

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.567 OF 2009

Ashok Anandrao Dhale
V/s
Vidya Vardhini & Ors.

..... Petitioner
..... Respondents

Mr. C.R. Sadasivan for Petitioner.
Mr. K.K. Jadhav for Respondent Nos.1 to 3.

CORAM : A.A. SAYED, J.
DATED : 10 MARCH 2015

P.C.

1 This Petition filed under Article 226 of the Constitution impugns the order of the Mumbai University and College Tribunal dated 4 September 2008 dismissing the Appeal of the Petitioner. The Appeal was filed challenging the order dated 26 November 2007 passed by the Respondent Management whereby the Petitioner was reduced to the lower scale of pay and rank.

2 The Petitioner was appointed in the year 1997-98 as a full time Lecturer in Mechanical Engineer in the Respondent College. On 1 January 2004 the Petitioner was appointed as a Lecturer in Senior Scale and was granted the benefit under Career Advancement Scheme. On 9 June 2006 a show cause notice was issued to the Petitioner calling upon him to explain

why disciplinary action should not be taken against him for subordination and conduct unbecoming of a University teacher. The show cause notice referred to letter dated 17 November 2005 sent by the Petitioner through Advocate addressed to the Principal stating therein that Mr. U.G. Shahane and Mr. R.D. Jilte have been appointed to the posts of Assistant Professor, though they were not qualified as much as the Petitioner in terms of education as well as experience and accusing the Principal of bias in the selection procedure and sought an apology from the Principal. The show cause notice dated 9 June 2006 further stated that the Petitioner shouted slogans (Principal Murdabad) outside the Principal's office. It was also alleged in the show cause notice that the Petitioner had published "Notes on Industrial Financing" without seeking permission from the College which act was in violation of the Maharashtra Universities Act, 1994. On 30 June 2006 the Petitioner replied to the show cause notice wherein it was stated in para 3 as under:

"3. To the best of my knowledge I did what I thought was right at that time. I was unaware of any ordinances regarding of proper procedure for addressing our problem and under this circumstance, I may be excused for this for taking recourse to legal counsel. I think what I did was right then but if this has given you any sense of insult, I am sorry for the same."

The Petitioner denied shouting slogans or publishing any notes as mentioned in the show cause notice.

3 The Petitioner was suspended from service by communication dated 6 November 2006. The Petitioner was informed by the said communication dated 6 November 2006 that a Departmental Inquiry would be conducted against him. On 28 November 2006 the Inquiry Officer issued a charge sheet to the Petitioner (alongwith statement of allegations/documents) on the ground of misconduct and called upon him to submit his written statement of defence. The statement of allegations on which the three charges were based reads as follows:

“You were fully aware that the Selection Committee consisting of subject experts and Management Representatives was duly constituted to interview the candidates for the posts of Lecturers/Assistant Professors on 23rd September, 2005 and the College Management had accepted the recommendations of the Selection Committee as per rules prescribed by the University and appointed Mr. U.G. Shahane and Mr. R.D. Jilte as Assistant Professors. You along with your colleagues Mr. J.B. Patil, Mr. R.S. Deshmukh and Mr.V.V. Shukla caused a legal notice dated 17th November, 2005 to be served on the Principal of the College contending that Mr. U.G. Shahane and Mr. R.D. Jilte were selected as Assistant Professors though they are not as qualified as you and your colleagues are in terms of education and experience. In spite of being fully aware that a member of teaching staff attached to any college affiliated to University of Mumbai has recourse to Grievance Committee if he feels aggrieved by a decision of the Selection Committee, you chose to issue to the Principal a legal notice accusing him of

bias in the selection procedure and went to the extent of demanding an apology from him.

On 17th February, 2006 at about 2.00 p.m. when your colleague Mr. J.B. Patil was called in the Principal's cabin to receive the show cause notice, he got agitated and used abusive language towards the Principal Dr. M.N. Bhavé and threatened him of dire consequences. Further, you and your colleague Mr. Pereira joined Mr. J.B. Patil in shouting slogans on the said date i.e. 17th Feb., 2006 at about 2.00 p.m. against the Principal "Principal Murdabad" for about 5 to 7 minutes.

Further, in collaboration with your colleague Mr. J.B. Patil, you published "Notes on Industrial Financing" without permission from or the knowledge of the Management or the Principal in total violation of the code of conduct applicable to teachers."

