh.C-3) and resisted the claim of complainant. It is denied that the complainant was not having any administrative power and whatever he was done and the work entrusted to him goes to show that he is a workman of the respondent – Bank as per the provisions of Section 2(s) of the Industrial Disputes Act, as alleged. It is denied that while discharging the duties there was no complaint against the complainant that he was never given any opportunity to make any grudge regarding his duties. It is further denied that the service of the complainant is unblemished. It is false to say that the complainant is a victim of a planned conspiracy and he was falsely implicated for making embezzlement of funds worth Rs.8,48,881/-, as alleged and, hence denied. It is correct to say that the complainant embezzled the amount of Rs.8,48,881/- from the sundry creditor account, saving account and from Bachat Gut Loan Account of various customers in Mendki Branch. It is correct to say that Shri M. B. Burande and Shri S. M. Dongarwar conducted enquiry in the matter of misappropriation done by the complainant and submitted their report on 30.04.2019 and that as per the report, the complainant has misappropriated Rs.17,67,315.65 Ps. By using the user of complainant. The allegations made to the effect that the complainant was not allowed to involve in the enquiry and no explanation of the complainant was called, are denied. It is false to say that there was no proper enquiry and that the Bank suspended the complainant without issuing show cause notice to him vide order dated 02.05.2019 and

hence, the allegations are denied. It is absolutely false to say that the complainant is not responsible for the said misappropriation and that without show cause notice the Bank illegally suspended the complainant vide order dated 02.05.2019 as alleged and, hence, are denied. It is further denied that it is falsely mentioned in suspension order about the misappropriated amount to the tune of Rs.17,67,315.65 Ps. and that the complainant was illegally suspended vide order dated 02.05.2019, as alleged and, hence, denied. It is denied that the Bank has done re-audit without intimating the complainant. However, it is true that in the re-audit, the misappropriation was discovered. However, it is denied that the complainant was not informed about it, as alleged. The allegations made to the effect that no re-audit report was supplied to him, are also baseless, and frivolous. It is denied that the Bank never issued any document in respect of the misappropriated amount along with charge sheet and that no list of witnesses was provided to the complainant, as alleged, as being false, frivolous and vexatious. It is further denied that no list of witnesses was provided to the complainant and that thereby a false charge was levelled against him, as alleged. It is further denied that the enquiry officer never recorded the statements of any person in the presence of the complainant, as alleged. It is further denied that no opportunity was given to him for contesting the departmental enquiry. It is further denied that the statement of witnesses were not recorded in the presence of the complainant, as alleged. It is denied that the enquiry was illegal, erroneous, concocted, baseless and

arbitrary, as alleged. It is further denied that the Bank never issued any letter or made correspondence about calling objection for appointment of Shri Y. D. Shirbhaiye as an enquiry officer, as alleged. It is denied that, in the departmental enquiry, no proper procedure was followed, as alleged. It is further denied that the complainant was not given adequate and fair opportunity to present his side, as alleged. The further allegations made to the effect that the witness certified the audit was not examined and that the document of re-audit balance sheet made by the Auditor was not examined and that the Enquiry Committee relies solely on re-audit document and thereby committed a grave mistake in the eyes of law on facts, are denied. It is denied that the respondent Bank never issued any document along with charge sheet to enable the complainant to give proper explanation, as alleged and that the complainant, therefore, could not give the proper explanation, as alleged. It is denied that that the enquiry report is against the bye laws and service rules of the respondent Bank, as alleged. It is denied that the enquiry was conducted against the complainant illegally and arbitrarily by giving perverse and erroneous findings, as alleged. It is denied that the complainant has made out prima facie case and that the balance of convenience also lies in favour of the complainant. Lastly, prayed to reject the application.

08. Following points arise for my determination. They are answered with my findings thereon for the reasons given on below :-

POINTS

FINDINGS

- 1) Whether complainant has made out prima facie case ? : In the negative.
- 2) Whether balance of convenience lies in his favour ? : In the negative.
- 3) Whether he will suffer irreparable loss, in case application – (Exh.U-2) is not allowed ? : In the negative.
- 4) What order ? : Application is rejected.

REASONS

09. I have heard Shri N. I. Ganvir for the complainant and Shri A. L. Labhe, the learned Counsels of the parties and perused record.

10. The learned counsel of complainant has relied upon the documents. Those documents are – Dismissal order dated 18.10.2021, Termination order dated 02.05.2019, Show cause notice dated 20.07.2020, Reply to the show cause notice dated 23.07.2020, Reminder dated 26.11.2020, Complainant has issued reply to the Manager for depositing the amount of misappropriation. The chief Executive Officer has issued a letter to the complainant dated 10.08.2021, Reply dated 23.08.2021, Office Order dated 28.10.2015, The complainant issued a letter to the Manager dated 29.10.2015, Office Order dated 13.06.2018, Joining letter dated 13.06.2020,

