

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

WRIT PETITION NO.9313 OF 2003

Shri Kundalik Pandharinath Newale ... Petitioner

vs.

1 Shree Jain Vidya Prasarak Mandal
2 Principal, Sanghavi Kesari College of
Arts, Commerce & Science ... Respondents

Mr. Dilip Bodake for the Petitioner.

Mr. S.A. Sawant a/w Ms. Saloni Ghule for the Respondent Nos.1 and 2.

Coram : **A.A.Sayed, J.**

Date : 18 November 2016

P.C. :

1 This Petition is filed invoking Articles 226 and 227 of the Constitution to challenge the order dated 6 July 2001 passed by the Presiding Officer, University and College Tribunal, Pune, whereby the Appeal filed by the Petitioner came to be dismissed. The said Appeal was filed by the Petitioner under section 59 of the Maharashtra Universities Act, 1994, against the order dated 17 July 1997 passed by the Respondent/Management terminating his services with effect from 14 July 1997.

2 The Petitioner was appointed as peon in the Respondent College on 1 August 1971. In 1986 he was promoted to the post of Library

Attendant. The Petitioner was entrusted the work of selling and distributing admission forms, examination forms and other forms from 1991-1992 onwards upto 1995-1996. The Petitioner was called upon to submit the accounts of the sale of those forms. According to the Respondent Management, the Petitioner failed and neglected to submit the accounts. The Petitioner also questioned the Authority of the Vice Principal Mr. Pardeshi, to make such demand of submission of accounts. The Vice Principal thereafter by letter dated 24 April 1996 had again called upon the Petitioner to submit the accounts, but he failed to submit the same. On 2 May 1996 when the Vice Principal of the College enquired about the accounts, he stated "that you are no way concerned with the account work, it's the suspended Principal to whom I am responsible and I will not give you the accounts". On 27 May 1996 the work of selling and distribution of the forms was taken away from the Petitioner and given to another employee.

3 The Honorary General Secretary thereafter issued a show cause notice dated 27 November 1996 wherein it was stated that though the Petitioner was handed over the work of selling and distributing the admission forms and other forms since 1991-1992 upto 1995-1996, he never gave and/or maintained proper accounts in respect of the sale of the said forms nor deposited the cash in the Store Account of the Respondent/College with the Syndicate Bank, Branch Chinchwad, regularly. It was stated that though the Vice Principal by letter dated 24

April 1996 had called upon the Petitioner to furnish accounts, he had failed and neglected to furnish the same or reply to the said letter. It was stated that the said accounts were again inspected by Shri R.M. Mehta, College Office Superintendent, who also found that the accounts were not properly given and there was difference between the cash deposited by the Petitioner with the store accounts and the cash collected by the sale of the forms and from the inspection it was prima faice found that there was misappropriation of Rs.50,267.90 ps. by the Petitioner. The Petitioner was asked to show cause why major penalties should not be imposed on him by conducting necessary enquiry and he was called upon to Reply to the show cause notice.

4 The Petitioner by his letter dated 10 December 1996 replied to the show cause notice, wherein he interalia stated that he had already submitted the accounts of the sale of the forms to the then Accountant Mr. R.M. Mehta and also to the Secretary Mr. Shankarlalji Mutha. It was stated in letter that the post of the Vice Principal itself was not approved by the University and therefore, he was not answerable to the Vice Principal. The Petitioner further stated in his letter that the Respondent/Management was adopting pressure tactics and it was suggested to him by them that he should support their charge against the then Principal Mr. L.B. Survase who was accused of defalcation and misappropriation of an amount of Rs.1,80,000/- and in that event he would be paid an amount of Rs.10,000/-.

5 The Petitioner was thereafter suspended from 2 January 1997 pending further investigation and he was directed to handover the charge to another employee. The Respondent/Management thereafter appointed one Shri M.G. Shende, Advocate as a Inquiry Officer to hold the Departmental Enquiry into the conduct and charges leveled against the Petitioner. A charge-sheet alongwith the statement of allegations and suspension order and relevant documents were sent to the Petitioner on 1 January 1997. In the charge-sheet five charges were leveled against the Petitioner. The same are reproduced hereunder:

“1. Not maintaining and giving the accounts of sale distribution of admission forms, E.B.C. Forms, Examination forms, Commerce Journal etc. since 1991-92 till 1995-96 and not depositing the cash collected regularly in the Store Account of the College with Syndicate Bank as per the instructions given to you by your superiors thereby committing negligence in performing your duties.

