IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11970 OF 2023

Vikas Dyneshwar Kumbharkar ***...Petitioner***

V/s.

Pune District Central Co-operative Bank Ltd. ***...Respondent***

Mr. Prashant C. Kamble *for the Petitioner.*

Mr. Vilas B. Tapkir with Mr. Parth Deshpande *for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

JUDGMENT RESD ON: 10 June 2026

JUDGMENT PRON. ON: 15 June 2026.

JUDGMENT:

1) By this Petition, the Petitioner challenges judgment and order dated 19 July 2018 passed by the Labour Court, Pune dismissing Application BIR No. 4 of 2010. The order of the Labour Court was subjected to Appeal before the Industrial Court at Pune. However, Appeal (MIR) No. 3 of 2018 has been dismissed by the Industrial Court by judgment and order dated 18 April 2023, which is also the subject matter of challenge in the present Petition.

2) Petitioner was appointed as a Clerk in Bhor Branch of the Respondent-Bank in the year 1985. He was confirmed in service on 2 September 1986. On 17 December 2009, disciplinary proceedings were initiated against the Petitioner by leveling three charges. In Charge No.1, it was alleged that Petitioner misappropriated amounts deposited by three customers of Maharashtra State Electricity Distribution Company Limited (**MSEDCL**). In Charge No.2, it was alleged that the Petitioner failed to follow the instructions for receipt of amounts against the bills of MSEDCL. In Charge No.3, it was alleged that Petitioner transmitted amounts deposited by consumers before the due date to MSEDCL after expiry of the due date, resulting in receipt of complaints from MSEDCL. Enquiry was conducted into the charges. At the end of the enquiry, Enquiry Officer submitted his report holding that Charge No.1 was partly proved and Charges No.2 and 3 were fully proved.

3) After service of copy of Enquiry Officer's report and after considering Petitioner's representation, the Respondent-Bank issued order dated 30 August 2010 imposing the punishment of dismissal from service on the Petitioner. Aggrieved by the dismissal order, the Petitioner filed Application (BIR) No.4 of 2010 before the Labour Court, Pune. The Petitioner filed application at Exhibit-2 seeking interim relief, which application was rejected by the Labour Court vide order dated 2 July 2011. The Respondent-Bank filed written statement resisting the application. The Labour Court framed preliminary issues relating to fairness in the enquiry and perversity in the findings recorded by the Enquiry Officer. By order dated 25 September 2017, both the issues were answered against the Petitioner by holding that the enquiry is fair and

proper and that the findings recorded by the Enquiry Officer are based on evidence and are not perverse. The Petitioner examined himself before the Labour Court on behalf of the Respondent-Bank. The Labour Court thereafter decided Application (BIR) No.4 of 2010 by its judgment and order dated 19 July 2018. The Labour Court did not find any infirmity in punishment imposed on the Petitioner and accordingly dismissed the Application. The Petitioner preferred Appeal (MIR) No.3 of 2018 before the Industrial Court, which has been dismissed by judgment and order dated 18 April 2023. The Petitioner is aggrieved by orders passed by the Labour Court on 25 September 2017 on preliminary issues, 19 July 2018 rejecting Application (BIR) No.4 of 2010 as well as order dated 18 April 2023 passed by the Industrial Court in Appeal (MIR) No.3 of 2018 and has accordingly filed the present Petition.

4) Mr. Kamble, the learned counsel appearing for the Petitioner submits that the Labour Court has erred in upholding the order of dismissal. He submits that the order on preliminary issue dated 25 September 2017 is clearly erroneous since the enquiry is not conducted in a fair and legal manner. That the original MSEDCL bills were never produced during the course of enquiry and Enquiry Officer has erroneously relied on mere photocopies of the bills. That the Petitioner was not given proper opportunity of defence in the enquiry. Mr. Kamble further submits that the Enquiry Officer has completely ignored the letters of the customers, who did not express any complaint with regard to the conduct of the Petitioner. That the findings are recorded in ignorance of vital evidence on record and an element of perversity has

crept in. That the customers of MSEDCL were not examined in the enquiry.

5) Mr. Kamble would further submit that the Petitioner is erroneously held guilty of charge of temporary misappropriation. That MSEDCL has appointed its agent, who had the responsibility of making entries in the Daily Cash Collection Report **(DCCR)**. That it has come in the enquiry that the MSEDCL's consumers have actually deposited excess amount and there is no explanation as to why they would deposit amount in excess of the one billed by the MSEDCL. That the case does not involve misappropriation in any manner. That the Petitioner has been erroneously dismissed from service. He would accordingly pray for setting aside the impugned orders passed by the Labour and the Industrial Courts.

