

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

WRIT PETITION NO. 5471 OF 2016

Jnan Vikas Mandal & anr.

... Petitioners

vs.

Shri. Rajendra Kumar S. Shah

... Respondent

Mr. Lancy D'Souza a/w Ms. Deepika Agarwal i/by N. M. Parkar,
Advocate for the petitioner.

Mr. R. C. Sadasivan, Advocate for the respondent.

Coram : Smt. R. P. SondurBaldota, J.

Date : 4th October, 2016

P.C. :

1. This petition challenges the order dated 8th March, 2016 by which the Mumbai University and College Tribunal allowed the appeal preferred by respondents no.1 and 2 to set aside termination order dated 24th November, 2013 passed by the petitioner management holding that the same was illegal, perverse and biased. The order asks the petitioners to reinstate respondent no.1 to the post held by him at the college without any break in service with full back-wages from the date of suspension as per rules. After considering all the aspects and facts, the petitioners are also directed to pay the costs quantified at Rs.25,000/- to the appellant.

2. Respondent no.1 was served with charge-sheet dated 10th September, 2013 alleging the following acts of misconduct :

1. Gross negligence.
2. Disorderly behaviour unbecoming of the status of Accounts and Administration Officer.

3. Stopping work singly as well as with other employees inciting them not to work.
4. Refusal to accept communication from the College.
5. The act subversive of discipline or good behaviour on the premises of the College.

The charge-sheet carried Annexures containing a statement of allegation on which the charges were based. The respondent sent reply dated 10th October, 2013 denying all the allegations against him. He also alleged that issuance of charge-sheet to him was malafide. The respondent was working as the Accounts and Administrative Officer in the petitioner College. It was the highest administrative post. He had completed a period of eight years in service at the time of suspension. He alleged that the petitioners as the management of the College was not paying salaries as per rules. The dearness allowance was paid at a much lower rate. Similarly, the house rent allowance, which was to be paid at 30% of the basic salary per month as mandatory part of the salary was not paid at all. The respondent being Administrative Officer, the non-teaching staff members use to always confront him with issues as regards the salary paid to them. Consequently, the petitioners had from time to time brought their difficulties to the knowledge of the management. He had also requested the management to attend to these issues urgently. This was disliked by the petitioners, who with intent to victimize him started finding fault with his work since January-2013.

3. On 14th January, 2013, the classrooms of the College and Library were not opened at 7.30 am. As a result, the students were unable to go to their classes. The petitioners put the entire blame for this laps on the respondent alleging that, he had incited the staff to

non-cooperate with the petitioners. According to the respondent, at the relevant time he was not even present in the college. He also claims that it was not his duty to open the college-gate on any day. As regards the allegations of the not maintaining the provident fund record of the staff of College, he absolutely denied the same contending that the work of provident fund was pending, not with him but with the consultant appointed by the management. The third charge was not attending to the Professional Tax Assessment work which had been pending for five years. The respondent alleged that he had in fact done everything within his means and was unable to complete the work because the concern officials were demanding money for the settlement of the assessment. As regards the allegation of refusing to accept communication from the College and indulging into acts that are subversive discipline and good behavior on the premises of College, he denied the same.

4. The petitioner appointed one M. P. Sadekar as the Enquiry Officer. In the enquiry proceedings they examined five witnesses. The respondent was unable to examine any witness. By his letter dated 14th August, 2014 he had informed the Enquiry Officer that the witnesses proposed to be examined by him being employees in the college were scared of the repercussion of victimisation. The Enquiry Officer submitted the report of his enquiry on 29th September, 2014. The petitioners accepted the report and terminated the services of the respondent. Being aggrieved by the order, the respondent appealed therefrom to the University and College Tribunal.

5. Admittedly there is no evidence produced by the petitioner management on any of the charges except charge no.5 i.e. leading role and active participation in instigating non-teaching staff

for protest. The only evidence of the solitary incidence alleged as regards this charge is that on 14th February, 2013 at about 7 o'clock in the morning various departments and library of the College were not opened, which led to inconvenience to the students because certain practicals and classes could not be conducted. The witnesses who deposed on these facts are one Santosh Nimbare working as Library Attendant and one Rakhi Punyarthi working as I. T. Lab Inspector Instructor. These two persons are signatories to Exh.12, which was supposed to be a complaint made by six persons to the management stating that the respondent had instigated them to cooperate in the call of Bandh on 14th February, 2013 and prevented them from opening the locks to the classrooms, library and laboratory. Consequently, first two practicals and lectures could not be conducted.

6. The deposition of Santosh Nimbare is however seen to be not consistent with the above complaint. He does not state that the respondent had instigated him to cooperate in the call for Bandh. In his deposition, he has stated that on coming to the college at 8.30 am., he found that the library was closed. Therefore he returned to the college office for the keys. But the keys were not on the Keyboard. At the same time, the respondent arrived, who allegedly told him that he should not go in the library and support the call for Bandh. Later at about 9.10 am. the respondent came along with one Mr. Digambar Keluskar and handed over the keys of the library.

7. The above evidence in examination-in-chief by itself is sufficient to told that there was no instigation to this witness from the respondent. In his cross-examination the witness was asked whether he was aware that the keys are not kept in the administrative office and are always kept with the security. He answered in the

affirmative. He also knew that ordinarily it is duty of peon Anil Gavaskar to take keys from the key box and open the office and classrooms. If the witness was aware that the keys are always kept with the security there was no reason for him to go to the administrative office looking for the keys. On the relevant day, the father of Anil Gavaskar was unwell. Therefore Anil Gavaskar had reported late for his duty and Mr. Digambar Keluskar another peon collected the keys and opened the classrooms. The witness however claimed that he was completely unaware of these subsequent facts. Therefore this witness cannot be said to be a reliable witness. He is also seen to have not supported the complaint at Exh.12.

8. Similar is the position of another signatory to Exh.12 i.e. Rakhi Punyarthi. She stated that at about 8.10 am. when she came to the college, she found that IT Lab was closed. Students and the staff were stranded in the corridor. She also waited in the corridor until the lab was opened at 9 am. She stated that she was given to understand by her colleagues that classrooms, library and laboratories would not to be opened on that day. This evidence of the witness is not consistent with the allegations made at Ex.12.

9. The above are the only two witnesses who refer to the complaint at Ex.12. None of the other witnesses were aware of Ex.12. On appreciation of the above facts, the Tribunal passed the impugned order.

10. Mr. D'souza, the learned advocate for the petitioner draws attention of the Court to an observation in the impugned order that the petitioner had not examined any witness during the enquiry to prove the complaint at Exh.12, in order to contend that, there was non-application of mind by the Tribunal to the material on record and therefore the impugned order needs to be set aside. A solitary

stray statement in the impugned order can hardly be a reason for holding that there is non-application of mind on the part of the Tribunal. Perusal of the impugned order shows that the Tribunal has in fact looked into the deposition of the witnesses and in particular witness, Santosh Nimbare and Rakhi Punyarthi, who were signatories to Ex.12. As already seen above, the evidence of these witnesses, is inconsistent with the allegations made in the complaint.

11. In the above facts and circumstances of the case, there is no infirmity in the impugned order. The petition is therefore dismissed.

[Smt. R. P. SondurBaldota, J.]