

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

**LETTERS PATENT APPEAL NO.136 OF 2013
IN
WRIT PETITION NO.7952 OF 2012**

- | | | | |
|----|--|---|--------------------|
| 1] | Shri A.P.D.J. Pathashala, Solapur |] | |
| | Ashok Chowk, Seth Walchand Hirachand Marg |] | |
| | Solapur, 413, 006, through its Secretary - |] | |
| | Dr.Ranjeet Hiralal Gandhi |] | |
| | |] | |
| 2] | Hirachand Nemichand College of Commerce, |] | |
| | Ashok Chowk, Seth Walchand Hirachand Marg |] | Appellants |
| | Solapur, 413 006, through its |] | (Ori. Petitioners) |
| | Principal – Dr.Bibhishan Nagnath Barkul |] | |

Versus

- | | | | |
|----|---|---|--------------------|
| 1] | Ashok Atmaram Salunke |] | |
| | Age – 59 years, Occupation – Service |] | |
| | Residing at – Dnyanyog, 354-A, Sindhu Vihar |] | |
| | Vijapur Road, Solapur – 413 004 |] | |
| | |] | |
| 2] | Solapur University, Solapur |] | |
| | Solapur – Pune Highway, Kegaon, |] | |
| | Solapur – 413 255, Through its Registrar. |] | |
| | |] | |
| 3] | The Regional Joint Director of Education |] | |
| | Higher Education (Grants), Solapur Region, |] | |
| | Solapur University Campus, Solapur – 413255 |] | Respondents. |

**ALONG WITH
CIVIL APPLICATION NO.59 OF 2014
IN
LETTERS PATENT APPEAL NO.136 OF 2013
IN
WRIT PETITION NO.7952 OF 2013**

Ashok Atmaram Salunke	]	
Age – 60 years, Occ : None	]	 Applicant.
R/o – Dnyanyog, 354-A, Sindhu Vihar	]	(Org.Respondent
Vijapur Road, Solapur – 413 004	]	No.1)
versus		

- | | | |
|----|---|--------------------|
| 1] | Shri A.P.D.J. Pathashala, Solapur |] |
| | Ashok Chowk, Seth Walchand Hirachand Marg |] |
| | Solapur, 413, 006, through its Secretary - |] |
| | Dr.Ranjeet Hiralal Gandhi |] |
| | |] |
| 2] | Hirachand Nemichand College of Commerce, |] |
| | Ashok Chowk, Seth Walchand Hirachand Marg |] |
| | Solapur, 413 006, through its |] |
| | Principal – Dr.Bibhishan Nagnath Barkul |] |
| 3] | Solapur University, Solapur |]..... Respondents |
| | Solapur – Pune Highway, Keygaon, |](Resp. No.1 & 2 |
| | Solapur – 413 255, Through its Registrar. |]Org. Petitioners. |
| | |]Resp. Nos.2 & 3 |
| 4] | The Regional Joint Director of Education |] Original |
| | Higher Education (Grants), Solapur Region, |] Resp. Nos. 2 & 3 |
| | Solapur University Campus, Solapur – 413255 |] in Writ Pet.) |

ALONG WITH
CIVIL APPLICATION NO.160 OF 2013
IN
LETTERS PATENT APPEAL STAMP NO.33509 OF 2012
(LETTERS PATENT APPEAL NO.136 OF 2013)
IN
WRIT PETITION NO.7952 OF 2013

- | | | |
|----|--|---------------------|
| 1] | Shri A.P.D.J. Pathashala, Solapur |] |
| | Ashok Chowk, Seth Walchand Hirachand Marg |] |
| | Solapur, 413, 006, through its Secretary - |] |
| | Dr.Ranjeet Hiralal Gandhi |] |
| | |] |
| 2] | Hirachand Nemichand College of Commerce, |]..... Applicants/ |
| | Ashok Chowk, Seth Walchand Hirachand Marg |] Appellants |
| | Solapur, 413 006, through its |](Ori. Petitioners) |
| | Principal – Dr.Bibhishan Nagnath Barkul |] |

Versus

- | | | |
|----|---|---|
| 1] | Ashok Atmaram Salunke |] |
| | Age – 60 years, Occupation – Service |] |
| | Residing at – Dnyanyog, 354-A, Sindhu Vihar |] |
| | Vijapur Road, Solapur – 413 004 |] |

- 2] Solapur University, Solapur]
 Solapur – Pune Highway, Kegaon,]
 Solapur – 413 255, Through its Registrar.]
 3] The Regional Joint Director of Education]
 Higher Education (Grants), Solapur Region,]
 Solapur University Campus, Solapur – 413255]..... Respondents.

