

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

WRIT PETITION NO.3352 OF 1999

Shri Sambhaji Shivaji Mali)
Adult, Occupation : Nil,)
Residing at : Kore Building,)
near Ram Mandir, Sangli,)
District Sangli, Pin - 416 416.) .. Petitioner

Versus

1. The Honourable Vice Chancellor)
Shivaji University, Vidyanagar,)
Kolhapur 416 004.)

2. The Honourable Secretary)
Latthe Education Society,)
Rajnemi Campus, Timber Area,)
Sangli – 416 416.)

3. The Principal)
Latthe Education Society,)
Ganpatrao Arawade,)
College of Commerce,)
Rajnemi Campus, North Shivajinagar,)
Timber Area, Sangli – 416 416.)

4. The Collector,)
office of the Collectorate)
Sangli – 416 416.)

5. Prof.Milind Warmare,)
1, Shastri Nagar, Dr.Ambedkar Road,)
Sangli – 416 416.)

6. Joint Director of Education)
(Higher Education),)
Maharashtra State, Pune.) .. Respondents

Mr.N.V. Bandiwadekar i/by Mr.G.M. Savagave for the petitioner.
Mr.A.B.Borkar for the respondent no.1.
Mr.T.S.Ingale for the respondent no.3.
Mrs.M.S. Bane and Mrs.Vaishali Nimbalkar, AGP for the respondent nos.4 and 6 - State.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 28th June 2016
PRONOUNCED ON : 31st August 2016

Judgment :-

. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for a writ of certiorari for quashing and setting aside the order and judgment dated 19th April 1999 passed by the learned Presiding Officer, Pune Shivaji University and College Tribunal in Appeal No.38 of 1996 thereby dismissing the appeal filed by the petitioner and seeks writ of mandamus for quashing and setting aside the order dated 27th October 1995 passed by the Tehsildar, Miraj and for other reliefs. Some of the relevant facts for the purpose of deciding this writ petition are as under :-

2. The petitioner belongs to Lingayat Community. The petitioner is M.A.(English) and LL.B.(Special). On 23rd June 1968, the petitioner was appointed as a lecturer in the college run by the respondent no.1 as an open category candidate and was posted at Sangli College, Sangli. On 23rd July 1971, the petitioner was confirmed in the post of lecturer w.e.f. 23rd July 1971. On 30th June 1989, the petitioner was appointed as a Vice Principal in the respondent no.3 college w.e.f. 1st July 1989. On 24th July 1995, the petitioner was promoted as Principal of N.D. Patil Night College of Arts and Commerce, Sangli.

3. On 15th May 1995, the Tehsildar, Miraj issued a caste certificate to the petitioner certifying that the petitioner belonged to Hindu Lingader, Scheduled Caste. On 21st September 1995, the Tehsildar, Miraj issued a notice to the petitioner to remain present on 25th September 1995 for the purpose of enquiry into the complaint received in respect of the said caste certificate dated 15th May 1995 which was issued to the petitioner by the Tehsildar, Miraj. The said complaint was filed by the Phule Ambedkar Shahu Teachers' Association alleging that the petitioner had obtained a false caste certificate.

4. It is the case of the petitioner that though the petitioner received the said notice from Tehsildar, Miraj, on 25th September 1995, the petitioner could not remain present before the Tehsildar for the said enquiry. On 26th September 1995, the Tehsildar issued another notice to the petitioner directing the petitioner to remain present for enquiry on 6th October 1995. In the said notice dated 26th September 1995, the Tehsildar had once again asked the petitioner to produce requisite documents immediately and threatened that in the event of failure on the part of the petitioner to produce the documents, a presumption would be drawn against the petitioner and the petitioner would be prosecuted. On 6th October 1995, the petitioner received the said notice dated 26th September 1995.

5. On 28th September 1995, the petitioner was arrested by the local police and was released on bail on 5th October 1995. On 6th October 1995, the petitioner informed the Tehsildar that he was arrested and the relevant documents were in custody of police and it was therefore

not possible for him to produce those documents before the Tehsildar. The petitioner therefore could not remain present before the Tehsildar on 6th October 1995.

6. On 25th September 1995, the respondent no.2 management issued an order reverting the petitioner from the post of Principal to the post of Lecturer on the ground that several complaints were received by the management against the petitioner regarding his caste certificate and also on the ground that an enquiry in that respect was going on at University level. It is the case of the petitioner that the respondent no.2 management took the said decision as per Statute 196(2)(a) framed by the Shivaji University. It is the case of the petitioner that the said decision was taken by the management without giving an opportunity of hearing to the petitioner and without conducting any enquiry.

7. On 27th October 1995, the Tehsildar issued an order thereby cancelling the caste certificate which was issued to the petitioner based on the complaint made by the said Phule Ambedkar Shahu Teachers' Association. It is the case of the petitioner that copy of the said complaint made by the said Phule Ambedkar Shahu Teachers' Association was not supplied to the petitioner. The Tehsildar passed the said order on 27th October 1995 without giving an opportunity of hearing to the petitioner.

8. On 13th November 1995, the petitioner sent a reply to the Tehsildar contending that the order passed by the Tehsildar thereby canceling the caste certificate was passed behind the back of the petitioner. The petitioner also contended that the petitioner had not

submitted any School Leaving Certificate of the school of which the name was mentioned in the said order while obtaining the caste certificate. The petitioner also made a grievance that a copy of the said complaint made by the said Phule Ambedkar Shahu Teachers' Association had not been supplied to the petitioner.

9. On 13th November 1995, the petitioner also made a complaint to the Sub-Divisional Officer, Miraj against the said order dated 27th October 1995 passed by the Tehsildar. On 27th October 1995, the Management Council passed a Resolution and decided to conduct an enquiry in the matter of caste certificate of the petitioner and in view of the detention of the petitioner by the police, it was decided to constitute a Preliminary Enquiry Committee as per Statute 216(A) and to obtain explanation from the petitioner along with all necessary documents through Head of the Department, G.A. College of Commerce.

10. The respondent no.3 sent a letter dated 2nd November 1995 to the Shivaji University and requested to nominate two persons for constituting a preliminary Enquiry Committee as per Statute 216(A) framed by the Shivaji University. On 5th December 1995, the Shivaji University sent a reply to the management informing that since there was allegation against the petitioner that he had submitted a false caste certificate of Scheduled Caste category for appointment as Principal, the University had appointed a committee. The University informed the management that the University had not approved the decision of the management to revert the petitioner from the post of Principal to his original post as Lecturer as per Statute 196(2)(a). It was stated in the said

letter that the management should have taken action as per Statute 217(A).

11. By the said letter, the University directed the management to submit explanation as to why such action was not taken by the management as per Statute 217(A). The University also informed the management that the management had no authority to conduct the enquiry against the petitioner. It is the case of the management that in view of the said letter dated 5th December 1995, the management did not conduct any enquiry against the petitioner though it had proposed as per Statute 216 (A).

12. On 14th November 1995, the Shivaji University informed the petitioner that the Vice Chancellor had appointed an enquiry committee and had proposed to hold preliminary discussion with the petitioner in the enquiry in respect of his caste certificate submitted by the petitioner and directed the petitioner to remain present for recording his statement before the said committee on 17th November 1995. Pursuant to the said notice, the petitioner appeared before the said enquiry committee. The petitioner was asked two questions and was asked to produce certain documents.

13. On 17th February 1996, the said enquiry committee appointed by the Vice Chancellor of the Shivaji University submitted its report to the Shivaji University. On 7th March 1996, the Management Council of the Shivaji University passed a Resolution. The text of the said resolution is referred to in the letter dated 7th March 1996 addressed by the Shivaji University to the management of the College. By the said

letter, University informed the management that three member committee appointed by the Management Council had submitted its report. The said report was discussed in the meeting of the Management Council held on 7th February 1996. In the said meeting, it was decided that since the petitioner had submitted false documents to obtain caste certificate of Scheduled Caste category and had taken undue advantage of the said caste certificate, the approval given to the petitioner by the Shivaji University vide order dated 15th September 1972 should be immediately withdrawn and the same should be intimated to the petitioner and the Management Council. It is the case of the petitioner that the petitioner was not supplied with a copy of the report of the said three member committee which was submitted to the Management Council of the Shivaji University.

14. On 9th March 1996, the management informed the petitioner that in view of withdrawal of the approval which was granted to the petitioner as teacher/lecturer, the services of the petitioner as teacher had come to an end and the petitioner would be relieved from service w.e.f. 11th March 1996. On 9th April 1996, the petitioner filed an appeal (38 of 1996) under Section 59(1) of the Maharashtra Universities Act, 1994 impugning the said order of termination dated 9th March 1996. In the said appeal filed by the petitioner before the University and College tribunal, the Shivaji University filed an application raising a preliminary objection about maintainability of the said appeal filed by the petitioner.

15. On 26th August 1996, the University and College tribunal rejected the said application filed by the Shivaji University. Being aggrieved by the said order dated 26th August 1996, Shivaji University

filed a writ petition (5153 of 1996) in this Court. By an order dated 15th October 1996, Division Bench of this Court rejected the said writ petition and granted liberty to the Shivaji University to approach this Court if so advised but after the said appeal filed by the petitioner was decided. The said Shivaji University filed written statement on 7th August 1996. By an order and judgment dated 19th April 1999, the University and College tribunal dismissed the said appeal (38 of 1996) filed by the petitioner on various grounds. This order and judgment of the University and College tribunal dated 19th April 1999 has been impugned by the petitioner in this writ petition filed under Articles 226 and 227 of the Constitution of India on various grounds.

