



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2380 OF 2007



Ankush R. Khatkale

...Petitioner

V/s.

M/s. Shree Mineral Products

...Respondent

Mr. Arshad Shaikh, *Senior Advocate with Ms. Namrata Agashe & Ms. Vinsha Acharya i/b. Mr. Vinod Shetty for the Petitioner.*

None for the Respondent.

CORAM: SANDEEP V. MARNE, J.

RESERVED ON: 20 FEBRUARY 2026.

PRONOUNCED ON : 13 MARCH 2026

JUDGMENT:

1) Petitioner-workman has filed the present Petition challenging Part- I Award dated 6 February 2006 holding that the enquiry is fair and proper, Part-II Award dated 8 November 2006 holding that findings of the Enquiry Officer are not perverse and Part-III Award dated 7 April 2007 answering the Reference in the negative. The Reference was with regard to the Petitioner's demand for reinstatement with full backwages.

2) Briefly stated, facts of the case are that the Respondent is a Partnership Firm, engaged in the business of production of Silica Sand and Silica coated sand. The Petitioner was appointed in June 1995 as Clerk-cum-Chemist. On 4 March 2000, the Petitioner was on leave. When



he reported for duties on 5 March 2000, he was not allowed to resume duties. He raised a demand by letter dated 25 March 2000 calling upon the Respondent-Company to reinstate him with full backwages. According to the Petitioner, the Respondent sent a backdated charge-sheet dated 25 March 2000 to the Petitioner, which he received on 5 April 2000. He responded the charge-sheet by denying all allegations on 7 April 2000. The Respondent-Company however, initiated enquiry against the Petitioner, which commenced on 10 April 2000 and concluded on 29 July 2000. At the end of the enquiry, report and findings were submitted by the Enquiry Officer on 13 September 2000 holding the Petitioner guilty of misconduct alleged in the charge-sheet. The Respondent-Company thereafter issued order dated 19 September 2000 dismissing the Petitioner from service w.e.f. 25 September 2000. The Petitioner sent Demand Letter dated 16 February 2001 calling upon the Respondent-Company to reinstate him with full backwages and continuity of service. Following conciliation proceedings, which ended in a failure report, the Petitioner's demand was referred to third Labour Court at Mumbai for adjudication and the Reference was numbered as Reference (IDA) No.749 of 2001.

3) The Petitioner filed Statement of Claim, which was resisted by the Respondent-Company by filing written statement. The Petitioner led evidence on the issue of fairness of enquiry. The Respondent examined the Enquiry Officer. The learned Judge, third Labour Court, Mumbai, passed Part-I Award dated 6 February 2006 holding that the enquiry is fair and proper. The Petitioner thereafter examined himself on the issue of perversity in the findings of the Enquiry Officer. The Labour Court thereafter passed Part-II Award on the twin issues of –Enquiry Officer's



adherence to fair play and principles of natural justice and perversity in his findings. Both the issues were answered against the Petitioner in Part-II Award dated 8 November 2006. The Petitioner thereafter led evidence on the remaining issues. The Respondent-Company did not lead any further evidence. After hearing the parties, the Labour Court passed Part-III Award dated 7 April 2007 rejecting the Reference.

4) Aggrieved by Part-I, II and III Awards dated 6 February 2006, 8 November 2006 and 7 April 2007 passed in Reference (IDA) No.749 of 2001, the Petitioner has filed the present Petition. By order dated 3 December 2007, the Petition came to be admitted.

5) Mr. Shaikh, the learned Senior Advocate appearing for the Petitioner submits that the Labour Court has grossly erred in delivering Part-I, II and III Awards against the Petitioner and in ultimately dismissing the Reference relating to demand for setting aside dismissal order and for reinstatement. That the charges levelled against the Petitioner in charge-sheet dated 25 March 2000 were absolutely vague. That the Labour Court has failed to record any findings on the point of vagueness of the charges. That the charge-sheet lacked material particulars in support of charges levelled against the Petitioner and it is impossible to comprehend the exact allegations based on the charges levelled in the charge-sheet. He submits that the charge relating to acquisition of property is difficult to comprehend as the same alleges purchase of 'plot of land', which is shown to have been situated at fourth floor of a building. That mere purchase of property does not *per se* amount to misconduct. Similarly, mere deposit of amounts in the bank account cannot *per se* lead to presumption of misappropriation. He



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submits that advancement of loans to workers again cannot amount to misconduct. He therefore, submits that most of the allegations in the charge-sheet, even if accepted as correct, do not amount to any misconduct.