Mr. Jaydeep Mitra i/by Mr. Sandeep R Waghmare for the Appellants in LPA and for the Applicants in Civil Application No.160 of 2013 and for the Respondent Nos.1 and 2 in Civil Application No.59 of 2014.

Mr. C G Gavnekar a/w Mr. Gautam Hiranandani for the Respondent No.1 in LPA and Civil Application No.160 of 2013, and for the Applicant in Civil Application No.59 of 2014

Mr. Thokade Sanjay Digambar for the Respondent No.2 in LPA and Civil Application No.160 of 2014, and for the Respondent No. 3 in Civil Application No.59 of 2014.

**CORAM : R. M. SAVANT &
 SMT. SADHANA S JADHAV, JJ.**

Reserved on : 10th July 2017

Pronounced on : 04th August 2017

JUDGMENT : [PER R M SAVANT, J.]

1 The above Letters Patent Appeal takes exception to the order dated 30/10/2012 passed by a learned Single Judge of this Court (Smt. R P SoundurBaldota, J.) by which order Writ Petition No.7952 of 2012 filed by the Appellants came to be dismissed and resultantly the order dated 27/09/2011 passed by the learned Presiding Officer of the College Tribunal, Pune setting aside the punishment of dismissal of service imposed upon the Respondent No.1 herein came to be confirmed.

2 The facts giving rise to the above Letters Patent Appeal can in brief be stated thus :-

The Appellant No.2 herein is a college run by the Appellant No.1 wherein the Respondent No.1 herein was appointed as a librarian with effect from 01/07/1980. The Appellant No.2 is a minority institution but was declared as such, much later to the appointment of the Respondent No.1. The appointment letter of the Respondent No.1 inter-alia contains a stipulation that the service of the Respondent No.1 as a librarian was governed by the Statutes, Rules, Regulations etc of the Shivaji University. The Solapur University to which the Appellant No.2 is now affiliated came to be established much later, however, the same Statutes, Rules and Regulations continued to apply though the University changed and is now the Solapur University. The Respondent No.1 was a member of the local managing committee of the Appellant No.2 College for two years. He was also the secretary of the Shivaji University Teachers Association popularly known as "SUTA" for Solapur District Unit in the year 2006. The Respondent No.1 in his said capacity participated as a member of the National Assessment and Accreditation Council (NAAC) and also saw to it that there was full utilization of the UGC grants for the library and equipments required by the Appellant No.2 College. The Appellant No.1 Trust runs various institution in Solapur, one of the other institution which the Appellant No.1 runs is the Walchand Institute of Technology ("WIT" for short). It appears that the teachers of the said WIT had various grievances which

included the payment of provident fund and gratuity therefore the SUTA decided to make efforts in solving the said grievances. The demands of the teachers were put up before the management by a letter dated 11/10/2006. On 14/10/2016 a joint meeting of the management of the Appellant No.1 and the representatives of SUTA was held. However, the said meeting did not bear any fruit. The Respondent No.1 in his capacity as the secretary of the SUTA issued a notice dated 01/10/2007 informing the Appellant No.1 Trust that if the demands are not satisfied, the SUTA would initiate an agitation on 12/10/2007. There was no response to the said letter. The Respondent No.1 fell sick from 09/10/2007. He therefore submitted an application for medical leave on 11/10/2007 with effect from 09/10/2007 with a doctor's certificate. On 12/10/2007 an agitation was held at two colleges viz. D.A.V. College of Arts, Science and Commerce, Solapur, and Walchand Institute of Technology (WIT), Solapur. In so far as D.A.V. College is concerned, the principal of the said College agreed to have discussion regarding the resolution of the grievances of the teachers. Therefore, the agitation at the gate of D.A.V. College was postponed. The members of the SUTA then came to the gate of the WIT. It was found that the gate of the WIT was locked and banners against SUTA were put up on the gate. In view of the fact that the agitation in the D.A.V. College of Arts, Science and Commerce was postponed on the ground that the Principal agreed to negotiate, the President of the SUTA Shri Mathpati was of the view that the same course of action could be adopted in so far as the

WIT is concerned. However, as the Principal of the WIT did not give any heed, the members of the SUTA held a protest at the gate by shouting slogans.