16. Mr. Bandiwadekar, learned counsel for the petitioner submits that the learned Tehsildar had no power to cancel the caste certificate of the petitioner. Learned Tehsildar could not review his own order. He submits that the Tehsildar had passed the said order thereby canceling the caste certificate which was issued to the petitioner, without giving him proper opportunity of being heard. By a notice dated 21st September 1995, Tehsildar had called upon the petitioner to remain present on 25th September 1995 for the enquiry. The said notice was received by the petitioner belatedly. The notice dated 26th September 1995 was received by the petitioner on 6th October 1995. The petitioner however was arrested by the police on 28th September 1995 in view of the complaint made by the Phule Ambedkar Shahu Teachers' Association. The petitioner was released on bail only on 5th October 1995. He submits that the petitioner had informed the Tehsildar on 6th October 1995 that all the documents were in custody of the police and thus the petitioner would not be able to produce those documents. He submits that the learned

Tehsildar did not give any proper opportunity to the petitioner to produce those documents subsequently and passed the order of cancellation of the earlier caste certificate.

17. It is the case of the petitioner that the entire action initiated by the Shivaji University based on the cancellation of the caste certificate by the Tehsildar was thus totally illegal and without authority of law. The petitioner was not supplied with a copy of any complaint made by the said Phule Ambedkar Shahu Teachers' Association. The Tehsildar appears to have considered the said complaint behind the back of the petitioner and passed the impugned order canceling the caste certificate.

18. It is submitted by the learned counsel for the petitioner that the petitioner was initially appointed as a lecturer and his appointment was in open category. He submits that the allegation made by the management as well as the Shivaji University was that while seeking promotion as a Principal, the petitioner had submitted a caste certificate showing the petitioner as Scheduled Caste which caste certificate was subsequently cancelled by the Tehsildar. He submits that services of the petitioner were terminated by the management without holding any enquiry against the petitioner and in violation of the provisions of the Statutes framed by the Shivaji University.

19. In support of this submission, learned counsel for the petitioner invited my attention to Statutes 212 and 216(A). He submits that the management could not have terminated the services of the petitioner without conducting a full-fledged enquiry and could not have inflicted any major penalty. Reliance is also placed on Statute

211(3) of the said Act. He submits that admittedly the management had passed a resolution proposing to conduct an enquiry against the petitioner under Statute 216(A), however, no such enquiry was admittedly conducted by the management. Though the management had rightly proposed to conduct an enquiry under Statute 216(A), in view of the illegal instructions issued by the Shivaji University, the management did not conduct the said enquiry under Statute 216(A) though was required to be held before inflicting any major penalty upon the petitioner. The letter sent by the Shivaji University disapproving the reversal of the petitioner made by the management was not sent by the management to the petitioner.

20. It is submitted that the management admittedly did not challenge the direction issued by the Shivaji University not to conduct any enquiry against the petitioner under Statute 216(A) and disapproving the action of the management in reverting the petitioner to the post of Lecturer from the post of Principal. He invited my attention to Statute 216(A) of the said Act and would submit that the enquiry against the Principal of College is mandatory under the said provision which has to be a full-fledged departmental enquiry in accordance with the procedure prescribed therein. He submits that neither the Shivaji University nor the management had followed any requisite procedure under the provisions of the said Maharashtra Universities Act, 1994 and under the Statutes framed by the Shivaji University. It is submitted by the learned counsel that though there was a specific direction issued by the Shivaji University to conduct an enquiry against the petitioner under Statute 217(A), admittedly the management did not conduct any such enquiry even under the said provisions.

21. Learned counsel for the petitioner invited my attention to various provisions of the Maharashtra Universities Act, 1994 and would submit that the Shivaji University had no power to make any enquiry regarding validity of the caste certificate issued by the Tehsildar in favour of the petitioner. He submits that the petitioner was only called upon by the said enquiry committee to give certain explanation regarding caste certificate and to produce documents. The petitioner was never informed about the nature and purpose of such enquiry against the petitioner. He submits that merely because the petitioner had appeared before the said enquiry committee pursuant to the notice issued to him for a limited purpose, participation of the petitioner for such limited purpose would not confer jurisdiction on the Shivaji University.

22. It is submitted by the learned counsel for the petitioner that the university did not give any notice informing the petitioner that the university had proposed to conduct an enquiry for the purposes of taking a decision of the termination of the services of the petitioner. The petitioner was not even informed before constitution of an enquiry committee by the university. The university had recognized the petitioner as Principal but had cancelled the approval of the petitioner to the post of Lecturer which was granted in the year 1972. He submits that the university could not cancel the approval of the petitioner as a Lecturer. The petitioner had not submitted any caste certificate while applying for the post of Lecturer. Similarly the management also could not terminate the services of the petitioner as a Lecturer on the ground that the petitioner had alleged to have submitted a false caste certificate while applying for the post of Principal.

23. Learned counsel appearing for the petitioner placed reliance on the judgment of the Supreme Court in case of ***Kumari Madhuri Patil vs. Additional Commissioner (1994) 6 SCC 241***, and more particularly on pages 103 to 106. He submits that the university had appointed three members committee for the purpose of enquiry after the judgment of the Supreme Court in case of ***Kumari Madhuri (supra)*** was already pronounced. The appointment of the enquiry committee by the university was thus illegal and contrary to the said judgment of the Supreme Court.

24. It is submitted by the learned counsel for the petitioner that the learned Tehsildar while recalling his order granting the caste certificate had relied upon the alleged school leaving certificate alleged to have been issued by a school. The petitioner had never attended the said school nor had produced the said alleged school leaving certificate before the Tehsildar. Without giving a proper opportunity to the petitioner, the Tehsildar relied upon the said school leaving certificate and illegally recalled his earlier order granting caste certificate in favour of the petitioner. The petitioner had accordingly disputed the said alleged school leaving certificate relied upon by the Tehsildar immediately upon the petitioner having come to know about the said order passed by the Tehsildar.

25. It is submitted by the learned counsel for the petitioner that the Statute 196(2)(a) of Statute does not provide for reversion of any employee. The reversion of the petitioner from the post of Principal to Lecturer was not a reversion simplicitor but was punishment without conducting an enquiry which action was totally contrary to the said provision.

26. It is submitted by the learned counsel for the petitioner that the management has terminated the services of the petitioner based on the illegal order passed by the university by which the university had cancelled the approval granted to the petitioner. He submits that the management did not challenge the earlier order passed by the university directing the management not to conduct any enquiry against the petitioner under section 216(A) of the Maharashtra Universities Act, 1994 though the management had initially proposed to conduct a full fledged enquiry against the petitioner under the said provision.

27. Learned counsel appearing for the petitioner placed reliance on the judgment of this Court in case of ***Daulat Dhana Mali vs. State of Maharashtra & Ors. (1994) Mh.L.J. 1710*** and in particular paragraphs 2 and 5 and would submit that the issue of caste certificate can be considered only by the Caste Scrutiny Committee and not by the Tehsildar or by the university. He submits that the enquiry conducted by the university in the validity of the caste certificate itself was totally illegal and contrary to the law laid down by this Court in case of ***Daulat Dhana Mali (supra)***.

28. Learned counsel for the petitioner placed reliance on the judgment of the Division Bench of this Court in case of ***Miss Priti Prataprao Shinde vs. The State of Maharashtra & Ors.*** delivered on 10th December, 2007 in Writ Petition No.2359 of 2007 and in particular paragraph 2 in support of the submission that once the university had already granted approval to the appointment of the petitioner after ascertaining the facts from the management, there could be no

justification for cancelling the approval without issuing any notice to the petitioner. Learned counsel for the petitioner relied upon the said judgment in support of his submission that the notice was required to be given by the university thereby informing the petitioner and the management the reasons as to why the university wanted to recall its approval. He submits that similarly the Tehsildar also ought to have given appropriate notice to the petitioner informing the petitioner about the proposed action of the Teshildar to recall the earlier caste certificate granted in favour of the petitioner.

29. Learned counsel for the petitioner placed reliance on the judgment of the Division Bench of this Court in case of ***Satpute Vidya Machindra vs. The state of Maharashtra & Ors.*** delivered on 2nd August, 2013 in Writ Petition No.3811 of 2013 and other companion matter and in particular paragraphs 2 and 3 in support of the submission that the learned Tehsildar had no power to review his own order. The university also could not have reviewed its approval granted to the appointment of the petitioner. He submits that admittedly no show cause notice was issued by the university to the petitioner to show cause as to why the approval to the appointment of the petitioner granted by the university was required to be recalled. The entire action on the part of the university as well as the management is in violation of principles of natural justice.

30. Learned counsel for the petitioner invited my attention to the prayers in the appeal filed by the petitioner before the tribunal and also the order passed by the tribunal. He submits that the tribunal did not

frame any issue as to whether the university could cancel the approval already granted and if could cancel whether any requisite procedure for cancellation of the approval was followed by the university. Reliance is also placed on sections 58 and 59 of the Maharashtra Universities Act, 1994.

31. Learned counsel for the petitioner placed reliance on sections 8 and 9 of the MEPS Act and would submit that the said two provisions were in pari materia with sections 58 and 59 of the Maharashtra Universities Act, 1994. Learned counsel placed reliance on the judgment of this Court in case of **Arti Vithalrao Warkhede vs. Education Officer (Secondary), Zilla Parishad, Wardha & Ors., (2011) 1 Mh.L.J. 638** and in particular paragraphs 2 and 6. It is submitted by the learned counsel for the petitioner that it is not in dispute that on 25th November, 2014, the petitioner has been already acquitted by the learned Magistrate, Islampur in the criminal proceedings filed on the basis of the complaint made by the Teachers' Association. He submits that there were no allegations against the petitioner that he was appointed as a Lecturer in open category on the ground of any alleged fraud. The university had already granted approval to the appointment of the petitioner as a Lecturer. He submits that the caste certificate produced by the petitioner did not show that any documents were produced by the petitioner for obtaining such caste certificate as referred in the impugned order passed by the learned Tehsildar.

32. It is submitted by the learned counsel for the petitioner that neither any directions were given by the university to the management to

terminate the services of the petitioner nor such directions could be given. He submits that only after conducting proper enquiry in accordance with law, the management could have terminated the services of the petitioner and that also as a Principal and not as a Lecturer. He submit that the university could not have cancelled the approval granted to the petitioner as as Lecturer after 24 years. He submits that even if the university could have conducted an enquiry against the petitioner, the said enquiry could have conducted only in respect of the appointment of the petitioner as a Principal and not as a Lecturer. He submits that though this issue was raised by the petitioner specifically before the tribunal, the tribunal has not dealt with this crucial issue at all in the impugned order.

