

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4125 OF 2011

Ravindra S/o Shrawan Vyas

Age : 46 Yrs., Occ.: Service

as Junior Assistant in

Department of Management

Studies, North Maharashtra

University, Jalgaon,

Dist. : Jalgaon.

..... PETITIONER

V E R S U S

The North Maharashtra University

Jalgaon through its Registrar,

Jalgaon.

..... RESPONDENT

.....

Mr. S.R.Barlinge, Advocate for Petitioner.

Mr. Vivek Dhage, Advocate for Respondent.

.....

CORAM : V.M.DESHPANDE, J.

DATE OF JUDGMENT : 9th FEBRUARY, 2015

.....

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. By consent of the learned counsel for the petitioner and the learned for the respondent, the present Writ Petition is taken up for final hearing.

2. Heard Mr. S.R.Barlinge, the learned counsel for the petitioner and Mr. Vivek Dhage, the learned counsel for the respondent.

3. The present Writ Petition can be disposed of without expressing on merits and demerits of the matter, on the short ground of the applicability of Rule 47 of the Maharashtra Non Agricultural University and Affiliated Colleges Standard Code rules, 1984 [hereinafter referred to as the 'Rules' for the sake of brevity].

4. The petitioner was appointed as Junior Assistant with the respondent on 01/02/1995. He was transferred on 14/03/2005 to the department of Management Studies on 17/05/2002. There, he was placed under suspension vide

Order dated 14/03/2005. After lapse of 2 years on 18/05/2005, enquiry was conducted to initiate disciplinary enquiry against him since it was under contemplation that the petitioner was placed under suspension.

5. The Enquiry Officer on 26/09/2009 has submitted the report that the disciplinary authority, on the basis of the said report, issued show cause notice which was served upon the petitioner. The petitioner responded to the show cause notice and filed his reply. Thereafter, the order of termination is passed by the respondent on 20/05/2009, whereby the petitioner was terminated from the services of the respondent – University.

6. Feeling aggrieved thereby, the statutory Appeal was filed before the College Tribunal at Aurangabad. The said Appeal was dismissed. Against the said decision, the present Writ Petition is filed.

7. The learned counsel for the petitioner submitted that the termination order does not reflect the consideration as envisaged under Rule 47.

8. It would be useful to refer to sub rule (1) of Rule 47 of the Rules reads as under :

*“ Action on Enquiry Report -
(1) The Disciplinary Authority, if
it is not itself Enquiring Authority,
shall consider the report and record
its findings on each charge ”.*

9. There is no dispute in between the parties that in the present case, the disciplinary authority and the enquiring authority are different. In that view of the matter, Rule 47 will step in operation. Bare reading of sub rule (1) of Rule 47 of the Rules clearly shows that it create obligation on the disciplinary authority, if the said authority is not enquiring authority to consider the report and record its finding on each charge.

10. The learned counsel for the petitioner submitted that there is nothing on record to show that the report of the Enquiry Officer was considered by the disciplinary authority separately.

11. With the assistance of the learned counsel, I have

perused the order of termination. It clearly shows that the disciplinary authority has not considered the report and the findings on each charge.

12. It is not expected that the appointing authority will pass very detail order of termination, however, at the same time, when the Rule obliges the disciplinary authority to consider the report, the disciplinary authority can not abduct its duty to consider the same. To consider the report is not a formal or empty formality. Either the order of termination or separately the disciplinary authority must be able to show that the report of the Enquiry Officer was considered by the disciplinary authority. In that view of the matter, on this short ground itself, the matter can be remitted back to the respondent with direction that the respondent shall adhere with sub rule (1) of Rule 47 of the Rules strictly and follow the same. The learned counsel for the petitioner has fairly stated that during the pendency of the matter before the disciplinary authority after the remand, the petitioner will not claim his status as suspended employee nor he will claim reinstatement in employment till the disciplinary authority consider the matter as directed. Since

the matter is old, it is expected from the disciplinary authority to consider the matter in the light of the above observation within a period of 3 months from today. Needless to mention that the order of termination is set aside, however in view of the fair statement made by the learned counsel for the petitioner, the petitioner will not claim employment with the University.

13. With these observations, the Writ Petition is disposed of.

14. Rule is made absolute.

[V.M.DESHPANDE, J.]

KNP/W.P. 4125.2011 - [J]

[J]

10

W.P. 4125.2011 -

[J]

11

W.P. 4125.2011 -

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

[J]

21

W.P. 4125.2011 -

[J]

[J]

[J]

[J]

[J]

[J]

27

W.P. 4125.2011 -

[J]

[J]