4 The Principal of the College Dr. M.N. Bhavé was examined as Management witness. The Petitioner also examined himself as also five witnesses. The Enquiry Officer submitted his Report dated 28 November 2006 holding that the charges levelled against the Petitioner were proved and held that the Petitioner was held guilty of misconduct on all three charges. On the basis of the Report of the Enquiry Officer the Petitioner was served a show cause notice dated 31 October 2007 along with copy of the Report of Enquiry Officer. The Petitioner gave his explanation to the show cause notice vide letter dated 18 November 2007. On 26 November 2007 an order was passed demoting the Petitioner to the post of Lecturer in the

pay scale of Rs.8000-275-13500 from the post of "Lecturer, Senior Scale" in the pay scale of Rs.10000-325-15200 with effect from 1 December 2007. The said penalty amounted to reduction in rank. On 1 December 2007 the Petitioner resumed his services after being suspended by accepting the penalty under protest. Aggrieved by the order of demotion dated 26 November 2007 the Petitioner filed an Appeal before the Mumbai University and College Tribunal. The Tribunal passed the order on 4 September 2008 dismissing the Appeal of the Petitioner which order is the subject matter of challenge in the present Petition.

5 I have perused the impugned order of the Tribunal. The Tribunal recorded the points for determination in the following terms:

<u>"Points:</u>	<u>Findings:</u>
1) <i>Whether the findings recorded by the Enquiry Officer are perverse or without any evidence on record?</i>	No
2) <i>Whether the Enquiry Officer had conducted the enquiry as Management Representative and thus was biased against the Appellant causing prejudice to the Appellant?</i>	No
3) <i>Whether the penalty of reducing the Appellant to the lower scale is disproportionate to the charge held proved against him?</i>	No
4) <i>Whether the impugned order dated 26.11.2007 is liable to be quashed and set aside?</i>	No

- 5) *Whether the Appellant is entitled to restore to his senior scale without any break in service and full back wages?* No
- 6) *What order?* As per order.”

6 A bare perusal of the impugned order of the Tribunal would indicate that the Tribunal has dealt with all the charges threadbare. There is no dispute about the fact that the Petitioner alongwith his three colleagues had addressed a letter dated 17 November 2005 through Advocate wherein while referring to the advertisement dated 2 June 2005 in the Indian Express regarding the post of Assistant Professor (Mechanical), it was alleged that though the Petitioner was called for interview he was not selected for the post even though he was eligible and the candidates viz. Shri U.G. Shahane and Shri R.D. Jitle had been appointed though they were not qualified for the said post and that the Principal has deliberately neglected to make the appointment of the Petitioner and his other colleagues and that the Principal was biased and had violated the appointment rules. The Principal was asked to furnish an apology in writing and also threatened that legal steps would be taken against him. In Reply to said letter dated 17 November 2005 of the Petitioner, the Principal had through his Advocate's letter dated 6 December 2005 stated as follows:

“1) At the very outset, my clients inform that your clients have not revealed to you the facts of the case, properly and

certain important particulars have been deliberately suppressed or have been mischievously omitted.

2) My clients inform that there were 2 vacancies for which they had given an advertisement in the Indian Express on 2/6/2005. It was made clear that, one vacancy was for the SC category and the other one was meant for open category. Both Mr. Jilte and Mr. Shahane, who have been promoted by my clients, met the requirements of the respective categories in which they have been appointed. Apart from possessing the required educational qualifications. Mr. Shahane has an industrial experience of 20 years. He has been working as an Asst. Professor on ad-hoc basis in the Mechanical Engineering Department. And so far as Mr. Jilte is concerned he has been working as a lecturer in the Department. Consequently the management knew their competency, background, and dedication towards work.

4) My clients further instruct that, a Committee, constituted by the University of Mumbai, has made the said selection. It consists of 2 expert members on the panel. All the candidates including your clients were interviewed and selected by the said Committee as a whole and not only by my clients. Hence, your clients had no reasons to suspect the bonafides of my clients. In fact, questioning the decision of the said Selection Committee, amounts to doubting the credentials of the members of the said Committee including two eminent professors from IIT, Powai, who were appointed as "subject experts". Consequently it amounts to personal verification of my clients as well as the said members of Selection Committee.