3 After the Respondent No.1 had recovered from illness he joined the duties on 15/10/2007 and submitted a medical certificate on 18/10/2007. The Appellant No.2 College served a letter on the Respondent No.1 directing him to give an explanation for participating in the agitation at the gate of WIT, Solapur on 12/10/2007. On 05/11/2007 the Respondent No.1 was served with a letter calling for his explanation in respect of shouting of slogans at the gate of WIT as also in respect of his interview given to the local television channel known as "IN Channel". The Respondent No.1 accordingly submitted his reply on 07/11/2007. On 13/11/2007 the Appellant No.2 received a fax message from the Joint Director of Higher Education, Kolhapur that the Respondent No.1 should attend a meeting at Kolhapur on 14/11/2007. The Respondent No.1 therefore submitted an application for two days duty leave on 13/11/2007. In terms of Statute 200 of the Shivaji University Statutes a teacher is entitled to get leave if the distance of a venue of the meeting is more than 200 kilometers from the place where he is teaching. The Respondent No.1 attended the meeting at Kolhapur and joined his duties after availing two days duty leave. By a letter dated 21/11/2007 the Appellant No.2 College called for explanation of the Respondent No.1 as to why two days was enjoyed for a single day's meeting. The Respondent No.1 accordingly submitted his

explanation on 27/11/2007 making a reference to Statute 200 of the Shivaji University Statutes.

4 The Appellant No.1 initiated a Departmental Enquiry against the Respondent No.1 by inter-alia levelling 5 charges. The same were contained in the charge-sheet dated 14/12/2007. The first charge was as regards participation of the Respondent No.1 in the agitation of SUTA outside the WIT. It was alleged against the Respondent No.1 that in the said agitation the Respondent No.1 raised slogans against the Appellant No.1 – Trust and WIT. The second charge alleged was that the Respondent No.1 had obtained medical certificate for the period 09/10/2007 to 14/10/2007 on a false ground since during the period of medical leave the Respondent No.1 had participated in the demonstration outside the WIT. The third charge was in respect of the interview of the Respondent No.1 on the local channel by name “In Channel”. In the said interview the Respondent No.1 is alleged to have imputed false statements to the person in the management. In so far as the Charge No.4 is concerned the same relates to the on duty leave obtained by the Respondent No.1 for attending a meeting at Kolhapur on 14/11/2007. The said leave being sanctioned subject to the length of the meeting. It was alleged that the Respondent No.1 had attend the meeting only for one day on 14/11/2007. However, he had applied for two days leave. The fifth charge alleges that the Respondent No.1 is trying to bring a pressure on the management.

5 The Appellant No.1 appointed Advocate Shri G R Joshi as an Inquiry Officer. The said Inquiry Officer served the said charge-sheet upon the Respondent No.1 on 14/12/2007 and communicated to him that the enquiry would commence from 05/01/2008. The Inquiry Officer proceeded to hold the enquiry and on the basis of the material on record submitted his report to the management holding that all the five charges were proved against the Respondent No.1. The Appellant No.1 thereafter took into consideration the said enquiry report and having regard to the fact that the charges were proved against the Respondent No.1 dismissed the Respondent No.1 from service. This has resulted in the Respondent No.1 filing an Appeal before the College Tribunal, Pune. The said Appeal was numbered as 4 of 2008.

6 The said Appeal was founded on the ground that the principles of natural justice were violated inasmuch as the Respondent No.1 was not allowed to examine two of his witnesses and that the enquiry was closed hastily. It was also the case of the Respondent No.1 in the said Appeal that the enquiry was held in violation of Statute 216 of the Shivaji University Statutes. To the said Appeal the Appellant Nos.1 and 2 filed their replies dealing with the grounds raised in the said Appeal. It was the case of the Appellants that the Appellant No.1 Trust runs various educational institutions in Solapur District including the Walchand Institute of Technology i.e. WIT. It was their

case that about 650 employees are working in the said institutions and about 10000 students are taking education. It was their case that the Respondent No.1 has been conferred with minority status by virtue of the judgment rendered in Writ Petition No.1215 of 1996 by this Court as confirmed by the Apex Court by virtue of the order dated 20/12/1996 passed in SLP No.6887 of 1996. It was the case of the Appellants that the Appellant No.2 is an aided college run by a minority institution. It was therefore their case that having regard to the law which has evolved in respect of the minority institutions, the minority institutions have maximum autonomy in relation to methods of recruitment of teachers, fees payable by students, admissions of students and such other administrative matters including initiation of disciplinary proceedings against the employees and imposing punishment on them. It was their case that though the Respondent No.1 was on medical leave up to 14/10/2007, he had participated in the agitation of SUTA on 12/10/2007 at the gate of WIT and had therefore committed a misconduct by shouting slogans against the Appellant Nos.1 and 2. It was therefore the case of the Appellants that the medical leave obtained by the Respondent No.1 was on false ground. It was also the case of the Appellants that the Respondent No.1 in his interview made defamatory statements in respect of the Appellant Nos.1 and 2 to the effect that the provident fund and gratuity is not being paid to the teachers and that the authorities of the Appellants claim that they would be dealing with the problems of the teachers as per their will. It was also their