6) He further submits that so far as the charge of misappropriation is concerned, the same is levelled on the basis of mere entries in the diary. Though during the course of enquiry, it got established that diary was required to be maintained by the Petitioner for recording incurring of expenditure for the employer, mere entries in the diary is not a ground for alleging misappropriation. That charges relating to sale of raw materials are absolutely vague as no details of alleged sale of raw material are indicated in the charge-sheet.

7) Mr. Shaikh further submits that the enquiry has been conducted in an unfair and improper manner since Enquiry Officer refused to allow defence representative of the Petitioner to ask pertinent questions. That Petitioner was denied opportunity to defend himself. That the documents demanded by the Petitioner were not made available to him for his defence. That duplicate diary was admittedly in possession of the Respondent, which was not produced despite being demanded by the Petitioner.

8) Mr. Shaikh further submits that Part-II Award of the Labour Court is also illegal, improper and bad in law and that findings of the enquiry are totally perverse, vague and conjectural and unsupported by any evidence. That no supporting evidence is produced by the Management to prove the misconduct. That the findings of the Enquiry Officer are



contrary to the evidence adduced before the Labour Court. That Findings of the Enquiry Officer are unreasoned and based on mere *ipse dixit*. That no reasons are assigned by the Labour Court for holding that the findings of the Enquiry Officer are based on evidence. That the Labour Court has observed that the Enquiry Officer deliberately omitted to consider answers to questions put by Defendant's representative and erred in holding that it is not necessary to consider answers given by the witnesses to the said questions by the Enquiry Officer.

9) Mr. Shaikh would further submit that the Labour Court has erred in holding that the punishment is not disproportionate to the misconduct. That the Petitioner is victimised by the Management by deliberately including the word 'misappropriation' in the charge-sheet so as to give flavour of seriousness to the allegations, which are otherwise absolutely vague and totally baseless. Mr. Shaikh would accordingly pray for setting aside the impugned Awards.

10) None has appeared on behalf of the Respondent -Company when the Petition is called out for final hearing. It appears that the Respondent used to be represented by a Firm of Advocates, who appeared in the Petition till June-2024. However, thereafter there is consistent non-appearance on the part of the Respondent on several dates. Accordingly, the Petition is heard in absence of any representation by the Respondent.

11) Having considered the submissions canvassed by Mr. Shaikh, it is seen that the Petitioner faced following broad allegations :-



- (i) Misappropriation of monies of the Company while reimbursements made in cash to him.
- (ii) Sale of raw material as well as finished products without counting the same and using the monies for personal gain.
- (iii) Sale of 35 empty drums of sister concern and misappropriating Rs.7,000/- being the sale proceeds.
- (iv) Destruction of a shed due to Petitioner's negligence putting the management to loss of Rs.75,000/- for repairs.
- (v) Advancement of loans to other workers out of misappropriated amounts.
- (vi) Deposit of large amounts in the bank accounts earned through misappropriation.
- (vii) Purchase of 'plot of land' in own name out of the misappropriated amount.

12) It is the case of the Management that the Company trusted the Petitioner and allowed him to handover cash of the Company for purchase and sales activities. According to the Management, Petitioner was given a free hand in day to day functioning of the Company. The Management apparently came across a diary maintained by the Petitioner, in which entries were made relating to certain sums. The total of such entries was Rs.97,733/-. Details of those entries were provided to the Petitioner as annexure to the charge-sheet. In the domestic enquiry conducted against the Petitioner all the charges are held to be proved and punishment of dismissal from service was imposed on him by the Management vide letter dated 19 September 2000.



13) The first preliminary issue before the Labour Court was about fairness in the enquiry. The Tribunal went into evidence led by the Petitioner and of Enquiry Officer led by the Management on the issue of fairness of enquiry. There is no dispute to the position that the Petitioner has cross-examined all the Management witnesses. He was represented by a defence representative, who has conducted indepth cross-examination of all the Management witnesses. The Labour Court has observed that the Petitioner did not file on record any application for production of documents. After scanning the entire evidence on record the Labour Court has observed that ample opportunity was given to the Petitioner for defending himself in the enquiry. The findings recorded by the Labour Court about grant of full opportunity of defence to the Petitioner therefore do not warrant any interference in exercise of jurisdiction of this Court under Article 227 of the Constitution of India.