33. Learned counsel for the petitioner invited my attention to the statutory rules framed by Shivaji University which provided for a mandatory procedure for conducting a full fledged enquiry before inflicting any major penalty. He submits that though the university as well as the management had taken a decision to terminate the services of the petitioner which punishment was major punishment, the university as well as the management dispensed with the regular enquiry before initiating any such action. He submits that the conduct of the regular enquiry cannot be dispensed with. Reliance is placed on Statute 214 and it is submitted that power to inflict penalty vests on the Governing Body of the Affiliated College recognized with the university.

34. It is submitted that only the management of the college could take action against the petitioner after conducting appropriate regular enquiry contemplated under the Maharashtra Universities Act, 1994 and

Statutory Rules framed under the said Act and the Statutes. Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in case of ***Ramana Dayaram Shetty vs. International Airport Authority of India & Ors., (1979) 3 SCC 489*** and in particular paragraphs 10 to 12 in support of the submission that every action by the executive government must be informed with reasons and should be free from arbitrariness.

35. Mr. Borkar, learned counsel for the university submits that the Tehsildar being Quasi and Judicial Authority had inherent powers to recall his own order. He submits that the findings recorded by the Tehsildar and the order passed by him cancelling the caste certificate was admittedly not stayed or challenged when the management council had passed an order. He submits that the university had passed a resolution to conduct an enquiry for looking into the conduct of the petitioner while obtaining a false caste certificate and submitting such false certificate while applying to the post of Principal. He placed reliance on section 42 of the Maharashtra Universities Act, 1994. He submits that the Statutes framed by Shivaji University were continued to be in force even after enactment of the Maharashtra Universities Act, 1994 in view of the specific provision made under the said Act. Reliance is placed on Statute 195 of the Statutes framed by Shivaji University which provides for mode of recruitment of teachers and principal.

36. Learned counsel for the university placed reliance on the judgment of the Division Bench of this Court in case of ***Sunil Gayaprasad Mishra vs. Rashtra Sant Tukdoji Maharaj University &***

Ors, 2012(6) Bom.C.R. 37 and in particular paragraphs 9 to 12, 39, 42 to 49, 52, 55, 57, 58, 61 to 63 and 66. He submits that the university has ample powers to cancel the approval granted to any of the Lecturer to whom the university had granted approval earlier if any fraud is noticed by the university committed by such Lecturer or any member of the staff during his recruitment or even thereafter.

37. Learned counsel for the University submits that the petitioner was admittedly charged for obtaining caste certificate based on forged document. The petitioner was a resident of Village Valve, District Sangli. He had however obtained caste certificate from the Tehsildar, Miraj. He submits that the petitioner was appointed as a Lecturer in the year 1968 and was granted approval in the year 1972. Till 1994, the petitioner did not claim that he belonged to Schedule Caste. He submits that the School Leaving Certificate produced before the Tehsildar by the petitioner was falsified by the letter of the Head Master of the said school stating that no such School Leaving Certificate was issued by the said school to the petitioner.

38. It is submitted that the petitioner had disowned the said School Leaving Certificate after obtaining the caste certificate from the Tehsildar. He submits that the petitioner was beneficiary of the said caste certificate and thus could not be allowed to disown the said School Leaving Certificate produced before the Tehsildar when the caste certificate was obtained by the petitioner. It is submitted that another teacher of the same school had made a statement that he had forged the School Leaving Certificate and had sold the said certificate to the petitioner. It is submitted by the learned counsel that merely because the

petitioner was acquitted in the criminal proceedings, the same was not relevant for the purpose of taking any decision in the enquiry proceedings which are in the nature of civil proceedings. He submits that the nature of the evidence in the criminal proceedings is different than the nature of the enquiry in the enquiry proceedings.

39. It is submitted by the learned counsel for the University that cancellation of the approval by the University which was granted to the petitioner earlier was based on cancellation of the caste certificate issued by the Tehsildar. He submits that the petitioner was fully aware that the caste certificate issued to the petitioner was already cancelled by the Tehsildar, Miraj. The petitioner was also aware about the factum of enquiry being conducted by the University against the petitioner. He submits that the enquiry committee had rightly considered the order of Tehsildar as well as the complaint filed by the Phule Ambedkar Shahu Teachers' Association and other material. He submits that the petitioner had not challenged the order passed by the Tehsildar, Miraj cancelling the caste certificate.

40. In so far as the issue raised by the petitioner that the entire procedure was in violation of the principles of natural justice is concerned, it is submitted by the learned counsel for the University that since no prejudice of whatever nature was caused to the petitioner as canvassed, the action taken by the University cannot be questioned or set aside. In support of this submission, learned counsel for the University placed reliance on the judgment of the Supreme Court in the case of ***Dharampal Satyapal Limited Vs. Deputy Commissioner of Central***

Excise, Gauhati and Ors., reported in **(2015) 8 SCC 519** and in particular paragraph 45 thereof.

41. It is submitted by the learned counsel for the University that in view of the fraudulent conduct of the petitioner in obtaining a caste certificate by producing fabricated documents before the Tehsildar, the petitioner was not even otherwise entitled to be granted any relief by the Tribunal or by this Court. In support of this submission, learned counsel placed reliance on the judgment of this Court in the case of ***Seema Dattatraya Phuge Vs. Municipal Commissioner***, reported in **2013 (5) Mh.L.J. 814** and in particular paragraphs 14 to 16 and 18 to 20 thereof.

42. Mr.Ingale, learned counsel for the respondent no.3, the Principal of the College invited my attention to the prayers in the appeal filed by the petitioner before the University and College Tribunal. He submits that the petitioner had not challenged the order of Tehsildar before the University tribunal. He submits that the petitioner thus cannot be allowed to challenge the order of the learned Tehsildar cancelling the caste certificate for the first time in this writ petition. He submits that in any event, the said prayers could not have been made in this petition under Articles 226 and 227 of the Constitution of India before the learned Single Judge. He submits that the petitioner had already filed his representation before the Deputy Collector.

43. In so far as the submission of the learned counsel for the petitioner that the management could not have reverted the petitioner

from the post of Principal to the post of Lecturer is concerned, it is submitted by the learned counsel for the respondent no.3 that it is a matter on record that the petitioner had accepted the order of reversion from the post of Principal to the post of Lecturer and had joined the said post of Lecturer. Upon such acceptance of the order, the petitioner thus cannot be allowed to challenge the said order of reversion.

44. In so far as the issue raised by the petitioner that the management could not have terminated the services of the petitioner without conducting any enquiry under Statute 216(A) framed by the Shivaji University against the petitioner is concerned, learned counsel for the management invited my attention to the resolution passed by the Managing Committee of the respondent no.3 dated 27th October 1995 proposing to conduct a preliminary enquiry about the alleged misconduct of the petitioner under Statute 216(A).

45. It is submitted that the management could not have challenged the said directives issued by the University and thus did not conduct any enquiry under Statute 216(A) though had proposed the same by passing an appropriate resolution in that regard.

46. Learned counsel appearing for the management placed reliance on Section 195(3) of the Maharashtra Universities Act, 1994 which prescribes the procedure for mode of recruitment to the post of Lecturer. He submits that all such appointments made by the college are subject to the approval of the Vice Chancellor of the Shivaji University. He submits that Section 196 (3) of the said Act applies to the appointment of the petitioner. He submits that since the University

had granted approval to the appointment of the petitioner and since University had withdrawn the said approval granted earlier to the petitioner, the appointment of the petitioner as a Principal or as a Lecturer could not have been continued by the management of the college. He submits that the appointment of the petitioner was made by the management only after approval by the selection committee of the Shivaji University was granted.

47. It is submitted that the appointment as a Lecturer can be made only on the recommendation of the selection committee and approved by the Vice Chancellor. It is submitted that an independent enquiry was thus not necessary in this matter. It is submitted by the learned counsel that from the date of appointment of the petitioner as a Lecturer in the college run by the respondent no.3 till the post of Principal was advertised by the respondent nos.2 and 3, till 1995, the petitioner did not apply for change of record regarding caste mentioned on record of the respondent nos.2 and 3. He submits that admittedly the petitioner was appointed in the post reserved for open category and he belonged to the said category. It is submitted that admittedly the post of Principal was reserved for a Scheduled Caster candidate. The petitioner had obtained a false caste certificate from Special Executive Magistrate, Nagpur though he was a resident of Sangli who was not authorized to issue such caste certificate.

48. It is submitted by the learned counsel that though the selection committee had asked the petitioner to obtain caste certificate from Tehsildar, Islampur, the petitioner obtained such caste certificate

from Tehsildar, Miraj. He submits that the petitioner had submitted two forged documents i.e. one School Leaving Certificate obtained from Vidya Mandir High School and Junior College at Islampur and another is the caste certificate obtained from Police Patil of his village Dhavali, Talathi of Dhavali showing that he belonged to Hindu Lingader (Scheduled Caste). He submits that learned Tehsildar, Miraj on the basis of the complaint filed by the Phule Ambedkar Shahu Teachers' Association had rightly cancelled the caste certificate obtained by the petitioner on producing the forged documents. He submits that even the said caste certificate was issued on the condition that if any false information was given by the person in obtaining caste certificate, the said caste certificate could be cancelled and a criminal action could be initiated against such person.

49. Learned counsel for the management placed reliance on the approval letter dated 21st July 1995 issued by the Shivaji University to the management stating that if any complaint was received in respect of the said approval, the said approval would be cancelled and withdrawn. Learned counsel for the management placed reliance on the judgment of the Division Bench of this Court in the case of ***Sunil Gayaprasad Mishra Vs. Rashtra Sant Tukdoji Maharaj University***, reported in **2012 (6) Bom.C.R. 37**. Learned counsel for the management placed reliance on Section 2(34) of the Maharashtra Universities Act, 1994 which provides for definition of “teacher” which would mean the full time approved Professor, Associate Professor, Assistant Professor, Reader, Lecturer, Librarian (Principal, Deputy or Assistant Librarian and Documentation Officer in the University and College Librarian) Director

or Instructor of Physical Education in any university department, conducted, affiliated or antonymous college, antonymous institution or department or recognised institution in the university.