6) The Petition is opposed by Mr. Tapkir, the learned counsel appearing for the Respondent -Bank. He submits that concurrent findings of fact are recorded by the Trial and the Appellate Courts, which do not warrant interference by this Court in exercise of writ jurisdiction. He submits that the Petitioner did not challenge the order on preliminary issues and is precluded from questioning the same at this juncture. That the original bills were produced before the Court. That the case involves misappropriation by the Petitioner which has resulted in loss of faith and trust by the Respondent-Bank. That no sympathy can be shown in such circumstances. That the Petitioner was working as a Cashier of the Bank and misappropriation of even a small amount for a

temporary period would result in loss of faith for the employer. In support of his contention, Mr. Tapkir would rely on following judgments:

(i) ***Damoh Panna Sagar Rural Regional Bank and Another V/s. Munna Lal Jain***[1]
(ii) ***Divisional Controller, KSRTC (NWKRTC) V/s. A.T. Mane*** [2]
(iii) ***Divisional Controller, N.E.K.R.T.C. V/s. H. Amaresh*** [3]
(iv) ***U.P. State Road Transport Corporation, Dehradun V/s. Suresh Pal*** [4]
(v) ***T.N.C.S. CORPN. Ltd. and Others V/s. K. Meerabai*** [5]

7) Rival contentions urged on behalf of the parties now fall for my consideration.

8) The Petitioner functioned as Cashier in Loni Kalbhor Branch of the Respondent-Bank during the period from 11 November 2003 to 30 July 2009. He was issued chargesheet dated 17 December 2009 alleging misconduct in respect of his functioning as a Cashier while accepting amounts from MSEDCL customers, who deposited amounts against the electricity bills. He faced allegation of temporary misappropriation where the *modus operandi* alleged was about non-reflection of amounts deposited by the MSEDCL consumers in the records of MSEDCL on the day on which deposits were made by consumers. All the three charges levelled against him essentially related to the manner in which the Petitioner accepted amounts from MSEDCL customers and delay in reflection of the same in the records of MSEDCL. It was thus alleged that

1 (2005) 10 SCC 84
2 (2005) 3 SCC 254
3 (2006) 6 SCC 187
4 (2006) 8 SCC 108
5 (2006) 2 SCC 255

the Petitioner temporarily misappropriated the deposited amounts. In the enquiry held by the Enquiry Officer during 1 February 2010 to 12 July 2010, the Bank examined various witnesses, who were cross-examined by the Petitioner. The Enquiry Officer assessed the evidence on record and held that Charge No.1 was partly proved. Thus, the allegation of temporary misappropriation levelled in Charge No.1 was proved. So far as allegations in Charge No.2 is concerned, the Enquiry Officer held that the Petitioner failed to follow instructions vide letter dated 30 October 2007 and the said charge was held to be proved. Similarly, Charge No.3 was also held to be proved wherein it was found that MSEDCL received complaint about non-reflection of deposited amounts before the due dates. The Disciplinary Authority accepted the report of the Enquiry Officer and after grant of opportunity of hearing to the Petitioner, proceeded to dismiss the Petitioner from service.

9) The Petitioner has sought to question fairness in the enquiry by contending that original electricity bills were not produced and merely photocopies of the bills were relied upon in the enquiry. The issue of fairness in the enquiry was framed as preliminary issue and has been decided by order dated 25 September 2017. The Petitioner did not contemporaneously challenge order dated 25 September 2017 and participated in further hearing of his application, which came to be finally dismissed on 19 July 2018. However, it appears that before the Appellate Court (Industrial Court) the Petitioner did question correctness of preliminary order dated 25 September 2017. The Labour Court has perused the entire enquiry proceedings and has satisfied itself

about grant of due opportunity of defence to the Petitioner. The Petitioner has cross-examined all the prosecution witnesses. He was given opportunity to lead his own evidence as well as to file a defence statement. However, the Petitioner himself did not examine any witness. The Petitioner was provided copies of all documents relied upon by the Bank. Now a technical objection is sought to be raised that the original bills were not produced during the course of enquiry. It is well-settled position of law that technical rules of evidence do not apply to domestic enquiry. The test, required to prove the charges in a domestic enquiry is preponderance of probability and not proof beyond doubt. Therefore, mere non-production of original bills or reliance on photocopies of the bills would not vitiate the finding of guilt. At the instance of the Petitioner, the original bills were ultimately produced before the Industrial Court, and the Petitioner was not in a position to demonstrate any discrepancy in photocopies relied upon in the enquiry. Therefore, technical objection about non-production of original MSEDCL bills sought to be raised on behalf of the Petitioner deserves to be rejected.

10) So far as the objection of non-recording of evidence of the three MSEDCL consumers is concerned, if the Petitioner wanted to rely upon their evidence, he could have examined them as witnesses. Therefore, their non-examination in enquiry does not vitiate the finding of guilt. The contention of non-consideration of letters of MSEDCL consumers by the Enquiry Officer is again clearly misplaced. The issue here is not about consumers facing any loss or inconvenience. The issue is about misconduct of the Petitioner in temporary utilising the amounts

deposited by the MSEDCL consumers and not reflecting the same in the accounts of MSEDCL. Therefore, the letters of the consumers not expressing any grievance/complaint against the Petitioner were otherwise not relevant.