14) One of the facets of issue of fairness of enquiry was Petitioner's allegation of vagueness in the charges. It is sought to be contended before this Court that the charges were vague and lacked material particulars. Here, it must be noticed that for a vice of unfairness, the charges must be found to be so vague that vice of vagueness results in denial of opportunity of defence to the delinquent employee. However considering the facts of the case, it cannot be held that the Petitioner did not comprehend the charges and was denied opportunity to defence.

15) So far as the first charge is concerned, same was based on diary entries and thus full particulars about misappropriated amounts were given. So far as the allegations of deposit of amount in the bank account and purchase of a flat are concerned, the same are only additional facets



of charge of misappropriation. This is because both the allegations relating to deposits in bank accounts and purchase of flat relate to the allegation of misappropriation. Similar is the case in respect of advancing of loans to co-workers, which allegation again has direct correlation with allegation of misappropriation. It is only the three allegations in respect of sale of raw materials and finished products, sale of empty drums of sister concern and destruction of shed, which had no connection with allegation of misappropriation.

16) Allegation of vagueness is considered and decided by the Labour Court partly in both Part-I and Part-II Awards. However, the charge of destruction of the shed causing loss of Rs.75,000/- to the Management was not proved in the enquiry also. The allegations relating to raw materials and finished products and empty drums are apparently not considered by the Labour Court while rendering impugned Awards against the Petitioner.

17) The Management produced sufficient evidence for proving the allegation of misappropriation against the Petitioner. The Petitioner was earning salary ranging between Rs.3,000/- to Rs.5,000/- prior to his dismissal from service. As against the salary earned by him it appears that he deposited total amount of Rs.43,837/- in his bank account during short time gap of 3 August 1998 to 26 March 1999. It was fully proved during the course of enquiry that the Petitioner advanced loan of Rs.20,000/- to driver and Rs.8,000/- to another worker and charged exorbitant interest @4% per month from both of them. Both the workers were examined in the enquiry and gave evidence of advancement of loan and charging of hefty interest @4% per month, which comes to 48% per



annum. Thus, it is got proved in the enquiry that the Petitioner was carrying out activities of a private money lender. I am not impressed by the submissions of Mr. Shaikh that of advancing of loan *per se* is not misconduct. Here, Petitioner did not advance friendly loan to a co-worker. He acted as a private money lender by charging exorbitant interest @ 48% per annum, which clearly amounts to misconduct. Furthermore, how Petitioner was in a position to advance loans to co-workers upto Rs.28,000/- when his salary was ranging between Rs.3,000/- to Rs.5,000/- becomes difficult to comprehend. It has also an admitted position that the Petitioner purchased a flat at Mulund and could not produce any evidence of having availed any loan for purchase of the flat. Mere inadvertent error in the charge in description of the purchased land as 'plot of land' caused no prejudice to the Petitioner, who correctly understood the exact purport of the charge levelled against him.

18) In my view, the allegation of misappropriation on a large scale got clearly proved against the Petitioner, who was found disbursing loans at exorbitant rate of interest, depositing large sums of money in personal bank accounts and purchasing a flat, which is not found commensurate to his salary. Diary entries are proved to be 'personal' to the Petitioner. Considering the other activities of the Petitioner of lending loans and depositing large sums in the bank accounts, it is difficult to accept Petitioner's defence that the entries made in the diary were in respect of the expenditure incurred for the Company.

19) Contention of the punishment being disproportionate is raised only for being rejected. If the employee is found misappropriating the amounts of the employer, punishment of dismissal is clearly warranted.



Petitioner faced grave charges and the charge of misappropriation has been proved. The punishment of dismissal therefore cannot be treated as disproportionate by any stretch of imagination.

20) Considering the overall conspectus of the case, I do not find any reason to interfere in the impugned Awards. Writ Petition is devoid of merits. It is accordingly **dismissed**. Rule is discharged. There shall be no orders as to costs.

[SANDEEP V. MARNE, J.]