

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6510 OF 2002

Shri Sambhaji Aba Chougule ... Petitioner

Vs.

The Chairman, Lokmanya Tilak
Janakalyan Shikshan Sanstha & Ors. ... Respondents

....

Mr. Rahul Nerlekar for the Petitioner.
None for the Respondents

...

CORAM : A.A. SAYED, J.

DATE : 08 DECEMBER 2016

P.C.:

1 This Petition is filed under Article 226 and 227 of the Constitution impugning the order dated 18 July 2001 passed by the College Tribunal whereby the Appeal of the Petitioner/Original-Appellant was dismissed.

2 The Appeal was filed by the Petitioner under Section 59 of the Maharashtra University Act, 1974. The Petitioner was member of the non-teaching staff of the Respondent-College and the Appeal was filed challenging the order of his termination dated 30 December 1999.

3 The Appellant was appointed on 13 September 1994 as Lab-Assistant (Workshop). On 15 March 1999 a charge sheet was issued

against the Appellant. Five charges were levelled against the Petitioner which read as follows:

- 1) The Appellant unauthorizedly and without the permission of the Principal collected moneys from the students.
- 2) The Appellant dishonestly and fraudulently misappropriated for himself monies which he had collected unauthorizedly from the students.
- 3) From time to time the Appellant disobeyed the orders of his superiors.
- 4) The Appellant in respect of the work of the Sanstha, committed improper, threatening (intimidating) and pressurizing acts.
- 5) The Appellant made false allegations against his superiors.

4 So far as charges 4 and 5 are concerned, the Petitioner was held not guilty at the stage of enquiry by the Enquiry Officer. So far as, charges 1 and 2 are concerned, the Tribunal by impugned order exonerated the Petitioner from the said charges.

5 That leave us with Charge No. 3 which is the charge of disobedience/insubordination under Section 42 (f) and (o) as per the College Standard Code Rules 1984.

6 By office order dated 22 January 1999 issued by the Principal of College, the Petitioner was informed that Mr. Sudesh Mhatre was appointed as Senior Fitting Instructor in fitting work shop and he will be in-charge of Fitting Workshop and that the Petitioner will hand over the charge to Mr. Mhatre with immediate effect and that the Petitioner will work as per the instruction from the Senior Instructor. However, the Petitioner did not hand over the charge to Mr. Mhatre and issued a letter dated 27 January 1999 wherein he has stated that the order dated 22 January 1999 was passed overlooking his promotion and seniority and therefore there was no question of him handing over the charge to Mr. Mhatre. In the impugned order the Presiding Officer has dealt with this issue, para 9 and 10 whereof read as under:

“(9) This officer order is signed by Dr. R.V. Kulkarni, Principal. The Appellant gave a letter/Representation dated 27 January 1999. In that letter/Representation he says that since 24 August 1994 he has held the post of Workshop Assistant (Fitting) and that since then the charge of the fitting workshop was with him. He says that the order dated 22 January 1999 is against his seniority. He had applied for promotion earlier and that by overlooking his seniority and by doing injustice to him the order dated 22 January 1999 was issued and he was asked to give charge of the workshop to Mr. Sudesh Mhatre. He says that therefore no question arises of him giving charge to Mr. Sudesh Mhatre. He further alleges that the order dated 22 January 1999 was a malafide order and that the order should be withdrawn and the post of Senior Fitting Instructor should be

