

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

WRIT PETITION NO. 1163 OF 2010

Ramesh Tatya Dhotre	... Petitioner
V/s.	
Chembur Education Society, C/o. Chembur Sarvanka Shikshan Shastra Mahavidyalay & Ors.	... Respondents

Mr. Ravindra Sankpal for the Petitioner.
Mr. Abhay Patki for the respondent nos. 1 & 2.

CORAM : K. K. TATED, J.
DATED : 30/11/2015.

PC.:

. Heard learned Counsel for the parties.

2 By this petition under Article 226 of Constitution of India, the petitioner is challenging the order dated 15.10.2009 passed by Presiding Officer, Mumbai University and College Tribunal in Appeal No. 81 of 2008 under Section 59(1) of the Maharashtra Universities Act, 1954 (hereinafter will be referred as 'the said Act') dismissing the petitioner's Appeal.

3 In the present proceeding, the Petitioner was working with the respondent college as peon since 25.06.1990. From 01.08.1998 to 26.08.1998, the petitioner was working as Junior Clerk as per change appointment letter issued by the college. As the petitioner for obtaining loan of Rs.3,25,000/- from ICICI Bank submitted forged and fabricated salary slip showing salary of Rs.11,627/- instead of

Rs.5,627/- and Income Tax Form No.16, concerned Police Station lodged FIR against the petitioner on 07.10.2002 under Sections 420, 467, 468 and 471 of Indian Penal Code.

4 An Inquiry Officer came to be appointed, who commenced the inquiry on 06.02.2008 and completed on 02.06.2008. The Petitioner was served with the report of inquiry officer and also show cause notice dated 12.07.2008 to which he replied on 25.07.2008. Charges were as under :

- A) That the petitioner had violated Rule 41(3) of the Standard Code Rules 1984, in that the petitioner had failed at all time to maintain absolute integrity, show devotion to duty and behaved which was unbecoming of an employee of the college.
- B) The Petitioner had indulged into fraud and dishonesty.
- C) The Petitioner had tampered the College record,
- D) The Petitioner had made false and exaggerated allegations against the Principal and the management.

However, the college management did not accept the petitioner's reply and served him the termination order dated 26.08.2008.

5 Being aggrieved by the termination order dated 26.08.2008, the petitioner preferred Appeal No. 81 of 2008 under Section 59(1) of the said Act before the University & College Tribunal at Mumbai. The College Tribunal after perusing the evidence on record dismissed the petitioner's Appeal. Hence, the present Writ Petition.

6 The learned Counsel Mr. Ravindra Sankpal appearing on behalf of the petitioner submits that the College Tribunal erred in coming to the conclusion that petitioner failed to make out the case for setting aside the termination order dated 26.08.2008 passed by respondent College. He submits that inquiry committee has not given him fair chance to participate in the inquiry proceeding. Hence, the same is liable to be set aside. He submits that the learned Tribunal has totally erred in holding that the petitioner had given the salary certificate, Income Tax Form No.16 etc. to the bank authority were forged by the petitioner. He submits that both the authorities below failed to appreciate that the petitioner's agent/middleman played a fraud by manipulating petitioner's salary slip and Income Tax Form No.16 for obtaining sanction of the loan to the extent of Rs.3,25,000/-. He submits that both the authorities failed to appreciate that without consent of the petitioner and/or with the knowledge of the petitioner, the middleman/agent manipulated the salary slip and Income Tax Form No. 16. He submits that the said middleman/agent committed fraud for more than 82 cases against which the police has taken action. He submits that police authority also taken action against the some of the officers of the said bank and persons in whose favour the loan was sanctioned. He submits that the petitioner, filed his undertaking dated 24.01.2003 in the Court of Sessions Judge, Thane in C.R. No. 1-202/2002(Thane Nagar Police Station) stating that without petitioner's knowledge, the said middleman/agent committed fraud. He submits that it was specifically stated in the said undertaking that the petitioner, started repaying the said loan amount by installments. He submits that these facts were not considered by both the authorities below. Hence,

the petitioner filed the present petition. He submits that in the interest of justice, this Hon'ble Court be pleased to set aside the order dated 15.10.2009 passed by the College Tribunal, allow the petitioner's Appeal no. 81 of 2008 filed under Section 59(1) of the said Act and quash and set aside the order dated 26.08.2008 passed by the respondent college terminating the petitioner's service and direct them to reinstate the petitioner. He submits that if this order is not passed, irreparable loss and injury will be caused to the petitioner.