2. Giving vague and arrogant replied to the superiors – Vice Principal, not making compliance of work as per the directions-orders of the superiors amounting to act involving willful persistant neglect of duties is come petence, insubordination.

3 Misappropriation of sale/distribution of said forms, cash amount to the tune of Rs.50,267.90 ps. thereby committed criminal offence involving moral turpitude, misappropriation.

4 *Not observing the Code of Conduce prescribed by the Maharashtra Non-Agricultural Universities and Affiliated College Standard Code Rules 1984 have been proved prima facie.*

5 *A statement of allegations on which the charges are based is attached herewith. A list of document and of the witnesses by which each article of charge is proposed to be sustained is also enclosed.”*

6 The Respondent/Management examined three witnesses before the Enquiry Officer:

- i) The Vice Principal Mr. Sundhir C. Pardeshi, the then In-charge Principal;
- ii) Mr. Ravindra M. Mehta, the Office Superintendent who had taken out the extract of the Cash Book and the Statement of forms sold by the Petitioner;
- iii) Mr. Shankarlal J. Mutha, the Honorary General Secretary.

7 In the Affidavit-in-Reply filed on behalf of the Respondent/Management before this Court is interalia stated as follows:

“On 25-1-1997 the enquiry officer has sent the notice to the Petitioner and registered A.D. was returned with remarks that the Petitioner is not claiming or accepting the said envelope. The said envelope is on record at Exh.M-9 dated 9-2-1997. Again on

7-2-1997 the notice was sent to through R.P.A.D. which is exhibited as M-11 on 6-2-1997. The Petitioner written the letter that he will not remain present in the enquiry and the said letter written by the Petitioner is put up on record as Exh.M-12. Ultimately enquiry officer was pleased to pass an order on 28-2-1997 and submitted the report on 16-5-1997. The show cause notice was given to the Petitioner on 13-6-1997 that why he should not be dismissed from service. The said show cause notice of dismissal was received by the Petitioner and he has given the reply on 3-6-1997. The Respondent no.1 was pleased to issue the dismissal order on 17-7-1997 and the said information was given to the Deputy Director of Education, Pune Division.”

8 In the impugned order, it has been recorded by the University and College Tribunal that the packet containing article of charges, other documents and for calling upon him to submit the Written Statement of defence, was sent by the Registered Post and was refused to be accepted by the Petitioner as per the endorsement of the Postman on 10 January 1997. It is further recorded in the impugned order that even Enquiry Officer Shri Shende, Advocate had sent notices to the Petitioner at each and every stage of the inquiry. The Petitioner however refused to appear before the Inquiry Officer on the ground that he was not given copies of the papers.

9 The University & College Tribunal has concluded that the inquiry cannot be said to be an ex-parte inquiry. The University & College Tribunal after examining the material on record in paras 9 to 12 of the impugned order has observed thus:

“9 I shall now take up the evidence of 3 witnesses who were examined before the Inquiry Officer, Principal Mr. Pardeshi and Secretary Mr. Shankarlalji Mutha according to me do not lend direct assistance or assurance to prove the charge of misappropriation of Rs.50,000/- and odd while to prove that charge according to me, the evidence of Mr. Mutha was rightly accepted and acted upon by the Inquiry Officer. The reply dated 10th December, 1996 is the crucial documents. The authorship of the same as that of the Appellant is also not been controverted in this appeal also before me. The delinquent/ appellant therefore, seems to have committed himself in using the insulting language while addressing the post of the Vice Principal in utter enthusiasm of challenging this authority or challenging his existence itself. The very fact of refusal to submit account by questioning his authority would directly cannot causing of insubordination in plain simple language. If the letter is admitted to have been so written as on 10.12.1996. If the letter is admitted to have been so written as on 10.12.1996 by the delinquent, infact there would not be any other need to lead any oral evidence also, since all the contents of that letter would be presumed to have been binding on the delinquent. To my mind, the charge of insubordination was rightly upheld mainly on the basis of contents of this reply as well as on the basis of evidence of Mr. Pardeshi who happened to be Vice Principal at that relevant time.