case that full opportunity was given to the Respondent No.1 for defending himself and that the enquiry was conducted in a fair manner in conformity with natural justice. It was therefore their case that it is not necessary to interfere with the findings recorded by the Inquiry Officer nor with the order of dismissal passed by the management.

7 In the Appeal the Respondent No.1 had filed written notes of arguments and also the additional written notes of arguments.

8 The learned Presiding Officer, College Tribunal, Pune has by his judgment and order dated 27/09/2011 allowed the said Appeal by setting aside the order of dismissal dated 20/05/2008 passed against the Respondent No.1 and directed that the Respondent No.1 shall be reinstated in service with full back-wages and continuity of service within two months as required by Section 61(4) of the Maharashtra Universities Act, 1994.

9 The learned Presiding Officer of the College Tribunal, Pune in the said order considered the findings recorded by the Inquiry Officer in respect of each of the charges and came to a conclusion that none of the charges could be said to be proved against the Respondent No.1. In so far as the the charges Nos.1 and 3 are concerned, the learned Presiding Officer was of the view that the said charges are similar. The learned Presiding Officer observed that the

said charges were based on the statement found in the transcripts of both the events i.e. the agitation at the gate of WIT and the interview of the Respondent No.1 in the local television by name "In-Channel". The learned Presiding Officer held that the charge has to be specific so as to facilitate the delinquent taking a defence. The learned Presiding Officer referred to the judgment of the Apex Court in Express Newspaper (Private) Ltd v/s. Union of India reported in (1986) 1 SCC 133 on the aspect of freedom of speech and expression covered by Article 19(1)(a) of the Constitution of India. The learned Presiding Officer thereafter held that in a democratic country like ours it is not permissible to prevent a citizen from voicing his grievances. The learned Presiding Officer thereafter observed that if the teachers' association or its office bearers are prevented from making a public protest, the same would amount to conferring unlimited power on the management. The learned Presiding Officer further observed that the slogans given in the course of agitation cannot be treated as damaging the reputation of the institution and have to be attributed as a form of protest against the attitude of the management. The learned Presiding Officer further observed that the slogans given during the agitation and statements made during the interview cannot be said to be species of misconduct. The learned Presiding Officer held that the Inquiry Officer has ignored the said principles and has held Charge No.1 as proved merely on the ground that the CD and the contents of its transcripts are not denied by the Respondent No.1. The learned Presiding Officer observed

that the Inquiry Officer has not taken into consideration the principles concerning the freedom of speech and expression applicable for determining whether the slogans or statements of the Respondent No.1 constitute a misconduct. The learned Presiding Officer held that the said agitation was on account of the fact that the management was refusing to implement the rules regarding provident fund and gratuity on the ground that it was a minority institution. The learned Presiding Officer therefore came to be a conclusion that the protest by the Respondent No.1 cannot be said to be unjustified. He further held that the Inquiry Officer has not considered the relevant factors which are necessary for deciding whether the Charge Nos.1 and 3 are proved and accordingly held that the findings of the Inquiry Officer in respect of the Charge Nos.1 and 3 suffer from non-application of mind and are perverse.

10 In so far as Charge No.2 is concerned, the learned Presiding Officer relied upon the judgment of a learned Single Judge of this Court rendered in Writ Petition No.6309 of 2007 between Ashwini Sahakari Rugnalaya and Research Centre v/s. Ashok Bhujanga Vhotakar. In the said case a similar issue had arisen. The employee therein had participated in hunger strike whilst being on medical leave. The learned Single Judge held that the act of the employee to join the hunger strike towards the end of his medical leave by itself would not be an act of misconduct. The learned Presiding Officer held that merely because the Respondent No.1 had attended

the agitation for limited period whilst being on medical leave, would not mean that he was not sick. The learned Presiding Officer held that the Appellants cannot question the medical certificate produced by the Respondent No.1 as they have not produced the evidence to show that the said medical certificate produced by the Respondent No.1 was false. The learned Presiding Officer therefore held that the finding on the said charge was also without application of mind and perverse.