50. It is submitted that mere approval granted to the appointment of the petitioner as a teacher by the Shivaji University would not give him any unfettered right. It is submitted by the learned counsel that such approval granted by the Vice Chancellor can be withdrawn by the Shivaji University if it is found that such teacher had committed a fraud in obtaining such approval from the University. He submits that if such approval granted by the Shivaji University is ultimately withdrawn, such teacher ceased to be a teacher and thus no enquiry was required to be initiated against an employee who ceased to be an employee. It is submitted by the learned counsel that Shivaji University had withdrawn the approval granted to the appointment of the petitioner and that the management has not terminated the services of the petitioner but had relieved him from service.

51. It is submitted by the learned counsel that merely because the petitioner was acquitted in the criminal proceedings, such employee is not absolved in the disciplinary proceedings. In support of this submission, learned counsel for the management placed reliance on the judgment of the Calcutta High Court in the case of **Ajit Kumar Nag Vs. General Manager (PJ), Indian Oil Corporation, Ltd. & Ors.**, reported in **2004 (4) L.L.N. 512** and more particularly paragraph 24 thereof. Reliance is also placed on the judgment of the Madras High Court in the case of **Joint Director of School Education (Personnel), Chennai Vs. N. Venugopal and Registrar, Tamil Nadu Administrative**

Tribunal, Chennai, reported in **2006 (2) L.L.N. 281** and in particular paragraph 14 thereof.

52. Learned counsel for the management placed reliance on the judgment of the Supreme Court in the case of **Lalit Popli Vs. Canara Bank & Ors.**, reported in **(2003) 3 SCC 583** and in particular paragraph 16 in support of the submission that approach and objective in criminal proceedings and disciplinary proceedings are altogether distinct and different. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different.

53. Mr.Bandiwadekar, learned counsel for the petitioner in rejoinder to the submissions made by the learned counsel for the management submits that no affidavit-in-reply has been admittedly filed by the college and the management in these proceedings. The letter dated 21st July 1995 relied upon by the learned counsel for the management was not part of the record.

54. In so far as the caste certificate issued by the Special Executive Magistrate, Nagpur is concerned, it is submitted that the said caste certificate was not subject matter of any enquiry by any authority. The petitioner had produced the relevant certificate in the year 1994 which was accepted by the College and based on such certificate, the management had made entry in their record. The management did not raise any objection about such certificate before appointment of the petitioner as a Principal. He submits that the caste certificate dated 15th May 1995 does not refer to any document alleged to have been submitted by the petitioner before the learned Tehsildar viz. The School Leaving

Certificate alleged to have been issued by the Vidya Mandir High School and Junior College, Islampur which school was not attended by the petitioner. He submits that the petitioner has disputed that the petitioner had produced any such School Leaving Certificate alleged to have been issued by the Vidya Mandir High School and Junior College, Islampur.

55. Learned counsel invited my attention to the finding recorded by the University and College Tribunal holding that at that stage, one could not say that the petitioner herein had forged the said School Leaving Certificate alleged to have been issued by the Vidya Mandir High School and Junior College, Islampur. He submits that it is thus clear that on the basis of a finding alleged to have been rendered by the enquiry committee appointed by the Shivaji University that though the petitioner had forged the said School Leaving Certificate, the approval already granted to the appointment of the petitioner could not have been recalled by the Shivaji University, the fact remains that the petitioner was already acquitted in the said criminal proceedings.

56. Learned counsel appearing for the petitioner submits that there is no dispute about the proposition that the nature of the enquiry in the criminal proceedings and in the departmental proceedings is different. He submits that in the departmental enquiry, the matter is decided on the basis of preponderance of probabilities. However, since no departmental enquiry was held by the management in this case, admittedly no action of termination or reversion could be taken by the management against the petitioner. He submits that disciplinary action against the petitioner could be taken only by the management and not

by the Shivaji University. It is submitted that the enquiry committee appointed by the Shivaji University could not have held any disciplinary enquiry proceedings nor held any such disciplinary enquiry against the petitioner.

57. In so far as the submission made by the learned counsel for the Shivaji University is concerned, Mr. Bandiwadekar, learned counsel for the petitioner in rejoinder submits that admittedly no copy of the enquiry report submitted by the enquiry committee appointed by the Shivaji University was served upon the petitioner before taking any action against the petitioner. No such enquiry committee report thus could be relied upon by the Shivaji University before cancelling the approval granted to the appointment of the petitioner. He submits that the Shivaji University could not point out before the University and College Tribunal that under which provision of the Maharashtra Universities Act, 1994, the Shivaji University had appointed such enquiry committee for considering the complaint made by the Phule Ambedkar Shahu Teachers' Association and for the purpose of withdrawal of the approval granted to the appointment of the petitioner.

58. In his alternate submission, it is submitted by the learned counsel for the petitioner that the said fact finding enquiry committee appointed by the Shivaji University alleged to have visited the Vidya Mandir High School and Junior College, Islampur and had alleged to have collected the evidence from the said school to ascertain whether the said School Leaving Certificate alleged to have been submitted by the petitioner was issued by the said school or not. However, no such material collected by the said fact finding enquiry committee was

admittedly furnished to the petitioner. No opportunity including right to cross examine was given to the petitioner to deal with such material alleged to have been collected by the said committee behind the back of the petitioner.

59. It is submitted that the entire enquiry proceedings initiated by the Shivaji University were not only without jurisdiction but the same were in violation of the principles of natural justice. He submits that since the criminal complaint was already pending at the material time in which the finding on the allegation of fabrication could be rendered, the enquiry committee could not have taken the task of rendering such finding on fabrication and that also without giving any opportunity of being heard to the petitioner. He submits that in any event, the scope of such enquiry was very limited. Enquiry committee had to verify the authenticity of the cast certificate submitted by the petitioner. There was no enquiry contemplated for withdrawal of approval granted to the appointment of the petitioner.

60. It is submitted by the learned counsel for the petitioner that a perusal of the said report of the enquiry committee now placed on record also indicates that there was difference of opinion between the majority of the members of the enquiry committee and the minority member. The Shivaji University had produced the full text of the said report of the enquiry committee before the University and College Tribunal. Learned counsel for the petitioner placed reliance on Statute 195 framed by the Shivaji University and more particularly clauses 'D' and 'E' and would submit that under the said statute, there was no provision conferring power on the University to cancel the approval

already granted. There was only a procedure for pre-appointment approval by the University. Post appointment approval was provided only for the purpose of change in staff every year.

61. Learned counsel for the petitioner distinguishes the judgment of the Division Bench of this Court in the case of Sunny ***Sunil Gayaprasad Mishra (supra)*** on the ground that in the said matter, employee had challenged the order passed by the Vice Chancellor of withdrawing and cancelling the approval granted to the appointment of the said employee. The employee in that matter was prosecuted in a criminal case and was convicted. In appeal filed by the employee, the said order of conviction was partly modified. One of the punishment awarded was confirmed. The appointment granted to the employee was ad-hoc appointment and not permanent. Show cause notice was issued to the said employee calling upon him to show cause as to why his approval should not be withdrawn. It is submitted that in this case, the petitioner was acquitted when the order was passed by the University. No show cause notice was issued to the petitioner as to why the approval granted by the University should not be cancelled. No enquiry for cancellation of the appointment of the petitioner was conducted. No order was passed by the Vice Chancellor in this case. The order was passed based on the resolution passed by the Management Council of the University. The directions were issued by the Chancellor in the case before the Division Bench. However, no such directions were issued by the Chancellor or Vice Chancellor in this case.

62. Learned counsel for the petitioner placed reliance on Section 9 and 10 of the Maharashtra Universities Act, 1994 and would

submit that the powers of the Chancellor and other Officers of the University described in those two provisions do not include any power to revoke the approval to the appointment already granted to any of the employees. Reliance is also placed on Section 14 of the Maharashtra Universities Act, 1994 which provides for powers and duties of the Vice Chancellor, Section 24 which provides for authorities of the University and Section 28 which provides for powers and duties of the Management Council. He submits that the Vice Chancellor has not passed any order of withdrawal of the appointment of the petitioner. No notice had been given by the Vice Chancellor. No action has been taken by the Vice Chancellor in this case. The powers of the Management Council are not at par with the powers of the Vice Chancellor. He submits that the post of the Principal is admittedly kept vacant by the respondent nos.2 and 3 after termination of the petitioner from the said post.

63. It is submitted by the learned counsel for the petitioner on instructions that if the impugned order passed by the University and College Tribunal is set aside, the petitioner will not claim any back wages which the petitioner is otherwise entitled to from the date of termination till his superannuation i.e. 31st December 2004. The petitioner, however, shall be granted notional benefit including the pension which shall be fixed on such notional benefit. He submits that the petitioner would be entitled to pension from 1st January 2005 on the basis of the entire period of service to be computed till 31st December 2004. Learned counsel placed reliance on Statute 217(4) which provides for an action which can be taken by the University on conviction or acquittal

of an employee. He submits that the action taken by the University is much beyond the action permissible under the provision against the petitioner. Learned counsel appearing for the petitioner distinguishes the judgments relied upon by the learned counsel for the management as well as the Shivaji University on the ground that none of those judgments were applicable to the facts of this case and clearly distinguishable in the facts of this case.

64. Mr.Borkar, learned counsel appearing for the Shivaji University produced a portion of the enquiry committee report which was submitted by the enquiry committee before the University and College Tribunal. He submits that the said committee was constituted as per the order passed by the Vice Chancellor. He submits that in the said report, the committee had considered the complaint received from the Phule Ambedkar Shahu Teachers' Association and various other facts which were brought to the notice of the enquiry committee. The enquiry committee recommended the action against the petitioner which was also based on the order passed by the Tehsildar cancelling the earlier caste certificate issued in favour of the petitioner. He submits that there was no difference of opinion amongst the members of the enquiry committee on merits of the enquiry.