10 *As far as charge of misappropriation is concerned vis-a-vis a domestic inquiry, I think that the evidence of Mr. Mehta as he has claimed in his deposition to have maintained the accounts pertaining to giving of the forms with particular number to the delinquent receiving back certain blank forms with partial amount of the sale thereby keeping the balance of Rs.50,000/- and odd as shown in the extract at Ex.M-31 is more than satisfactory. Much was addressed before me by Smt. Kaulgekar about the copy of the affidavit filed on record of this appeal also allegedly sworn in by Mr. Mehta himself which was dated 8.1.1998. Admittedly, this copy was produced for the first time in this appeal and it was admittedly not produced before the Inquiry Officer. This affidavit seems to be a common ground of attack collectively made by the management by all the officials including Mr. Mehta with the tactics of use of coercion of pressures, here followed by the management people and that only as a result of that coercion he has deposed in the domestic inquiry even against Mr. Newale. The affidavit's copy would not now serve any purpose since it was necessary for delinquent to file the same before the Inquiry Officer a like the similar copies to the said affidavits having been produced by the other 4 delinquent in their independent domestic inquiry. This filing of the copy before the domestic inquiry alone would have served the purpose or not is an independent issue.*

11 *That apart, the fact remains that the copy of this affidavit in the appeal before this Tribunal does not render any assistance or help to the present Appellant. To my mind*

therefore, the Inquiry Officer is right in holding the charge of misappropriation also to have been so duly established by the department on the basis of deposition of Mr. Mehta supported by the other documentary evidence.”

12 There is no question in the appeal or there is no need for this Tribunal also to go into the question of quantum of punishment inflicted against the Appellant. Once the charge of misappropriation of a sum of Rs.50000/- and odd is brought home light of the delinquent, no other penalty but that of dismissal or termination of services alone can be ultimatum.”

10 The contention on behalf of the Petitioner before this Court that the Respondent/Management ought not to have appointed an Advocate as Enquiry Officer is merely stated to be rejected. Nothing has been pointed out to show that there was a bar in appointing an Advocate as Enquiry Officer. In any event, no such contention has been taken in the Appeal and in this Petition also. The ground in the Petition in this regard appears to be that though the Respondent Management appointed a legal expert, the Petitioner was not given an opportunity to appoint an Advocate to defend his case. The Petitioner in my view has failed and neglected to avail of the opportunities granted to him to defend the disciplinary proceeding against him. It is noticed that the Enquiry Officer had also given several opportunities to the Petitioner to defend the enquiry. The Petitioner was very much aware of the proceedings before the Enquiry Officer and that in the

event of his non-appearance before the Enquiry Officer, the enquiry would be proceeded ex-parte. He chose not to attend the enquiry proceedings. The factual aspects in respect of the charges have remained uncontroverted before the Enquiry Officer for which the Petitioner himself is to blame. The Enquiry Officer has held that the Petitioner guilty of the charges of misappropriation and insubordination. The findings of the Inquiry Committee are upheld by the University and College Tribunal.

11 In **Abha Chawla Mohanty vs. The Oriental Insurance Co. Ltd., 2012 (1) ALL MR 757**, the Division Bench of this Court, following the judgment of the Apex Court in **Ranjan Kumar Mitra vs. Andrew Yale & Co. (1997) 10 SCC 386**, has held that if the delinquent does not participate in the inquiry, it is not open to him to complain about opportunity not being afforded to him in the inquiry.

12 Considering the facts and circumstances of the case, I do not find any illegality and infirmity in the impugned order of the University & College Tribunal to warrant interference. The Writ Petition is dismissed. Rule is discharged. No order as to costs.

(A.A.Sayed, J.)