11 In so far as Charge No.4 is concerned, since the learned counsel appearing for the Appellants had given up the said charge, it is not necessary to consider the finding of the learned Presiding Officer. However, suffice it would be to state that the Presiding Officer had found the findings in respect of the said charge also to be erroneous in the context of Statute 200 of the Shivaji University Statute and the factum of the Respondent No.1 applying for one day's leave.

12 In so far as Charge No.5 is concerned, the learned Presiding Officer held that the said charge was vague as the name of the outsider who tried to influence the Appellants on behalf of the Respondent No.1 is not disclosed and therefore it was not possible for the Respondent No.1 to meet the said charge. Hence as indicated above, the learned Presiding Officer held that none of the charges levelled against the Respondent No.1 have been proved

and therefore held that the findings recorded by the Inquiry Officer are perverse and not sustainable. The learned Presiding Officer accordingly set aside the order of dismissal dated 20/05/2008 and directed the reinstatement of the Respondent No.1 with full back-wages and continuity of service within two months. It is the said judgment and order dated 27/09/2011 which is taken exception to by way of the above Writ Petition.

13 During the course of hearing of the above Letters Patent Appeal the learned counsel appearing for the Respondent No.1 Shri C G Gavnekar submitted that the Respondent No.1 is giving up the issue of the maintainability of the above Letters Patent Appeal.

14 **SUBMISSIONS OF THE LEARNED COUNSEL SHRI JAYDEEP MITRA ON BEHALF OF THE APPELLANTS :-**

A] That the learned Single Judge erred in dismissing the above Writ Petition considering the fact that the misconduct alleged against the Respondent No.1 was serious.

B] That the learned Single Judge ought to have seen that the Respondent No.1 whilst being on medical leave between 09/10/2007 to 14/10/2007 had taken part in the agitation which was held at the gate of the WIT on 12/10/2007. That the said act

of the Respondent No.1 therefore amounted to a serious misconduct.

- C] That the learned Single Judge failed to appreciate that the Respondent No.1 by participating in the agitation on 12/10/2007 had thereby shown that he had obtained the medical leave on a false ground.
- D] That the Appellant No.2 being a minority institution was not bound by the rules and regulations of the UGC/University in respect of payment of provident fund and gratuity.
- E] That the Respondent No.1 without making any representation to the Appellants in respect of provident fund and gratuity had held an agitation which amounted to indiscipline and insubordination.
- F] That the learned Single Judge failed to appreciate that the right to free speech and expression is subject to reasonable restrictions and would therefore not entitle the Respondent No.1 to take part in agitation and shout slogans against the Appellants i.e. the management.

G] That the learned Single Judge failed to appreciate that there was material on record to substantiate the charges against the Respondent No.1 which charges were accordingly held to be proved by the Inquiry Officer.

H] That the punishment imposed upon the Respondent No.1 was commensurate with the charges proved against the Respondent No.1 and therefore did not merit any interference in the Appellate Jurisdiction by the College Tribunal.

15 **SUBMISSIONS OF THE LEARNED COUNSEL SHRI C G GAVNEKAR ON BEHALF OF THE RESPONDENT NO.1 :-**

i] That the learned counsel for the Respondent No.1 at the outset submitted that the Respondent No.1 is not pressing the issue of maintainability of the above Letters Patent Appeal and therefore would proceed on the basis that the above Letters Patent Appeal is maintainable.

ii] That the learned Single Judge by dismissing the above Writ Petition has thereby confirmed the well reasoned order passed by the College Tribunal, Pune.

- iii] That the charges levelled against the Respondent No.1 are frivolous, vague and are levelled as the Respondent No.1 was the Secretary of SUTA who had organized the agitation against the Appellants for non-compliance of the UGC/ University Rules and Regulations regarding payment of provident fund and gratuity.
- iv] That though the Appellant No.2 is a minority institution, it is still obligated to comply with the principles of natural justice in the matter of holding of a departmental enquiry by following a modicum of procedure.
- v] That the College Tribunal has rightly held that in so far as Charge Nos.1 and 3 are concerned, the principles of natural justice have been breached as no proper opportunity was granted to the Respondent No.1 to lead evidence.
- vi] That in the absence of any material being placed on record by the Appellants, it cannot be said that the Respondent No.1 had gone on medical leave on a false ground.
- vii] That by taking part in the agitation in support of the demands of the teachers, it could not be said that the Respondent No.1 has

committed any misconduct.