AS TO POINT NOS. 1 to 4:-

11. These points are interrelated with each other and source of evidence is the same to record findings thereon therefore, I took these at once for discussion to avoid repetition and length of the order. At the out set it is to be seen whether the complainant has strong prima facie case to grant the relief or not. According to the complainant, he never committed misconduct as alleged in the chargesheet but with intend to harass him, the respondent has issued false charge sheet and conducted enquiry. After completion of enquiry, he was dismissed form the services which is not just and proper. On the other hand, it is a case of the respondent that services of the complainant came to be terminated for his misconduct as alleged in the chargesheet. By keeping in mind the rival pleadings of the parties, it is necessary to have look charges leveled against the complainant in the charge sheet. Document no.6 annexed with Exh. C-6 is the charge sheet dated 10.12.2020, wherein it is alleged that complainant has misappropriated an amount of Rs.16,97,762/- of Branch Mendhaki and caused loss to the Bank. It is not in dispute that the charge sheet came to be issued and three charges were made against the complainant as per service rules of the bank which are :-

Charge 1 :- Chandrapur District Central with bank Marya, Chandrapur Branch – by misappropriating an amount of Mendaki Branch of Rs.1697762/-, causing financial loss to the bank by way of misappropriation. Not working as per the prescribed duty list of branch officers vide bank circular dated

10.10.1974. Also committing a deliberate, purposeful violation of once's own responsibility and duty.

Charge no.2 :- As per Bank Employees Service Rules no.22 (4) for not securing the interest of the bank and for failing to discharge his own responsibility and duty, .

Charge no.3 :- As per Bank Employee's Service Rules no.22 (10) Non-compliance of disciplinary rule. Betraying the bank and the customers by misappropriating of the amount of the customers of the bank. Moreover, intentionally and purposefully failing to fulfill once's own responsibility and duty.

12. On perusal of charges leveled against the complainant in the charge sheet, prima facie, it appears that the charges of defalcation and misappropriation of amount of the bank, not securing the interest of the bank and for failing to discharge his own responsibility and duty came to be leveled against the complainant. Needless to say the learned Counsel appearing for the complainant has submitted that, charges are false and baseless. But it is matter of evidence to determine whether the charges are false and baseless and therefore at this stage merit of the case cannot be decided. Hence, at this stage it cannot be said that the charges are false and baseless.

13. So far as submissions made by the learned Counsel appearing for the complainant regarding validity of an enquiry

is concerned this is not proper stage to determine whether the enquiry conducted against the complainant is in consonance with the principles of natural justice or not. However, to decide prima facie unfair labour practice at the instance of the respondent while conducting enquiry proceeding, it is necessary to have look at enquiry proceeding. On perusal of the documents prima facie, it appears that there is evidence against the complainant regarding misconduct as alleged in the chargesheet. So also, on perusal of the documents prima facie, it reveals that an opportunity was given to the complainant to take part in an enquiry proceeding. Considering the circumstances and documents prima facie, I am of the opinion that there is no force in the contention of the complainant that he was not given full and fair opportunity during enquiry proceeding and the respondent has indulged into an unfair labour practices while conducting an enquiry.

14. It is not in dispute that the complainant was dismissed from the services. It is not in dispute that the respondent has completed enquiry proceeding. After completion of an enquiry, the enquiry officer has submitted his report. After submission of report by the enquiry officer, the respondent has passed an order on 18.10.2021 whereby the complainant came to be dismissed from the services. On perusal of prayer clause of Exh.U-2, it reveals that the complainant has prayed for granting stay to the effect and operation of order dated 18.10.2021. Thus, prayer clause shows that the complainant is intending to get the relief of

reinstatement by setting aside order dated 18.10.2021 which is in the nature of final relief. It is settled law that final relief can not be granted at interim stage. In this regard the this court is guided by the following authority of Hon'ble Apex Court - ***State of UP and others vs. Sandeep Kumar Balmiki and others 2009(123) FLR 1046***, the Hon'ble Apex Court held that, "*final relief could not be granted at the interim stage*". Therefore, complainant is claiming final relief by way of this interim application which can not be granted as per the settled provisions of law and in view of my finding given above and the observation of the Hon'ble Apex Court (supra), I am of the view that the complainant has failed prima facie to prove that respondent has committed unfair labour practice. Considering the circumstances and misconduct committed by complainant as alleged in the chargesheet dated 10.12.2020 I am of the opinion that the complainant has no strong prima facie case to grant the relief as prayed for in the application.

15. So far as the balance of convenience and irreparable loss is concerned, as the complainant has no strong prima facie case, question does not arise of having balance of convenience in his favour. So also no irreparable loss may result to the complainant if the application is rejected. That apart, the complainant will be entitled for the relief sought in the complaint if he succeeds in proving his case on merit. On the contrary, the respondent will suffer irreparable loss if the application is allowed and the complainant is reinstated because possibility cannot be ruled

out of committing same misconduct at the complainant. Considering the circumstances and aforementioned discussion, I come to the conclusion that application deserves to be rejected. Hence, I record my findings to point nos. 1 to 3 accordingly and I pass the following order to record my finding to point no. 4 is as under:-

: O R D E R :

- 1) Application is hereby rejected.
- 2) No order as to costs.

Sd/-

(Smt. R.V. Mete)

Judge

Labour Court, Chandrapur.

C H A N D R A P U R.

Date :- 20.04.2023.