11) There is ample evidence on record to prove misconduct alleged against the Petitioner. It is proved that the Petitioner did not deposit the bills and amounts on the date on which the bills were paid by the consumers of the MSEDCL and there was delay in such deposits in respect of the three consumers. It would be apposite to reproduce the findings recorded by the Industrial Court in paragraph 15 of its judgment, which read thus:

> I have gone through the bills of Mr. Kalbhor and it is observed that on the bill for consumer No.17151009631 it bears the seal of payment dated 06/02/2009 but the bills is not deposited on 06/02/2009 and as per D.C.C.R. it is seen to have been deposited on 21/04/2009. Further, another bill of Mr. Kumbhar is seen to have been paid on 06/02/2009 as per the seal of the Bank. The date is faint, but still legible, but as per the D.C.C.R. this bill of Rs.2,010/- is seen to have been deposited on 21/04/2009. If it was paid before 09/02/2009 the amount to be deposited in D.C.C.R. would be Rs.1,970/- but what is deposited is Rs.2,010/-. Mr. Kumbhar had no reason to deposit Rs.2,010/- on 06/02/2009 nor should the Bank accept excess amount. In this respect, the applicant has contended that Mr. Kumbhar had stated by his letter that he had paid the bills on 21/04/2009 with the Pune District Central Co-operative Bank, Loni of Rs.2,010/- for consumer No. 171510095692 and 171510096613 of Rs.1,080/-. When the bill for consumer No.171510095692 bear the date 06/02/2009 on the bill the amount paid should have been Rs.1,970/-. This shows that the applicant had utilised the amount after its deposit to his own benefit and when it is deposited by him in D.C.C.R., he deposited it with penalty. Further, Mr. Kumbhar also stated in his statement that he had paid the bills late for the consumer No. 171510096672 and 171510096931 respectively. For consumer No.171510096931 the bill is deposited on dated 06/02/2009 for December 2008. The amount thus deposited should have been

> Rs.2,270/- whereas the amount deposited in D.C.C.R. is Rs.2,290/-. As per the D.C.C.R. statement these bills are seen to have been deposited on 21/04/2009. For all the bill bearing consumer No.171510096672 this bill bears the seal in which 6 and F are legible in the date. There is only one month in English Calender which starts with the Alphabet F and that is February. Still in the D.C.C.R. the of deposit is 21/04/2009. Though Mr. Kalbhor has stated in his statement that he had deposited the amount late, the dates on the bills are contradicting his statement. These observations clearly shows that the applicant was involved in the misconduct mentioned in charge-sheet.

12) The Labour Court and Industrial Court have recorded concurrent findings of fact on the issue of proof of charges. This Court is not expected to re-appreciate the evidence on record and arrive at a conclusion different than the one concurrently recorded by both the Courts. The Petitioner has not been able to demonstrate an element of extreme perversity in the findings recorded by the Enquiry Officer, Labour Court and Industrial Court. The charges are thus rightly held to be proved against the Petitioner.

13) So far as correctness of the punishment imposed on the Petitioner is concerned, it is seen that a serious charge of temporary misappropriation is held to be proved against him. The Petitioner was working as a Cashier in the Bank and therefore even temporary non-deposit of amounts would constitute a serious misconduct. In ***Damoh Panna Sagar Rural Regional Bank*** (supra) the Apex Court has held that a bank officer is required to exercise higher standard of honesty and integrity. It is held in paragraph 17 of the judgment as under:

> **17.** A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity,

> honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager* v. *Nikunja Bihari Patnaik* [(1996) 9 SCC 69] , there is no defence available to say that there was no loss or profit resulting in case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court.

14) In ***Divisional Controller, KSRTC (NWKRTC) V/s. A.T. Mane*** (supra) the Apex Court has held that when an employee is found guilty of misappropriating funds, there is nothing wrong in employer losing confidence or faith in such an employee and awarding punishment of dismissal. In ***Divisional Controller, N.E.K.R.T.C. V/s. H. Amaresh*** (supra) it is held that misappropriation of even a small amount would constitute grave act of misconduct. The Court has also highlighted the principle of limited scope of interference in the findings recorded by the Enquiry Officer while exercising power of judicial review. In ***U.P. State Road Transport Corporation, Dehradun V/s. Suresh Pal*** (supra), the Apex Court viewed the conduct of the bus conductor carrying 20 passengers without ticket to be grave and serious misconduct. In ***T.N.C.S. CORPN. Ltd. and Others V/s. K. Meerabai*** (supra), the Apex Court has held that where an employee is found guilty of misappropriating funds, the primary factor to be taken into consideration is loss of confidence and not the amount of money misappropriated. The Apex Court held that punishment of dismissal from service cannot be interfered with by the Court on the ground of sympathy or generosity.

15) Applying the above principles to the facts of the present case, in my view, there is no warrant for interference either in the finding of guilt or the punishment imposed on the Petitioner. Writ Petition is devoid of merits, and it is accordingly **dismissed** with no orders as to costs.

[SANDEEP V. MARNE, J.]

NEETA SHAILESH SAWANT
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