- viii] That the College Tribunal has rightly held that the Charge Nos. 3 and 5 are not proved by the Appellants for the reasons mentioned in the order of the College Tribunal.
- ix] That the Appellants have imposed punishment of dismissal which is grossly dis-proportionate to the misconducts which are alleged against the Respondent No.1.
- x] That the Appellants were required to take an over all view of the matter which is a sine-qua-non before imposition of punishment in a departmental enquiry proceeding.

CONSIDERATION :

16 Having heard the learned counsel for the parties, We have considered the rival contentions. As indicated herein above, the charge-sheet which was served upon the Respondent No.1 contains five charges which were to the following effect (gist) :-

“the first charge was participation of Respondent No.1 in the agitation by Shivaji University Teachers' Association, popularly known as SUTA outside the WIT. Respondent No.1 is the secretary of SUTA for Solapur

District Unit since the year 2006. As a secretary, he participated in the demonstration organized outside the WIT. It is alleged that in the participation, he raised slogans against Petitioner No.1- Trust and WIT. The second charge alleges that Respondent No.1 had obtained medical leave for the period 9th October 2007 to 14th October 2007 on a false ground, since during the period of medical leave, Respondent No.1 had participated in the demonstration outside the WIT. The third charge relates to the talk by Respondent No.1 on the local television channel by name "In Solapur". Respondent No.1 is alleged to have imputed false statements to the persons in the management. Charge No.4 relates to the "on duty" leave obtained by Respondent No.1 for attending the meeting at Kolhapur on 14th November 2007. For that purpose Respondent No.1 had given an application for on-duty leave for two days on 13th November 2007. The leave was sanctioned subject to the length of the meeting. If the meeting was to be conducted for one day, leave of one day was sanctioned and if the meeting was to be conducted for two days, the leave was granted for two days. It is alleged that Respondent No.1 had attended the meeting for only one day on 14th November 2007. He was absent on next day also. Respondent No.1 subsequently sought a casual leave for 15th November 2007 by giving necessary application for the same. The leave was sanctioned by the management. According to the Petitioner, the discrepancy in the application for leave given by Respondent No.1 on 13th November 2007 and the attendance letter relating to the meeting amounts to playing fraud upon the Petitioners. The fifth charge vaguely alleges that Respondent No.1 is trying to bring pressure on the management."

17 The genesis of the charge-sheet lies in the participation of the Respondent No.1 in the agitation which took place at the gate of the WIT on 12/10/2007. The background to the agitation was the demand made by SUTA

on behalf of the teachers working with the Appellants in respect of the payment of provident fund and gratuity. In respect of the said demand a written representation was also made to the Appellants as also a notice was given that if the decision is not taken then the agitation would be held on 12/10/2007. It is in terms of the said notice that an agitation was held at the gate of the WIT as the management of the Appellants refused to consider the demands of SUTA on the ground that it was a minority institution. The Respondent No.1 who was on medical leave from 09/10/2007 had participated in the said agitation. The Respondent No.1 in his capacity as secretary of SUTA had also given an interview on the local channel known as "In-Channel". The said interview was in respect of the demands of SUTA and the stand of the management. Hence the Charge Nos. 1, 2, 3 and 5 are revolving around the said incident i.e. the agitation which was held at the gate of the WIT. In so far as Charge No.4 is concerned, the same relates to the alleged unauthorized one day's extra leave taken by the Respondent No.1 though in terms of Statute 200 he was entitled to only one day's leave. The learned counsel appearing on behalf of the Appellants Shri Mitra has fairly stated that the Appellants would give up the said charge.

18 In so far as Charge Nos.1 and 3 are concerned, they are similar. The learned Presiding Officer has observed that the Inquiry Officer has founded the said charges on the transcripts of both the events i.e. the agitation at the

gate of WIT and the interview of the Respondent No.1 in the local television by name "In-Channel". The learned Presiding Officer held that the charge has to be specific so as to facilitate the delinquent in taking a defence. The learned Presiding Officer has observed that in a democratic country it is not permissible to prevent a citizen from voicing his grievances. The learned Presiding Officer further observed that if the teachers' association or its office bearers are prevented from making a public protest, the same would amount to scuttling their voice and conferring unlimited power on the management. The learned Presiding Officer was of the view that considering the nature of the slogans given during the course of agitation on 12/10/2007 in justification of its demands, the said slogans cannot be termed as defamatory. The learned Presiding Officer resultantly found fault with the Inquiry Officer in holding that the said charge was proved without considering the aforesaid aspect. The learned Presiding Officer also found fault with the Inquiry Officer in holding the said charge as proved on the ground that the transcripts were not disputed. The learned Presiding Officer was of the view that the Inquiry Officer has not taken into consideration the principles concerning freedom of speech and expression on the basis of which it was required to be determined whether the Charge Nos.1 and 3 are proved. The learned Presiding Officer therefore held that the findings recorded by the Inquiry Officer suffer from non-application of mind and are perverse.