given to the Appellant. As a reply to this representation, the Principal of the College wrote a letter dated 27 January 1999 to the Appellant stating- "you have not handed over the charge is Mr. Sudesh Mhatre till today... you have mentioned in the last para that the question of handing over the charge to Mr. Mhatre does not arise. Both these Acts amount to insubordination under Section 42 (f) and (42) (o) as per the College Standards Code Rules, 1984. You are hereby informed that you are nobody to decide who should be In-charge of the Fitting Section ... you are requested to explain in writing before 30 January 1999 as to why disciplinary action against you should not be initiated". It was also added "You are once again directed to handover the charge of Fitting Section to Mr. S. Mhatre Immediately, failing which disciplinary action will be taken against you for this". The Appellant wrote a reply dated 28 January 1999, wherein the states that he, being senior according to rules, he has no desire to give charge to Mr. Sudehs Mhatre. He has again requested for giving him promotion. On 15 February 1999, the Principal wrote a long letter to the Appellant stating that he had not obeyed the order dated 22 January 1999 regarding giving charge to Mr. Sudesh Mhatre and this called for serious action against him. It is further stated that though Mr. Mhatre was appointed newly, he was appointed on a post senior to that of the Appellant. He was again asked to give charge to Mr. Mhatre immediately by 12 noon of 15 February 1999. The Appellant wrote a letter dated 15 February 1999 to the Principal asking 8 days time to take legal advice. It will be seen from this admitted correspondence narrated above, that the Appellant has in definite terms, refused to obey the Principal order's under

which he was required to give charge of the fitting workshop to Mr. Mhatre. There can be no doubt that this amounts to disobeying the orders of the superiors. On being charge-sheeted on 15 March 1999, his reply on part 3 of charge 3 is that all that wants to say is contained in the reply dated 19 March 1999. In the reply dated 19 March, 1999 he states that in respect of part 3 of charge 3, he denies that he refused to obey the orders and that all he wanted to say was that he wanted reconsideration of the order. The correspondence on this charge has been summarized above and it is clear that he has refused the order of the Principal. Under these circumstances there would really be no question of holding any disciplinary enquiry to decide whether this part 3 of charge 3 is proved or not. The facts are admitted and on these facts it is clear that he has refused to give the charge of the Fitting workshop and he has persisted in doing so despite more than 3 letters address to him.

(10) The refusal to obey the orders of the superiors may or may not be of serious consequence. However, it may be noted that he Appellant refused to give charge of the fitting workshop to Mr. Sudesh Mhatre who was appointed as Senior Instructor (Fitting) workshop. This refusal affects the very working of the College. It is not a disobedience that can be overlooked. It affects the functioning of the college in so far as the work of the workshop is concerned and the training of the students in the workshop. It is in this connection that the acts of the Appellant in mentioning "under protest" in respect of various correspondence and salary given to him must be considered. The attitude of the Appellant or the stance which he is adopting while dealing with correspondence being sent to him from his

superiors is one of disobedience. It is considering all these aspects that his behaviour under Part 3 of Charge 3 assumes seriousness. Such behaviour cannot be tolerated by the employer as the work of the institution cannot proceed with such order being disobeyed. I am making these remarks relevant to the question. I am making these remarks relevant to the question of punishment that has been given to the Appellant. No punishment less than dismissal from service is called for person refusing to give charge of the workshop in compliance of the order issued and thereby stopping the work of the working of the college so far as it relates to the working of the workshop”.

7 Thus, it is an admitted fact that the Petitioner had repeatedly refused to obey the order of the Principal. He had at even stated in writing that he would not comply with the order dated 22 January 1999. In view of this admission, there was no question of holding any disciplinary enquiry as Petitioner himself had clearly refused to give/ handover charge of the fitting workshop, despite more than 3 letters being addressed to him. The conduct of the Petitioner also dis-entitled him to any reliefs as prayed before the College Tribunal.

8 The Tribunal has rightly held that this act of the Petitioner would affect the functioning of the college and the training of the students in the workshop and such behavior cannot be tolerated by the employer and no punishment less-than dismissal from service is called for.

9 Considering the fact and circumstances the case, I do not find any fault with the impugned order. The refusal of the Petitioner to obey orders of the Principal was an act of insubordination which cannot be tolerated by any Management and it cannot be said that the order of dismissal was disproportionate.

10 In these circumstances no interference is called for in the impugned order. The Writ Petition shall accordingly stand dismissed. Rule is discharged. No order as to costs.

(A.A. SAYED, J.)