65. Mr.Bandiwadekar, learned counsel appearing for the petitioner, however, submits that in the said enquiry committee report, there was a difference of opinion between the members of the enquiry committee so also on the conclusion drawn by the enquiry committee. He submits that in any event, copy of such enquiry committee report was not furnished to the petitioner.

REASONS AND CONCLUSIONS :-

66. The question that arises for consideration of this Court is :

(a) whether the Tehsildar had powers to recall his earlier order issuing caste certificate in favour of the petitioner under any of the provisions of law and if he had any such power, whether principles of natural justice was followed by him while cancelling the earlier order of issuance of caste certificate.

(b) Whether the University could have conducted any enquiry to decide the validity of the caste certificate submitted by the petitioner and could have recalled the approval granted to the appointment of the petitioner as a Lecturer in English though the allegations against the petitioner was that he had submitted a false caste certificate while seeking an appointment to the post of Principal in the college.

(c) Whether an appropriate action against the petitioner could have taken for termination of his services only by the management after conducting the full fledged enquiry under Statutes 216(A) or 217(A) of the statutes framed by Shivaji University.

(d) Whether Shivaji University ought to have informed the petitioner by notice, the purpose and the nature of enquiry proposed to be conducted by the University against the petitioner and if not informed about the nature and purpose of the enquiry, an action of termination of services of the petitioner could be considered as illegal being in violation of principles of natural justice rightly taken by the University against the petitioner.

67. A perusal of the order passed by the tribunal indicates that the tribunal has held that it was an admitted fact that the petitioner

showed his caste as Hindu Mali-Lingayat when he was serving as a teacher on the date of confirmation of his services with effect from 23rd July, 1971 till 4th April, 1994. The petitioner herein had produced a caste certificate dated 24th March, 1994 issued by the Special Execution Magistrate, Nagpur before the Principal, G.A. College of Commerce, Sangli and accordingly an entry in his service book was made by the Principal on 4th April, 1994 entering the caste of the petitioner as Hindu Lingader which is recognized as scheduled caste. The tribunal also observed that it was an admitted fact that the petitioner had studied in Zilla Parishad School, Dhavali, Taluka Walwa, District Sangli upto 7th standard and his caste was shown as Hindu Lingayat in the school leaving certificate issued by the said school.

68. It is held that the petitioner had not disputed that his caste was shown as Hindu Lingayat in the said school leaving certificate. It is held that the the petitioner for the first time had obtained the certificate showing the change in his caste certificate from Hindu Lingayat to Hindu Lingader by obtaining a caste certificate from Dr.Padole, Special Executive Magistrate, Nagpur on 24th March, 1994 and produced the same before the college and got his caste entered in the service book maintained by the college from Hindu Mali to Hindu Lingader on 4th April, 1994.

69. In the impugned order, the tribunal held that it was clear from the book published by the Government of Maharashtra that Hindu Lingayat caste was from open category and Hindu Lingayat was schedule caste category, whereas the person belonging to Hindu Lingader

belonging to the scheduled caste category. The petitioner however, had produced a letter from the Joint Director, Social Welfare Department to the Desk Officer of Social Welfare, Cultural & Sports Department, Mantralay, Mumbai in which it was stated that the caste Lingader and Lingayat were the same. The tribunal held that the said letter produced by the petitioner from the Joint Director, Social Welfare Department had no statutory force and thus no reliance thereon could be placed by the parties including the tribunal. Based on this document, the tribunal has rendered a finding that the petitioner herein was Hindu Lingayat and belonging to open category and was not scheduled caste candidate.

70. Insofar as the order passed by the Tehsildar on 27th October, 1995, cancelling the earlier caste certificate issued by him on 15th May, 1995 in favour of the petitioner declaring the petitioner as if he belonging to Hindu Lingader is concerned, it is held by the tribunal that the caste certificate issued by the Tehsildar on 15th May, 1995 showed that the Tehsildar, Miraj had relied upon the certificate given by the Village Officer, Sangli dated 24th July, 1993 and the extract of service book of the petitioner and the certificate about the caste of the son of the petitioner dated 25th July, 1973 and school leaving certificate of the petitioner. It is held by the tribunal that Dr.Padole, Special Executive Magistrate, Nagpur, who had issued a caste certificate to the petitioner on 24th March, 1994, had no authority to issue such caste certificate.

71. Reliance is placed on section 21 of the Code of Criminal Procedure and it is held that the caste certificate issued by the Special Executive Magistrate appointed under section 21 of the Code of Criminal

Procedure should not be treated as valid for the purpose of recruitment. The tribunal held that the entry changed of the caste of the petitioner from Hindu Lingayat to Hindu Lingader was illegal. The tribunal held that the petitioner did not give any reason as to why he had obtained the certificate from Special Executive Magistrate, Nagpur when he was the resident of Sangli District. The petitioner could not produce his school leaving certificate from Zilla Parishad School, Dhavali and from Karmaveer Bhaurao Patil Vidyalaya, Bagani, Taluka Walwa, in which the caste of the petitioner was shown as Hindu Lingayat.

72. A perusal of the order passed by the Tribunal indicates that the tribunal has held that the post of Principal in N.D. Patil Night College, Sangli was reserved for scheduled caste category. The petitioner had not claimed any facility available to the scheduled caste candidate during his service till the post of Principal was advertised as reserved for scheduled caste. The petitioner had no caste certificate from the competent authority showing that he was from scheduled caste category till he gave his interview before the duly constituted selection committee. It is held that the petitioner started claiming himself as scheduled caste candidate in order to get the post of Principal and therefore, firstly he approached Special Executive Magistrate, Nagpur and got change of entry in his service book. The selection committee did not rely upon that certificate and directed the petitioner to produce a caste certificate from the competent authority. The petitioner thereafter approached the Tehsildar, Miraj.

73. It is held by the tribunal that the approach of the petitioner to the Tehsildar, Miraj for issuance of the caste certificate was not in

accordance with the guidelines framed by Social Welfare Department for issuance of caste certificate. It is held that it was an admitted fact that the school leaving certificate of Vidya Mandir High School and Junior College, Islampur was forged document. The Headmaster of that school had given a letter dated 25th August, 1995 to the effect that the petitioner had never studied in the said school and that the said school leaving certificate was not issued by it. The tribunal accordingly has rendered a finding that the petitioner had studied upto S.S.C. In Karmaveer Bhaurao Patil Vidyalaya, Bagani, Taluka Walwa, District Sangli. There was no doubt that the school leaving certificate of Vidya Mandir High School and Junior College, Islampur was a forged document. The tribunal however, made it clear that the criminal case against the petitioner was pending in respect of the charges of forgery and thus at this stage, it need not to state that the petitioner had forged the said school leaving certificate of Vidya Mandir High School and Junior College, Islampur. It is held by the tribunal that the said school leaving certificate alleged to have been issued by Vidya Mandir High School and Junior College, Islampur was before the Tehsildar and was considered by him while cancelling the earlier caste certificate.

74. Insofar as the submission made by the petitioner before the tribunal that the Tehsildar had no power to cancel the caste certificate dated 15th May, 1995, it is held by the tribunal that the tribunal could not sit over the order of Tehsildar cancelling the caste certificate and had no jurisdiction to set aside the order of Tehsildar. The petitioner himself has produced various documents along with a list before the tribunal.

75. Insofar as the issue raised by the petitioner before the tribunal that there was no provision in the Maharashtra Universities Act, 1994 or Statutes or Ordinances giving power to the university to withdraw the approval once granted to the appointment of any employee including the Lecturer or that there was no power granted to the Management Council to withdraw the approval given to the Lecturer is concerned, the tribunal has held that the teacher or the principal cannot be appointed unless the Vice Chancellor gives the approval and as per section 16 of the General Clauses Act, 1897, the Vice Chancellor has power to withdraw the approval since the power to appoint includes power to dismiss. The tribunal placed reliance on the judgment of the Allahabad High Court reported in **1987 Allahabad Law Journal , 950**, in which it was held that the Executive Council of a university has an implied power to dispense with the services of an Engineer. It is held that the Vice Chancellor had thus power to withdraw the approval granted to the appointment of the petitioner as Lecturer in the year 1972.

76. Insofar as the submission of the learned counsel for the petitioner that the impugned order passed by the university withdrawing the approval granted to the petitioner as far back as on 15th September, 1972 after lapse of about 26 years is concerned, the tribunal considered the complaint made by Phule, Ambedkar and Shahu Teachers Association alleging that the petitioner herein had produced a forged and false caste certificate and had secured the appointment in the post of Principal based on such false caste certificate. The tribunal has also placed reliance on the order passed by Shivaji University appointing a committee of three members to make an enquiry about the caste certificate of the petitioner

and the notices given by the said committee to the said petitioner and other witnesses. The said committee recorded the statement of the Principal of the management on 9th October, 1995, of the Honorary Secretary of the management on 9th November, 2015. The said committee also had sent a notice to the said association.

77. It is held by the tribunal that the said committee firstly made oral enquiry with the petitioner and then issued a notice on 14th November, 1995 to the petitioner to give his statement on 17th November, 1995. The statement of the petitioner was recorded on 17th November, 1995 and he had signed the said statement. It is held that in the said statement made by the petitioner, he had admitted that he had studied upto 7th standard at Dhavali and had studied upto to S.S.C. Standard at Bagani, Taluka Walwa, District Sangli. He stated in his statement that his caste was Hindu Lingayat when he was admitted in the school. He stated in his statement that he has brought the caste certificate from Dr. Padole, Special Executive Magistrate, Nagpur showing that his caste is Hindu Lingader. He also admitted that he had not applied to Tehsildar, Islampur though his native place was in Walwa Taluka and that he had taken education at Dhavali and Bagani which were in Walwa talukas and Islampur was headquarter of Walwa Taluka. The petitioner admitted that he had given the application to the Tehsildar, Miraj on 15th May, 1995 and Tehsildar, Miraj gave him the caste certificate on the same day. He also did not make any complaint against his reversion. He admitted that the criminal case was registered against him and he was in police custody from 28th September, 1995 to 5th October, 1995 and the said criminal case was about forgery of the school leaving certificate and false caste certificate.