5) *Hence kindly note that the allegations made by you at your clients instructions are wholly baseless, false, misconceived and derogatory.*

6) *Under the circumstances, my clients are planning to file a criminal, complaint for defamation and initiate civil proceedings for claiming damages, against your clients, for causing them mental tortures and agonies, which legal action will be entirely at the risk, cost and consequences of your clients. Besides this your clients are also guilty of committing misconduct of gross insubordination. My clients further call upon you to restrain your clients from making such irresponsible, reckless and defamatory statements against them, in future.”*

7 It is not disputed by the Petitioner that aforesaid legal notice dated 17 November 2005 was issued on his behalf and on behalf of his colleagues to the Principal. While dealing with the charge the Tribunal alluded to the Code of Conduct for teachers in para 14 and in para 18 held as follows:

“14 There is separate Statute governing the terms and conditions of service of teacher in the aided and unaided Colleges of Engineering, Technology, Pharmacy and Architecture. These Statutes are issued by the Vice Chancellor in exercise of his powers under Section 11(6)(b) of the Bombay Universities Act 1974 which has been saved by the provisions of the Maharashtra Universities Act 1994. Statute 30 prescribes the Code of Conduct for the teachers. Misconduct is defined by Statute 32, the relevant provisions are as under:-

“Statute 32 – A teacher who is confirmed in service is liable to be suspended or compulsorily retired or removed/dismissed from service or his services are liable to be terminated on one or more of the following grounds:-

- (a) Misconduct,*
- (b) Moral turpitude,*
- (c) Wilful and persistent negligence of duty,*
- (d) Permanent physical or mental unfitness, and*
- (e) Incompetence; provided that the ground of incompetence shall not be used after a teacher has served the college for a period of five years or more.*

Explanations:

- (a) “Misconduct” shall include the following:-*
 - (i) Breach of the terms and conditions of service laid down by these directions.*
 - (ii) Violation of the Code of Conduct.”*

Thus as per this Statute violation of Code of Conduct would amount to misconduct. Statute 30 prescribes the Code of Conduct as under:-

“The following shall be the norms governing the Code of Conduct for teachers:-

- (a) A teacher shall perform his academic duties and work related to examinations as assigned. No remuneration shall be payable to the teachers for internal assessment/home examinations conducted by the College.*
- (b) A teacher shall not discriminate against a student on political grounds or for reasons of race, religion, caste,*

language or sex or for other reason of an arbitrary or personal nature and shall not incite students/teachers against other students or other teachers, colleague or administration/Governing Body of the College and the University.

- (c) A teacher shall have freedom of thought and expression. He shall not misuse the facilities or forum of the College/ University.*
 - (d) A teacher shall not refuse to carry out the academic and administrative decisions taken by the Principal/ Governing Body.*
 - (e) A teacher shall not make use of the resources and/or facilities of the Department/College/University/Governing Body for personal, commercial, political or religions purposes.*
 - (f) A teacher shall not be partial in assessment of a student or deliberately overmark, undermark or victimize a student on any grounds.*
 - (g) A teacher shall not conduct/participate in private coaching classes directly or indirectly. He shall also not accept private tuitions.*
 - (h) A teacher shall not indulge in or resort to, directly or indirectly, any malpractice or unfair means in teaching/ examination/administration.*
 - (i) A teacher shall not furnish incorrect information regarding his qualifications, experience, age, etc. in respect of his appointment/promotion.*
- Failure of conform to the abovementioned norm/s shall be construed as misconduct.”*

18. Perusal of the Code of Conduct given above would indicate that it only prescribes the teachers conduct vis-à-vis to performing his job as teacher and towards the students. They are not exhaustive nor they are expected to be so. Needless to say that in an educational institution discipline is the basic requirement to be maintained. This discipline is expected to be maintain not only by students but also by the teachers. There has to be discipline among teachers themselves. The teachers are expected to behave courteously and maintain discipline and decency. As such while evaluating the conduct of the Appellant in giving a notice alleging bias against his superior the Principal and requiring him to apologize, it will be necessary to see whether the Appellant had crossed the level of courtesy and decency and the minimum discipline required to be maintained among the teachers. In this regard, the Appellant very well knew that the Selection Committee was appointed by the University. That Committee consisted of two Professors from I.I.T., who were the subject experts and were also totally independent. They were not concerned with interest of the management of the Respondent College. Their job was to consider the candidates appearing before them for interview on their merits. Furthermore, the Appellant being a duly qualified person and having served the College for number of years must have known the procedure to be followed if he had any grievance. He could have approached the Grievances Committee with his grievance for their redressal. But instead of doing this he had served a legal notice alleging bias against the Principal. The Principal was only one of the members of the Selection Committee by virtue

of the post held by him. It is pertinent to note that the legal notice that was given was not for the redressal of his grievance but that was with a view to make allegation against the Principal that he was biased and then asked for apology from him. Asking for apology would not have resolved the grievance which the Appellant had expressed in the notice. Therefore, the intention behind giving this notice was not to get the redressal of his grievances but only to make an allegation of bias against the Principal. This, therefore, in my view, will amount to misconduct by way of indiscipline and insubordination. The intention was merely to target the Principal without real intention to redress the grievances. This has also a background. The Appellant and others were taking active part in the Union activities of BUCTU and the Principal did not like the same and thus was opposing them. Therefore, while giving notice there was only an intention to make allegations against the Principal and to threaten him with legal action and dire consequences. This was therefore the act of indiscipline and insubordination. As such, I do not find any merit in the submission made on behalf of the Appellant. The Enquiry Officer had therefore, given a finding which was based on evidence and the same cannot be said to be perverse or without basis of evidence.”