19 In so far as Charge No.2 is concerned, the learned Presiding Officer held that merely because the Respondent No.1 was present in the agitation for a limited period on 12/10/2007, it cannot be said that he was not sick. The learned Presiding Officer relied upon the judgment of a learned Single Judge of this Court in *Ashok Bhujanga Vhotakar's* case (supra) wherein a learned Single Judge of this Court held that participation in the hunger strike towards the end of medical leave would not by itself be an act of misconduct. The learned Presiding Officer held that merely because the Respondent No.1 was on medical leave, it could not be said that he could not take part in the agitation which took place on 12/10/2007.

20 In so far as Charge No.4 is concerned, as indicated above, the learned counsel appearing on behalf of the Appellants Shri Mitra did not make any submissions as regards the said charge as the Appellants did not want to press the said charge against the Respondent No.1.

21 In so far as Charge No.5 is concerned, the learned Presiding Officer found that the said charge to be vague as the name of the outsider who influenced the Appellants on behalf of the Respondent No.1 was not disclosed. The learned Presiding Officer therefore observed that on account of the vagueness of the charge, the Respondent No.1 cannot be expected to defend the said charge. The learned Presiding Officer therefore concluded that none

of the charges can be said to be proved against the Respondent No.1 and therefore the findings recorded by the Inquiry Officer were perverse.

22 It is required to be noted that the Inquiry Officer has treated the Written Statement (Statement of Defence) filed on behalf of the Respondent No.1 as his deposition. That is the first flaw found in the enquiry held against the Respondent No.1. In contradistinction the Inquiry Officer permitted the Appellants to lead evidence by filing the affidavit of evidence as a result of which the evidence of Shri Dolas was led by the Appellants in support of the charges. It is also required to be noted that though a request was made by the Respondent No.1 to examine two witnesses, the same was rejected by the Inquiry Officer. Hence on account of the aforesaid facts the enquiry can be said to have been vitiated.

23 In so far as the charges levelled against a delinquent are concerned, it is well settled that the charges have to be clear and specific so that a delinquent would be in a position to deal with the same. In the instant case the transcripts of what had transpired in the agitation as also the contents of the interview of the Respondent No.1 were made the foundation of the Charge Nos. 1 and 3. The learned Presiding Officer has therefore rightly held that in the absence of the charges being specific, it was difficult for the Respondent No.1 to deal with the said charges.

24 In so far as Charge No.5 is concerned, a reading of the said charge makes it ex-facie clear that the said charge is vague and therefore the learned Presiding Officer was right in holding that the said charge being vague the enquiry stands vitiated on the said ground.

25 As indicated above, the misconduct alleged against the Respondent No.1 was principally based or founded upon his participation in the agitation which took place on 12/10/2007. It is required to be borne in mind that the Respondent No.1 was at the relevant time the secretary of SUTA. The SUTA being an association of the teachers working in the colleges affiliated to SUTA was espousing the cause of teachers which it is obligated to do as an association of teachers. Obviously some latitude is required to be given to the office bearers of such an association. If an agitation is launched by the association in furtherance of the demands of the teachers, the same obviously cannot be termed as a misconduct. In so far as the statements or slogans made/given in such an agitation, they cannot be treated as defamatory of the management unless the limits are transgressed. In the instant case where the agitation was in respect of non-payment of provident fund and gratuity and the slogans and statements made against the management herein were in the said context, it cannot be said that the limits of morality or decency were transgressed by the agitationists. The learned Presiding Officer of the College

Tribunal has accordingly recorded a finding that having regard to the nature of the slogans, it could not be said that they were defamatory.

It is also required to be noted that the Appellant No.2 though being a minority institution is obligated to follow a modicum of procedure in the matter of holding a Departmental Enquiry and cannot contend that it is not required to observe the principles of natural justice. In the instant case there is a breach of the principles of natural justice inasmuch as the Written Statement (Statement of Defence) of the Respondent No.1 was treated as his evidence and the opportunity to examine two witnesses was denied to the Respondent No.1

In so far as the charge of the Respondent No.1 having availed of medical leave on a false ground is concerned, the Appellants have not led any evidence in that regard, and the said charge is sought to be levied against the Respondent No.1 only on the ground that he had participated in the agitation on 12/10/2007 when he was on medical leave.