78. In the impugned order passed by the tribunal, the tribunal also held that the said enquiry committee had discussed the issue with the office bearers of the said association on 17th November, 1995 and recorded the minutes of that discussion and had prepared a report after considering the whole record and the statements of various witnesses. The enquiry committee found that the petitioner had forged the school leaving certificate and had obtained the false caste certificate. The managing committee passed a resolution on 7th February, 1996 and accepted the report of the enquiry committee and took a decision to withdraw the approval granted to the appointment of the petitioner as a lecturer, which was given on 15th September, 1972.

79. The university thereafter addressed a letter on 7th March, 1996 to the management of the college about withdrawal of the approval which was granted to the petitioner by the university. The management thereafter terminated the services of the petitioner by an order dated 9th March, 1996 with effect from 11th March, 1996. The tribunal accordingly held that the petitioner was given full opportunity to defend his case and there was no violation of the principles of natural justice. The tribunal held that it was not necessary to conduct a full fledged departmental enquiry against the petitioner as the withdrawal of the approval was based on the basis of the caste certificate, which was subsequently cancelled by the same Tehsildar. The tribunal held that Shivaji University had rightly withdrawn the approval granted to the petitioner as a teacher which action was taken in the interest of the entire educational set up and students at large. Lastly, the tribunal held that the university had power to withdraw the approval and the management had legally, validly and

properly terminated the services of the petitioner vide an order dated 9th March, 1996 with effect from 11th March, 1996 as Shivaji University had withdrawn the approval granted to the petitioner as a teacher.

80. I shall first decide the issue as to whether order dated 27th October, 1995 passed by the learned Tehsildar thereby cancelling the caste certificate which was granted by the Tehsildar on 15th May, 1995 was within his jurisdiction and the issue as to whether the petitioner was granted sufficient opportunity to represent his case before the learned Tehsildar.

81. It is not in dispute that the petitioner has applied for writ of mandamus under Article 227 of the Constitution of India in this petition for quashing and setting aside the order dated 27th October, 1995 issued by the Tehsildar, Miraj. It is also not in dispute that when the Shivaji University initiated an action against the petitioner and till the University and College Tribunal dismissed the appeal filed by the petitioner, the said order dated 27th October, 1995 passed by the Tehsildar was neither stayed by any competent court of law nor the same was even challenged by the petitioner before any court of law.

82. It is not in dispute that even in the said caste certificate issued by the learned Tehsildar on 15th May, 1995 certifying that the petitioner belonged to Hindu Lingader (Schedule Caste) it was mentioned that in case of any complaint, the said caste certificate could be cancelled. The said Tehsildar, Miraj who had issued a caste certificate in favour of the petitioner had received a complaint from the Teachers' Association.

Pursuant to the said complaint made by the Teachers' Association received by the learned Tehsildar, he had issued two notices upon the petitioner to produce the requisite documents and for the purpose of giving an opportunity to the petitioner to remain present before the learned Tehsildar. It was the case of the petitioner that insofar as the second notice is concerned, though the same was received by the petitioner before the date of hearing since all the requisite documents were in the custody of the concerned police station, the same could not be produced by him before the learned Tehsildar. The petitioner had not challenged the notice issued by the learned Tehsildar for considering the complaint made by the Teachers' Association on the ground of his jurisdiction at that stage. The learned Tehsildar considered the relevant documents on record and passed a reasoned order thereby cancelling the earlier caste certificate issued by him on the ground that the petitioner had obtained the said caste certificate based on the false documents.

83. In my view the learned Tehsildar who had issued a caste certificate and had made it clear that the same could be cancelled if any complaint was made, he had power to cancel the earlier caste certificate obtained by the petitioner based on the false documents. I am thus not inclined to accept this submission made by the learned counsel for the petitioner that the learned Tehsildar had no power to cancel the caste certificate already granted earlier or to recall his own order.

84. Be that as it may, the fact remains that the petitioner did not challenge the said order dated 27th October, 1995, till 9th June, 1999 by filing any appropriate proceedings. In my view, the challenge to the said

order passed by the learned Tehsildar on 27th October, 1995 could not have been challenged by the petitioner in this petition before the learned Single Judge. I am inclined to accept the submission made by the learned counsel for the University and the management that this prayer sought in prayer clause (c) of the writ petition cannot be entertained by the learned Single Judge of this court and that also belatedly after about four years and also the submission that the learned Tehsildar had inherent power to cancel the earlier caste certificate granted by him, having found that the said caste certificate was obtained by the petitioner based on the false documents submitted by the petitioner.

85. There is no dispute that the appointment of the petitioner to the post of lecturer was made subject to the approval of the University under the provisions of the statute framed by the Shivaji University. In the approval granted by the University to the appointment of the petitioner as a lecturer, it was made clear that in case of any complaint in respect of the said approval granted by the University, the said approval could be cancelled. The University had received a complaint from the Teachers' Association to the effect that the petitioner had submitted false documents and based thereon had obtained a false caste certificate from the learned Tehsildar certifying that he belong to the caste Hindu Lingader (scheduled caste). Based on such caste certificate, the petitioner had applied for appointment to the post of Principal in the respondent no.3 college run by the respondent no.2 society.

86. Shivaji University initiated proceedings for conducting an enquiry into the complaint made by the Teachers' Association and issue a

notice to the petitioner to remain present and contest the said enquiry. The management also had proposed to conduct a separate enquiry statute 216(A) framed by the Shivaji University and had requested the University to nominate its nominee in the enquiry committee in accordance with the said provision. The Shivaji University however took a stand that the management could conduct enquiry under statute 217(A) and not under statute 216(A) and the enquiry proposed by the management was illegal. The management had already reverted the petitioner from the post of Principal to the post of lecturer based on the complaint received from the Teachers' Association alleging the submission of the caste certificate obtained by submitting the false documents.

87. It is not in dispute that pursuant to the said notice received from the Shivaji University, the petitioner appeared before the said enquiry Committee and his statement was recorded by the said committee in respect of the caste certificate submitted by the petitioner before the management before seeking his appointment to the post of Principal. The petitioner did not challenge the said notice received by the petitioner from the University calling upon him to attend for the purpose of recording his statement on the issue of enquiry in respect of the caste certificate submitted by him and participated therein.

88. Based on the said enquiry conducted by the committee appointed by the University, the University passed an order thereby recalling order of granting approval to the appointment of the petitioner to the post of lecturer. Based on the said order passed by the University, it is the case of the management that the management relieved the petitioner from his duties.

89. I shall first decide the issue whether Shivaji University had any power to conduct any enquiry regarding the validity of the caste certificate submitted by the petitioner to the management.

90. It is clear that the appointment of the petitioner to the post of lecturer was subject to the approval of the University. The Shivaji University as a matter of record while granting approval to the said appointment of the petitioner to the post of lecturer had made it clear on the letter of appointment itself that if any complaint was received in respect of the approval, the same could be cancelled. The complaint was received by the University from the Teachers' Association that the petitioner had obtained caste certificate based on false document and management had appointed him to the post of Principal which was reserved for the reserved category candidates.

91. A perusal of the appeal memo filed by the petitioner before the University and College Tribunal clearly indicates that the petitioner was fully aware of various complaints made by the other candidates who belonged to the schedule caste and had applied for the said post of the Principal. Various grievances were also reported through the news media by those professors who had applied for the said post of Principal. Their Association had also lodged a complaint in respect of the caste certificate of the petitioner. The learned Tehsildar, Miraj as a result thereof issued a notice to the petitioner asking him to attend his office alongwith such documents. In the appeal memo, the petitioner has also admitted that the Shivaji University also had received such complaint. The petitioner was admittedly arrested by the local police station on the allegation of submitting a false caste certificate.

92. The Division Bench of this court in case of ***Sunil Gayaprasad Mishra (supra)*** has considered the provisions of the Maharashtra Universities Act, 1994 and has held that the said Act presents a united pattern for better governance of Universities and re-organization of higher education. One of the objects and purpose of the Act is to ensure proper selection and appointment of teachers as employees, to take measures for curbing or for eradicating undesirable non-academic influences detrimental to maintenance of discipline and standards of education or academic excellence in the Universities and to provide for matters connected with or incidental thereto. This court also considered the objects of the Universities provided in section 4 of the Maharashtra Universities Act, 1994.

93. This Court has held that under the provisions of the said Act, the Vice-Chancellor shall be the appointing and disciplinary authority for the university teachers who are appointed on the recommendation of the selection committee constituted for the said purpose. It is held that vice-chancellor has been conferred powers which are complied with duty. It is held that once the Vice-Chancellor who is the Principal officer and in-charge of academic and executive affairs of the University so also overseeing and monitoring authority, then it is futile to urge that he does not possess such powers to revoke the approval granted to the employees and staff. It is held that if the teacher is convicted of an offence then such teacher cannot commend any respect from its associate, college and students and also the staff of the university and affiliated college. If his activities are questionable, there is a slur on his reputation and his integrity is in doubt, then, allowing him to enjoy benefits and privileges

of an approved teacher would make mockery of the entire enactment. It would mean that academic environment and atmosphere is permitted to be polluted by presence of teachers, who can hardly set an example for others.

94. It is held by this Court that the Vice Chancellor will be accused of failing in his duty if he takes no action in such matters. He cannot allow the affiliated college alone to deal with a convicted teacher. Such teachers roaming in the campus of the University and college pose a threat to all. It is held that the Vice-Chancellor cannot leave it to the college because a affiliated college and institution may have its own reasons in not taking any action or it may in a given case delay taking necessary action. In these circumstances, the vice-chancellor can certainly step in and to take corrective measures against the guilty teacher. There are enough powers conferred in the University and the vice-chancellor and one such power is to withdraw and cancel the approval given to the appointment of the errant teacher so that he does not enjoy the privileges and benefits of an approved teacher. In my view the judgment of Division Bench of this court squarely applies to the facts of this case.