In my view, the act of the Petitioner in issuing the Legal Notice which has been admittedly sent by him (and his colleagues) through Advocate making all sorts of reckless allegations against the Principal particularly when there was a selection Committee (of which the Principal was only one of the members) involved, is sufficient for the punishment ordered and no fault can

be found with the Tribunal in arriving at its findings. The Tribunal in paras 21 to 26 further held as follows:

“21. The third charge that was levelled against the Appellant was that the Appellant in collaboration with his colleague Mr. J.B. Patil had published “Notes on Industrial Financing” without permission from or the knowledge of the management or the Principal in total violation of the code of conduct applicable to the teachers. With regard to this charge, MW-1 Dr. Bhawe stated that some time around February/March 2006 a copy of Notes on Industrial Financing compiled by Prof. Patil and Prof. A.A. Dhale the Appellant was made available to him. He stated that these notes were not sanctioned by the College and he was informed that these notes can be purchased from a Book Store. He had produced those notes on record. They are at Exhibit-12. These notes on Industrial Financing indicate that they were for VII Semester Mechanical/Automobile Engineering. At the top the notes it is clearly mentioned that the notes were compiled by Prof. J.B. Patil and Prof. A.A. Dhale, the Appellant, from Department of Mechanical Engineering, Vidhyavardhini's College of Engineering giving the address of the Respondent College. The notes run into 74 pages. In the beginning there is index. At the top of every page there is mention as under:

“Notes on Industrial Financing VII Semester Mechanical/Automobile Engineering compiled by Prof. J.B. Patil and Prof. A.A.Dhale, giving two mobile numbers.”

The defence of the Appellant in this regard is that he has no knowledge of such compilation and that he had neither published nor authorized any publisher to publish any such

notes. According to his defence it is cooked up story just to victimize him. He further stated that in a computer world, it is possible to show anything as being published by anybody by putting names as might have been done by the Principal of the College or by the Head of the Department of Mechanical Engineering who is inimical to him. However, I do not find any merit in this defence. It is undisputed that the Appellant and Prof. J.B. Patil both are teachers in Mechanical Department of the Respondent College. They have been together for number of years and working together for the BUCTU. Both of them were members of the LMC and both of them had attended the National Paper Presentation at the National Conference on Sun Rising Technologies-2005 on 18th and 19th November, 2005. On this background it is difficult to believe that the Appellant did not know about the preparation of these notes. At one stage of the cross-examination of M.W.1, Dr.Bhawe, the Appellant suggested that it was the Head of the Department, Prof. Datye, had prepared the said notes putting his name alongwith Prof. Patil. However, it is pertinent to note that Prof. J.B. Patil was examined as defence witness by the Appellant. In his examination-in-chief Prof. Patil stated that these notes were typed by him for the betterment of students but was not printed or published or sold to the students by any means. This admission is against the suggestions made by the Appellant as above. Since both Prof. Patil and the Appellant were working together for number of years not only as teachers in the Mechanical Engineering Department of Respondent College but also had jointly taken part into BUCTU activities and also jointly attended the conference together, it is very much likely, as admitted by Prof. Patil notes

were prepared by both of them. The Appellant admitted in his cross-examination that it is necessary to take permission of the Principal and the management if such notes are to be prepared and published. It is apparent that no such permission was obtained either the Appellant or his colleague Prof. J.B. Patil. That was, therefore, in violation of the Code of Conduct, clause (h) of Statute-30.

22. In this regard, it is vehemently submitted on behalf of the Appellant that the management had not produced any evidence to show that these notes were published and sold at a price. However, I do not find any merit in the submission. Publication of notes does not means the printing and publication of a book. It was obviously for circulation among the students though for their benefits. There is no price printed on the notes produced at Exhibit-12. However, it is difficult to imagine that such voluminous notes would be given away without charging any price. There could be no other purpose of preparation of these notes than to get monetary and gain out of it. It was also tried to be submitted on behalf of the Appellant that Industrial Finance was not the subject of the Appellant. However, the subject is included in the degree course of Mechanical Engineering the Appellant had taught. It is not a pure subject of Finance. From the heading of the note itself it is clear that this was a subject of VII Semester Mechanical/Automobile Engineering, the subject which both, the Appellant as well as Prof. Patil, were teaching.

