

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.9636/2013

Dr.Sinkukumar S/o Krishnakumar Singh.
...Petitioner..

Versus

The State of Maharashtra & others.
...Respondents..

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Shri Sanjay V.Mundhe, Advocate for the Petitioner.
Ms.R.P.Gour, AGP for the Respondent No.1.
Shri S.G.Chapalgaonkar, Advocate for the Respondent No.2.
Respondent no.3 served.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 25.11.2016

ORDER :

1] The petitioner assails the decision dated 17.2.2013 thereby debarring the petitioner to act as an examiner.

2] Mr.Mundhe, learned counsel for the petitioner, submits that the impugned decision is against the ordinance so also principles of natural justice. The

learned counsel submits that at no material point of time, the petitioner was served with a show cause notice nor any enquiry was conducted against the petitioner. On 25.6.2016, only a letter was given to the petitioner with regard to the enquiry to be conducted against Smt.K.G. Jadhav. There was no notice issued to the petitioner even remotely suggesting that enquiry was scheduled to be conducted against the petitioner. The learned counsel relies on the common ordinance on conduct of examinations, assessment of answer books, unfair means and other related matters of examination applicable to Dr.Babasaheb Ambedkar Marathwada University, Aurangabad. The learned counsel submits that the procedure for investigation is provided. The enquiry is required to be preceded with a show cause notice and reasonable opportunity including oral hearing is required to be given. No such procedure has been followed. As such the impugned order is illegal.

3] Mr.Chapalgaonkar, learned counsel for the respondent no.2 - University submits that the petitioner was aware of the charges against him. A notice dated 25.6.2012 was issued to the petitioner with regard to the

enquiry to be conducted of the mal-practices of the Physical Education Department of which Smt.K.G. Jadhav was the Head. The petitioner deliberately and willfully remained absent in the enquiry and the hearing knowing fully well that the charges would be proved against him. The petitioner cannot be allowed to take advantage of his own wrong. The procedure has been followed. The committee was constituted. The hearing was given. The documents were provided to the persons who attended the enquiry. After a detailed enquiry, the petitioner was found guilty. The decision of the Board of Examination was placed before the Management Council. The Management Council in its meeting approved the decision of the Board of Examinations in respect of the petitioner. The petitioner was always non-cooperative. He even criticized the Chairman of the Committee by making personal allegations against him.

4] We have considered the submissions canvassed by the learned counsel appearing for the parties.

5] The notice dated 25.6.2012 (Exhibit C) certainly cannot be said to be a show cause notice issued to the petitioner. The said notice contemplated enquiry against

Smt.K.G. Jadhav. In that enquiry, the petitioner was directed to remain present on 10.7.2012. The said show cause notice did not give details of the allegations, which the petitioner is required to meet. As per the procedure of investigation laid down in the common ordinance, the implicated person is required to be informed in writing of the acts of mal-practices alleged and lapses committed by him at the examination and shall ask him to show cause as to why charges leveled against him should not be held as proved and the punishment stipulated in the show cause notice to be imposed. Thereafter, the concerned person is required to appear before the enquiry committee with written reply, explanation to the show cause notice and in the enquiry, the documents are required to be shown and reasonable opportunity including oral hearing is required to be given to the concerned person. The ordinance further states that the committee should follow the procedure in the spirit of principles of natural justice.

6] It is trite that in case the principles of natural justice are not adhered, then the enquiry would stand vitiated. The well laid down procedure in the

common ordinance itself states that the enquiry has to be preceded with the show cause notice. The show cause notice would mean initiation of any proceedings against a delinquent. The show cause notice would contain the allegations, which are imputed against the delinquent and the charges which he is reasonably required to meet. In absence thereof, it cannot be said that the enquiry has been conducted fairly.

7] Considering the aforesaid conspectus of the matter, the impugned decision cannot be sustained and the same deserves to be set aside and is hereby set aside.

8] Needless to state that the respondent no.2 may, if it so desires, initiate enquiry against the petitioner after issuing show cause notice to the petitioner and following the procedure as laid down in the common ordinance. If it so chooses to initiate such a proceeding, it shall issue a show cause notice within a period of six weeks and complete the enquiry expeditiously and preferably within a period of six months from the date of issuance of the show cause notice. The petitioner is expected to cooperate in the said proceedings. Till the said proceedings are decided,

it is open for the respondent no.2 not to allot examination work to the petitioner. However, the schedule, as detailed above, should be followed scrupulously by the parties. Writ petition is disposed of accordingly. No costs.

(K.L. WADANE, J.) (S.V. GANGAPURWALA, J.)