95. In my view there is no merit in the submission of the learned counsel for the petitioner that the committee appointed by the Vice-Chancellor to look into the allegation of the submission of caste certificate based on false documents by the petitioner could not go into such serious charges whose appointment was approved by the University. The approval of the petitioner was granted by the University. The

University has thus ample power to recall the said approval granted by the University if it was found by the University that such employee or teacher had committed any such objectionable act relating to his appointment or committed during the course of conducting his duties which would affect the institution at large. In my view the University was thus justified in directing the management not to take any steps to conduct any separate enquiry under statute 216(A) against the petitioner and in conducting an enquiry itself.

96. Insofar as judgment of this court in case of **Miss Priti Prataprao Shinde (supra)** relied upon by the learned counsel for the petitioner is concerned, it is held by the Division Bench that once approval was granted after ascertaining the fact from the management, there can be no justification for cancelling the approval without issuing any notice to the teacher concerned and the management. It is not in dispute that the petitioner was called upon by the enquiry committee for recording his statement relating to the allegation made in respect of the caste certificate submitted by him. The petitioner was fully aware of the subject matter of the said enquiry which was initiated in view of the complaint made by the Teachers' Association consisting of teachers, some of whom had applied for the said post of the Principal which was made not only to the University but also to the Tehsildar as is apparent from the appeal memo filed by the petitioner. In my view the judgment of Division Bench of this court in case of **Miss Priti Prataprao Shinde (supra)** relied upon by the learned counsel for the petitioner thus would not assist the case of the petitioner. In my view since the petitioner was fully aware of the proposed enquiry conducted by the University even if no specific purpose

of enquiry was mentioned in the notice issued by the University, no prejudice was caused to the petitioner.

97. Insofar as submission of the learned counsel for the petitioner that the petitioner was not furnished with the copy of the complaint filed by the Teachers' Association or that he was not issued any notice by the University indicating the action proposed to be taken against the petitioner is concerned, a perusal of the record clearly indicates that the complaint and the representation made by various teachers against the petitioner were also published in the media as is apparent from the appeal memo filed by the petitioner. The petitioner was asked various questions by the enquiry committee pertaining to the caste certificate submitted by the petitioner and based on the complaint received by the university. The petitioner was thus fully aware of the nature of the enquiry being conducted by the University. There is thus no merit in this submission of the learned counsel for the petitioner.

98. There is no dispute that the petitioner was a resident of Village Walva, District Sangli. The petitioner was appointed as a lecturer in the year 1968 and was granted approval in the year 1972 by the University. There is no dispute that the petitioner was appointed as lecturer in the year 1968 as an open category candidate. Till the year 1994, the petitioner never made any claim that he belonged to schedule caste and that he was wrongly appointed as a lecturer in the year 1968 in the open category. The petitioner took all the benefits as an open category candidate till the year 1994.

99. It appears that the petitioner was promoted as a Vice-Principal w.e.f. 1st July, 1989 under an order issued by the Principal of College and acted as a Vice-Principal till 24th July, 1975. It was the case of the petitioner before the University and College Tribunal that the petitioner belonged to Hindu Lingayat sect and that the people of the sect of the petitioner were also known and recognized Hindu-Lingader. He came across the pamphlet published by Dr.L.V.Padole, Nagpur for the Lingayat sect in Maharashtra explaining therein the origin, principles, diksha-vidhi etc. of the Lingayat sect and its inclusion in the schedule caste. The said Dr.L.V.Padole assured the petitioner that the caste certificates issued from his office were legal and valid as held by the Supreme Court, that the Special Executive Magistrates had been authorized to issue it.

100. According to the petitioner, he applied to Dr.L.V.Padole for caste certificate alongwith caste certificate issued to him by the Police-Patil of his village Dhavali, Talathi of Dhavali, Sarpanch of Grampanchayat, Dhavali and the President of Vidarbha Pradeshik Basava Samiti, Nagpur. On the basis of those certificates, the petitioner obtained his caste certificate from the Special Executive Magistrate, Nagpur on 24th March, 1994. The petitioner thereafter submitted an application to the Principal of the respondent no.3 college alongwith photocopy of the said caste certificate on 4th April, 1994 for getting his caste entered in his service book as Lingader. The Principal of the respondent no.3 college added the remark alongwith the 'Lingader' in the service book of the petitioner as his caste on 4th April, 1994.

101. It was the case of the petitioner that however at the time of his interview for the post of Principal, he was informed by the management that for his claim of caste, he should submit caste certificate issued by the Taluka Executive Magistrate. The Tehsildar issued him a caste certificate on 15th May, 1995 on the basis of certificate issued by the Village Officer of Sangli and the entry in his service book and none other documents. It was the case of the petitioner that he had never produced any school leaving certificate of the school Vidya Mandir High School and Junior College, Islampur certifying the caste of the petitioner as schedule caste.

102. A perusal of the impugned order passed by the University indicates that the university had cancelled the approval granted to the petitioner to the post of lecturer on the basis of the cancellation of the caste certificate issued by the Tehsildar and also on the basis of the factum of the enquiry committed by the University against the petitioner. Admittedly the said order of Tehsildar cancelling the earlier caste certificate was not stayed and/or set aside by any competent court of law when the University considered the said order passed by the Tehsildar. I am thus not inclined to accept the submission of the learned counsel for the petitioner that the University could not have considered the order passed by the learned Tehsildar cancelling the caste certificate.

103. Insofar as the judgment of Supreme Court in case of ***Madhuri Patil vs. Additional Commissioner (supra)*** relied upon by Mr. Bandivadekar, learned counsel for the petitioner in support of the submission that the validity of caste certificate could be decided only by

the caste scrutiny committee and could not be considered by the University is concerned, in my view since the order passed by the learned Tehsildar cancelling the caste certificate was justified in the facts and circumstances of this case, the university was not prevented upon relying upon the said order passed by the Tehsildar while taking an action of revocation of approval granted to the petitioner to the post of lecturer. The judgment of Supreme Court in case of **Madhuri Patil (supra)** does not assist the case of the petitioner. The judgment of this court in case of **Daulat Dhana Mali (supra)** also does not assist the case of the petitioner.

104. A perusal of the impugned order passed by the University and College Tribunal indicates that it was an admitted fact that the petitioner had studied in Zilla Parishad School, Dhavali, Taluka Walva, District Sangli upto 7th standard and his caste was shown as Hindu Lingayat in school leaving certificate forming part of the record before the university and college tribunal. The petitioner had not disputed that his caste was shown as Hindu Lingayat in the school leaving certificate. The petitioner had obtained his different caste certificate showing Hindu Lingader by obtaining the caste certificate from Dr.Padole Special Executive Magistrate. The petitioner had studied upto SSC in Karmaveer Bhaurao Patil Vidyalay, Bagani, Tal. Walva, Dist. Sangli. Even the said school leaving certificate shows the caste of the petitioner as Hindu Lingayat. The petitioner had not disputed those two school leaving certificates.

105. Before the tribunal, the petitioner had produced one book published by the Government of Maharashtra in which the caste Hindu

Lingayat was shown as open category in appendix I and Hindu Lingader was shown as schedule caste. The tribunal accordingly rendered independent finding considering the documents on record and also the book published by the Government of Maharashtra and has held that the petitioner was Hindu Lingayat and was from the open category and was not schedule caste. The tribunal accordingly held that the caste certificate issued by the Special Executive Magistrate appointed under section 21 of the Criminal Procedure Code cannot be considered as valid for the purpose of recruitment of the entry of change of caste of the petitioner from Hindu Lingayat to Hindu Lingader in the service book and the same was illegal.

106. The tribunal has also rendered a finding that the petitioner did not produce his school leaving certificate from the Zilla Parishad, Dhavali and from Karmaveer Bhaurao Patil Vidyalay, Bagani, Tal.Walva in which the caste of the petitioner was shown as Hindu Lingayat. The petitioner also could not show any reason as to why he approached Tehsildar, Miraj for caste certificate instead of approaching Tehsildar, Walva Taluka, Dist.Sangli though he was resident of that Taluka. The Tehsildar, Miraj while cancelling his caste certificate dated 15th May, 1995 gave a direction to lodge a criminal complaint against the petitioner as he had produced forged documents. Accordingly the complaint was filed against the petitioner in the Astha Police Station and an offence was registered under sections 467, 468, 469, 471 and 420 of Indian Penal Code. The petitioner was arrested on 29th September, 1995 and was in police custody from 30th September, 1995 to 4th October, 1995.

107. The tribunal also considered the fact that the post of the Principal in N.D.Patil Night College, Sangli was reserved for schedule caste category. The petitioner had not claimed any benefits or rights of schedule caste during his service till the post of Principal was advertised as reserved for schedule caste. The petitioner started claiming as schedule caste candidate only in order to get the post of the Principal and obtained such false certificate from various authority. The tribunal also rendered the finding that the approach of the petitioner to obtain caste certificate from Tehsildar Miraj was not as per guidelines issued by Social Welfare Department for issuance of caste certificate.

108. A perusal of the said order passed by the tribunal indicates that the College Tribunal has also considered the endorsement made on the caste certificate which was issued by the Tehsildar on 15th May, 1995 that the Tehsildar had made entries about the documents relied upon by the petitioner on the first page i.e. certificate of village officer, extract of service book of the petitioner and on the back of that certificate there were entries of these two documents plus the school leaving certificate of the petitioner. In my view the tribunal has rightly disbelieved the case of the petitioner that he had not produced the school leaving certificate from Vidya Mandir High School and Junior College, Islampur before Tehsildar. In my view, the only beneficiary of the caste certificate applied by the petitioner and that also before the wrong officer was only the petitioner and not the management or any other teacher who had applied for the said post of Principal. The learned counsel for the petitioner could not justify this action on the part of the petitioner even in this court during the course of his lengthy arguments.