7 On the other hand, the learned Counsel Mr. Abhay Patki, appearing on behalf of respondent college vehemently opposed the present Petition. He submits that in the present proceeding, the petitioner fabricated the salary certificate as well as Income Tax Form No. 16 to show his salary on higher side i.e. Rs.11,627/- instead of Rs.5,627/- per month. He submits that though the police authority started action against the petitioner, he failed and neglected to disclose the same to the college. He submits that the first time college learnt about the action about against the petitioner, when they received letter from concerned police station making inquiry about the petitioner. He further submits that the FIR lodged against the petitioner dated 07.10.2002 shows that the petitioner involved in the said fraud case, by altering, fabricating salary certificate as well as Income Tax Form No. 16. He submits that petitioner failed to maintain the absolute integrity, devotion to duty. Apart from that the petitioner had made false and exaggerate allegations against the Principal and the management. All these charges were duly proved against the petitioner. Hence, there is no question of entertaining the present petition under Article 226 of

Constitution of India to re-appreciate the entire evidence on record which is not allowed in law.

8 In support of this contention, the learned Counsel for the petitioner, relies on judgment of the Apex Court in the matter of ***Union of India and Ors v/s. P. Gunasekaran reported in AIR 2015 SUPREME COURT 545***. In that authority, the Apex Court held that the High Court should not interfere with finding of fact unless it is perverse. Paragraph 13 of the said Judgment reads thus:

13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers Under Article [226/227](#) of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. the conclusion, on the very face of it, is so wholly*

arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article [226/227](#) of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.”

9 The learned Counsel for the respondent college also relies on judgment of the Division Bench of the this Court in the matter of **Ashok Udaram Pathrabe V/s. Maharashtra Remote Sensing reported in 2007(1) Mh. L. J. 519**. In that authority Petition under Article 226 of Constitution of India challenging the order of the Tribunal, court held that the Court/Tribunal exercising the power of judicial review should

not act as appellate authority. On the basis of these submissions, the learned Counsel for the respondent college submitted that there is no substance in the present Writ Petition and same deserves to be rejected.

10 I heard both the sides at length. Before considering the merits of the matter, I have to keep in mind that the Apex Court in the matter of ***Dr. Anil Kapoor V/s. Union of India & Anr. Reported in (1998) 9 Supreme Court Cases 47*** held that concurrent findings of disciplinary authority and appellate authority should not be disturbed in normal course. Paragraph 7 reads thus:

“7. After perusing the order of the Tribunal, we are of the view that though it is possible to take another view in this matter, that will not be a ground for interfering with the orders passed in the disciplinary proceedings. Accordingly, we are not satisfied that there is any case for interference.”

11 In the present proceeding, admittedly, the petitioner was charge sheeted for creating forged documents of salary slip and Income Tax Form No.16 by using the respondent's college's stationary. These facts were proved by the respondent college before inquiry committee by bringing on record relevant police documents. The respondent college also brought on record, the way in which the petitioner was behaving in college with Principal and management. Those facts were considered by the Tribunal in paragraphs 10 & 11 of the impugned judgment. Show cause notice, inquiry report and copy of FIR dated 07.10.2002 clearly shows that the petitioner for his benefit to secure the higher loan from ICICI bank committed fraud. Considering the authorities cited by the respondent in the matter of P. Gunasekaran

(Supra), Ashok Udaram Pathrabe (Supra), I am of the opinion that High Court cannot re-appreciate adequacy of evidence or reliability of evidence. Even the Apex Court in the matter of Dr. Anil Kapoor (Supra) held that even if it is possible to take another review, same should not be considered unless and until the order passed by the authority and Tribunal is against the justice, equity and good conscience. Same is not in case in hand.

12 In view of the above mentioned facts and law declared by the Apex Court, I am of the opinion that petitioner failed to make out the case under Article 226 of the Constitution of India to interfere the well reasoned order passed by the Presiding Officer, Mumbai University and College Tribunal dated 15.10.2009 in Appeal No. 81 of 2008.

13 Hence, Writ Petition stands rejected.

(K.K.TATED, J.)