23. Under these circumstances, I do not find the findings arrived at by the Enquiry Officer with regard to these charges, were perverse or baseless. In fact, there was ample evidence in that regard. With regard to legal notice that was an

admitted position. Notes were also produced indicating the name of the Appellant alongwith Mr. J.B. Patil being the compilation of the notes.

24. It appears that the management had not appointed its representative before the Enquiry Officer and the Enquiry Officer himself had conducted the examination-in-chief of the management witnesses and cross-examination of the defence witness as also the Appellant. It also appears that the Appellant had made a request to the Enquiry Officer to allow him to engage his representative to conduct the enquiry and the same was rejected by the Enquiry Officer. The Enquiry Officer had given reason for rejecting this request of the Appellant, on the ground that the management had not appointed any representative and therefore, the Appellant was also not entitled to engage his representative to conduct the enquiry. It is submitted on behalf of the Appellant that since the Enquiry Officer had acted as Prosecutor as well as the Judge the enquiry is vitiated. However, in this regard, he failed to point out anything from the enquiry that any prejudice was caused to the Appellant because of the Enquiry Officer having put questions to the Appellant and his witnesses in cross-examination. It is pertinent to note that in the Statutes with regard to the appointment of the Enquiry Officer the procedure is laid down and there is no mention of appointment of either the management representative or the representative on behalf of the charged employee. Therefore, the Enquiry Officer was right in refusing the request of the Appellant to engage his representative to conduct defence when the management themselves had not engaged any representative. In absence of specific provisions in this regard

the violation of principles of natural justice cannot arise. The Enquiry Officer putting questions in cross-examination would obviously be permitted under the Statutes as when there is no provision for appointment of management representative the Enquiry Officer himself will have to put the question in cross-examination. But mere putting question in cross-examination cannot vitiate the enquiry unless it is shown that prejudice was caused to the delinquent Appellant. No such prejudice is pointed out by the learned Advocate on behalf of the Appellant. As such the enquiry cannot be said to have been vitiated on this ground. In fact, full opportunity was given to the Appellant to lead evidence on his behalf and after he had examined a number of witnesses in his support. This ground is also not available to the Appellant.

25. The case of the Appellant is that he was victimized. However, it is well settled that when the charges are established the defence of victimization does not stand. In this case, the charges are established against the Appellant and therefore, defence of victimization is not available to the Appellant.

26. Lastly it is submitted on behalf of the Appellant that the punishment of reduction in rank was a major penalty and it was disproportionate to the charges proved against the Appellant. It was submitted that any minor penalty could have been imposed on the Appellant while he was retained in service. However, normally the punishment imposed by the management has not interfered with unless it is shown that the punishment is shockingly disproportionate to the charges proved against the delinquent. In this case, the Appellant had served a legal notice alleging bias against the Principal and required the Principal to give apology under the threat of legal

action against him. This was misconduct in the form of insubordination seriously affecting discipline among the teachers working in the Institution. The second charge was also a serious misconduct that is of shouting slogans "Principal Murdabad" just outside the Principal's Office and on the premises of the College that too during the working hours of the College at 2.00 p.m. This was also seriously affecting the discipline in the College. The third charge was also of serious nature of publishing private notes without permission of the Principal or the management obviously for profiteering. If the management had taken these charges into consideration for reducing the rank of the Appellant it cannot be said that it was shockingly disproportionate to the charges levelled against the Appellant ."

8 In my view, the aforesaid findings of facts arrived at by the Tribunal are not liable to be disturbed in the exercise of writ jurisdiction of this Court under Article 226 of the Constitution. The Tribunal has after appreciating the evidence on record rightly concluded that there is no perversity in the findings of the Enquiry Officer. In any event, it cannot be disputed that the Petitioners (alongwith his colleagues) had sent the legal notice dated 17 November 2005 through Advocate making several allegations against the Principal.

9 The Court is informed that the Petitioner has resigned from the services of the Respondent College in the year 2013 and is now serving in another College.

10 Taking over all view of the matter, in my opinion, the impugned order of the College Tribunal is unexceptionable and warrants no interference at the hands of this Court.

11 The Petition shall accordingly stand dismissed. Rule is discharged.
No order as to costs.

(A.A. SAYED, J.)

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