109. The tribunal in my view has rightly rendered a finding that there was no doubt that the school leaving certificate of Vidya Mandir High School and Junior College, Islampur in which the petitioner had never studied was a forged document. The university tribunal has also considered various admissions made in the statements made by the petitioner before the enquiry committee of the university on 17th November, 1995. The petitioner had signed on that statement.

110. A perusal of the record indicates that the petitioner had admitted before the enquiry committee in the said statement that he had studied upto 7th standard at Dhavali and upto SCC at Bagani, Taluka Walva, District Sangli. He specifically stated that his caste was Lingayat when he was admitted in the school and higher school. He had obtained caste certificate from Dr. Padole Special Executive Magistrate, Nagpur showing his caste as Lingader. He had admitted before the committee that he had not applied before Tehsildar, Islampur for caste certificate though his native place was Walva Taluka and though he had taken education at Dhavali and Bagani which was in Walva Taluka having headquarter at Islampur. The petitioner also admitted that he had given application to Tehsildar Miraj on 15th May 1995 and obtained the caste certificate from the said Tehsildar Miraj on the same day.

111. A perusal of the impugned judgment delivered by the University Tribunal indicates that the tribunal has rendered a very detailed and reasoned judgment recording reasons dealing with each and every submission made by the parties, has considered the evidence on record and after following the judgments of Supreme Court and this court has recorded various findings against the petitioner.

112. The next question that arises for consideration of this court is whether any prejudice was caused to the petitioner for alleged non-compliance of the principles of natural justice by the learned Tehsildar or by the enquiry committee appointed by the University and whether the same was proved by the petitioner. In my view in view of the admitted fact that the petitioner was not the student of Vidya Mandir High School and Junior College, Islampur and in the record and proceedings of the Tehsildar, the school leaving certificate of the said school was found on record with an endorsement made on the caste certificate, it is not possible to accept the submission of the learned counsel for the petitioner that such copy of school leaving certificate was not produced by the petitioner or that his rights were prejudiced in any manner whatsoever for not allowing him to cross examine any witnesses.

113. It is not in dispute that though the petitioner was resident of Walva taluka and was asked to submit a caste certificate from the appropriate authority, the petitioner obtained caste certificate from Tehsildar Miraj which was altogether a different locality. The petitioner had admittedly appointed to the post of lecturer in open category. The petitioner had never applied for the cancellation of the appointment or for change in his entry in the record of the college in service book as open category on the ground that the same was wrongly made though he belonged to a schedule caste. In my view when the post of the Principal was likely to be vacant, the petitioner obtained a false caste certificate from the Special Executive Magistrate, Nagpur who had no authority to issue such caste certificate nor the caste certificate of the Special Executive Magistrate Nagpur could be relied upon when the petitioner was working in Taluka Walva, Islampur.

114. The petitioner could not convince even before this court as to why the petitioner had applied for caste certificate before Tehsildar Miraj when he was resident of Walva. The petitioner also could not satisfactorily explain as to why he had obtained caste certificate from Special Executive Magistrate, Nagpur or whether the said Special Executive Magistrate, Nagpur was authorized to issue any such caste certificate. In view of the fact that the petitioner made various admissions before the enquiry committee as highlighted by the University Tribunal and highlighted by this court in the earlier paragraphs of this judgment, in my view even if the petitioner was not furnished copy of the complaint made by the Teachers' Association or the statement recorded by the University or the management or Teachers' Association etc., no prejudice has been caused to the petitioner in the facts and circumstances of this case. The petitioner was fully aware of the complaint made by the Teachers' Association before the Tehsildar Miraj and also before the University. Some of such complaints were also published in the media as is admitted by the appellant in his own appeal memo.

115. The petitioner has not been able to demonstrate even before this court that any prejudice was caused to the petitioner due to the university not furnishing copy of the statement made by the other witnesses or by not giving an opportunity to the petitioner to cross examine those witnesses or by not specifically mentioning the nature of enquiry proposed to be conducted by the petitioner in the notice issued by the university etc. In my view even if the university would have furnished a copy of the statement of the other witnesses or even would have given an opportunity to the petitioner to cross examine those

witnesses, in view of the various admissions made by the petitioner in the statement made before the enquiry committee, no different conclusion would have been drawn by the enquiry committee in view of the admitted position. In my view since no prejudice of any nature whatsoever was demonstrated by the petitioner for alleged non-compliance of the principles of natural justice, the submission of a false certificate obtained by the petitioner having been proved beyond reasonable doubt, setting aside of the order of the learned Tehsildar or passed by the Tribunal, by this court would amount to rewarding the petitioner whose guilt is proved beyond reasonable doubt by accepting his argument of alleged non-compliance of principles of natural justice.

116. In catena of decisions, the Supreme Court and this court has held that the interest of justice demands that the guilty should be punished and technicalities and irregularities are not allowed to defeat the ends of justice. It has been held that the principles of natural justice are but the means to achieve the ends of justice. Unless it is shown that the non-observance of principles of natural justice has caused prejudice to the person concerned, for the reason that quashing the order may revive another order which itself is illegal or unjustified, the court shall not set aside such order in exercise of writ jurisdiction. In my view since the petitioner has failed to satisfy that any real prejudice had been caused to him for the reason that the principles of natural justice were alleged to have been not complied with, order passed by the learned Tehsildar and by the university tribunal cannot be set aside on that ground. The judgment of Supreme Court in case of **Ramana D.Shetty (supra)** relied upon by the petitioner would be of no assistance to the petitioner.

117. Insofar as submission of the learned counsel for the petitioner that the services of the petitioner could not have been terminated by the management on the basis of the order passed by the university and without conducting full-fledged enquiry against the petitioner is concerned, in my view there is no merit in this submission of the learned counsel for the petitioner. The appointment of the petitioner was subject to the approval of the Shivaji University. Since Shivaji University had rightly passed an order in the facts and circumstances of this case and had withdrawn the approval granted to the appointment of the petitioner to the post of lecturer, the management had rightly relieved the services of the petitioner on the basis of such order passed by the university. In my view the management was thus not required to conduct any independent enquiry before relieving the petitioner from service under statute 216(A) or under 217(A) as canvassed by the learned counsel for the petitioner. The management could not have continued the petitioner in their employment after approval granted to the appointment of the petitioner was withdrawn by the University.

118. Insofar as statement of the learned counsel for the petitioner that the services of the petitioner from the post of lecturer could not have been terminated is concerned, in view of the alleged submission of the false caste certificate for the post of the Principal is concerned, in my view this submission of the learned counsel is stated to be rejected. An employee who was had submitted a false caste certificate and had obtained benefits based on such false certificate submitted by him for his personal gain while applying for the post of Principal and had deprived the other legitimate candidates who belonged to the schedule caste and

were qualified for the said post of Principal, the petitioner could not have been allowed to continue in the employment even as a lecturer.

119. Insofar as submission of the learned counsel for the petitioner that the petitioner could not have been reverted to the post of professor from the post of Principal by the management without conducting any enquiry is concerned, in my view there is no merit in this submission of the learned counsel for the petitioner. The petitioner had accepted the order of reversion without any protest. In any event since the petitioner had submitted a false caste certificate and had taken advantage on the basis of such false certificate and was appointed in the post of Principal which was reversed for schedule caste candidate though the petitioner was a open category candidate, the management was justified in reverting the petitioner to the post of professor and thereby relieving him from his service based on the order passed by the University. In my view there is no substance in the submission of the learned counsel for the petitioner that the petitioner could not have been reverted to the post of professor without conducting any enquiry under statute 196(2)(a) framed by the Shivaji University in the facts and circumstances of this case.

120. Insofar as submission of the learned counsel for the petitioner that the university tribunal had not framed any issue as to whether Shivaji University could cancel the approval once granted or that the cancellation of the approval was contrary to sections 59 and 49 of the Maharashtra Universities Act, 1994 is concerned, there is no substance in this submission of the learned counsel for the petitioner. The Division

Bench of this court has already held in case of ***Sunil Gayaprasad Mishra (supra)*** that the university has power to revoke the order of approval granted in case of employee. The submission made by the learned counsel is contrary to the law laid down by this court.

121. Insofar as submission of the learned counsel for the petitioner that in view of the acquittal of the petitioner in the criminal proceedings which were filed based on same charges against the petitioner and thus the university tribunal ought to have considered the order of acquittal passed by the criminal court is concerned, in my view the learned counsel for the management has rightly placed reliance on the judgment of Madras High Court in case of ***Joint Director of School Education (Personnel) (supra)***, judgment of Supreme Court in case of ***Lalit Popli (supra)***, judgment of Calcutta High Court in case of ***Ajitkumar Nag (supra)*** on the issue that in case of a departmental enquiry, preponderance and probabilities and some material on record are necessary to arrive at the conclusion about guilt of the delinquent and technical rules of evidence are not applicable. The nature of proof required in a departmental enquiry and what is required in a criminal proceedings cannot be compared. The judgment relied upon by the learned counsel for the management squarely applies to the facts of this case. I am bound by the judgment of Supreme Court in case of ***Lalit Popli (supra)*** I am in agreement with the views expressed by the Madras High Court in case of ***Joint Director of School Education (Personnel) (supra)*** and judgment of Calcutta High Court in case of ***Ajitkumar Nag (supra)***. Order of acquittal of the petitioner in criminal proceedings subsequently was of no significance.

122. Insofar as submission of the learned counsel for the petitioner that there was difference of opinion in the opinion expressed by the enquiry committee inter se is concerned, a perusal of the record produced before this court does not indicate any different of opinion insofar as recommendation made by the enquiry committee against the petitioner is concerned. There is no merit in this submission of the learned counsel for the petitioner. In my view the impugned judgment and order by the university and college tribunal is a very detailed and reasoned judgment. The findings recorded by the university and college tribunal are not perverse and thus cannot be interfered with by this court under Articles 226 and 227 of the Constitution of India. Petition is devoid of merits.

123. I therefore pass the following order :-

- (a) Writ Petition No.3352 of 1999 is dismissed;
- (b) Rule is discharged;
- (c) No order as to costs.

R.D. DHANUKA, J.