26 In our view, therefore, the conclusion arrived at by the learned Presiding Officer of the College Tribunal, Pune as regards the charges having regard to the well settled principles applicable to departmental proceedings cannot be found fault with.

27 The learned Single Judge of this Court in the above Writ Petition considered each of the charges and recorded findings thereon. Upon such consideration the learned Single Judge has concluded that the allegations contained in the charge-sheet are not of serious nature and neither of the charges deserve dismissal from service. In so far as Charge No.1 is concerned, the learned Single Judge has observed that by participating in the demonstration it could not be said that the Respondent No.1 was acting against the interest of the institution. In so far as Charge No.2 is concerned, the learned Single Judge has observed that despite his illness the Respondent No.1 had attended the demonstration on 12/10/2007. In so far as Charge No.3 is concerned, the learned Single Judge has observed that in the statements made by the Respondent No.1, he had not imputed any statement to any member of the management and that he had expressed his opinion as regards the stand taken by the management in respect of the provident fund and gratuity of the employees. The learned Single Judge has thereafter endorsed the view taken by the College Tribunal that none of the charges were proved. The learned single Judge further endorsed the view of the College Tribunal that the Respondent No.1 was acting in the interest of the teaching community in general and that the approach adopted by the Respondent No.1 of criticism does not amount to any misconduct.

28 We have considered the impugned order passed by the learned

Single Judge of this Court. As indicated above, we have also gone through the material before us, as also the order passed by the Presiding Officer of the College Tribunal. We do not find any illegality or infirmity in the order passed by the learned Presiding Officer of the College Tribunal as confirmed by the learned Single Judge of this Court. We therefore do not find this a fit case to exercise the Letters Patent Jurisdiction. The above Letters Patent Appeal is accordingly dismissed.

29 By the above Civil Application No.59 of 2014 the Applicant i.e. the original Respondent No.1 sought a direction that pending the hearing the Letters Patent Appeal the Respondent Nos.1 and 2 i.e. the original Appellants be directed to prepare and submit pension papers of the Applicant i.e. the original Respondent No.1 to the Respondent Nos. 3 and 4 in the Civil Application on the basis that the Petitioner is entitled to draw Rs.14940/- as his last drawn pay. Since We have dismissed the above Letters Patent Appeal, it is not necessary to consider the grant of the said relief. We however direct the Respondent Nos.1 and 2 in the Civil Application i.e. the original Appellants to pay the retirement dues to the Applicant i.e. the original Respondent No.1 including the pension on the basis of his date of superannuation in regular course, and on the basis of the pay that he would have drawn on the said date. The computation and payment if not already done, to be done within 12 weeks from date.

30 In view of the dismissal of the above Letters Patent Appeal, the above Civil Application No.160 of 2013 filed by the Applicants i.e. the original Appellants for stay of the order of the College Tribunal dated 27/09/2011 does not survive and the same to accordingly stand disposed of as such.

[SMT. SADHANA S JADHAV, J]

[R.M.SAVANT, J]

At the time of pronouncement :-

The learned counsel appearing for the Respondent No.1 Shri C G Gavnekar prays that the Respondent No.1 permitted to withdraw the amount lying in deposit in this Court i.e. 50% of the back-wages. The learned counsel appearing on behalf of the Appellants Shri Sandeep Waghmare opposes the same on the ground that the Appellants may carry the matter to the Apex Court.

In our view, the Respondent No.1 can be permitted to withdraw the balance 50% of the back-wages lying in deposit in this Court on the condition that the Respondent No.1 a furnishes solvency certificate to this Court from the concerned authority. The solvency certificate furnished by the Respondent No.1 in terms of the interim order dated 28/11/2014 in Civil Application

No.32 of 2014 whilst withdrawing 50% of the amount as permitted by the said interim order as well as the solvency certificate that would be furnished in terms of this order would be kept alive up to 30th November 2017 and would be subject to the orders that may be passed by the Apex Court.

The learned counsel appearing on behalf of the Appellants prays for stay of the instant judgment and order. In our view, it is not necessary to grant any stay as we have granted 12 weeks' time for the Appellants to comply with our directions as regards payment of retirement dues to the Respondent No.1.

[SMT. SADHANA S JADHAV, J]

[R.M.SAVANT, J]