

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 10118 OF 2016

Dr. Pratap Laxmanrao Bhosale

....Petitioner

V/s.

The State of Maharashtra
and anr.

....Respondents

* * * * *

Mr. Harshad Bhadbhade, Advocate for the petitioner.

Mrs. Rupali Shinde, AGP for respondent no.1.

Mr. Mihir R. Govilkar, i/by. Mr. R.V. Govilkar, Advocate for
respondents no.2 and 3.

CORAM :-

B.R.GAVAI &

SANDEEP K. SHINDE, JJ.

DATE :-

5TH OCTOBER, 2017.

P.C. :-

1. Rule. Rule made returnable forthwith.
2. Heard Learned Counsel for the petitioner, Learned
AGP for respondent no.1 and Learned Counsel for
respondents no.2 and 3.

3. The petitioner is a Professor and Head of Department in Forensic Medicine & Toxicology in Gulabrao Patil Homeopathic Medical College, Miraj ("GPHMC" for short). He was elected as a member student of the Maharashtra University of Health Science (MUHS), Nashik and was also appointed as a Senior Supervisor, Center In-Charge, Member of Vigilance Squad & Central Observer relating to University Examination from time to time. The petitioner was appointed as, Internal Center-Incharge and as a Center Observer at GPHMC Centre for examination of BDS course during Summer, 2011, University Examinations. On 27th May, 2011 Flying Squad visited the examination center, who eventually found in one of the blocks, one chit besides the bench of a student, by name, Ms. Monika Patil during the examination of the subject, "Oral Pathology & Micro". It is the petitioner's case that, Dilipsingh A. Pawar was appointed as Junior Supervisor and Dr. Vaishali Sawant was a Senior Supervisor for the aforesaid examination block. It is the petitioner's case that, he was not present in the aforesaid block but was in the

premises of the college. He was directed by the Flying Squad to initiate a procedure for adopting the “unfair means” against Ms. Patil. The petitioner, thereupon gave a remark on her answer sheet as an “unfair means case”. He had recorded the statement of Ms. Patil in present of two other student witnesses who were occupying the seats behind and besides the seat of Ms. Patil. It is the petitioner's case that, Ms. Patil admitted in her statement that chit was found near her desk. The petitioner thereupon also obtained the reports from Junior Supervisor, Dilipsingh Pawar and Senior Supervisor, Dr. Vaishali Sawant. The petitioner thereafter had prepared a report in co-ordination with Central Observer regarding the “unfair means suspicious case” and reported the matter to the Controller of Examination on telephone, who in-turn directed him to submit the papers of the aforesaid case to the MUHS, Nashik. The petitioner accordingly sent all material and papers regarding this case in confidential sealed envelope marked “suspected unfair means case” and obtained the signature of Central Observer.

4. It is the petitioner's case that, the Controller of Examination (MUHS) vide letter dated 15th July, 2011 called upon him, to remain present before the “unfair means enquiry committee” on 30th July, 2011 for enquiry with regards to the matter of Ms. Patil. The said notice/letter would refer to a complaint against the petitioner that the chit allegedly found near the bench of Ms. Pawar containing a copying material was provided to her by the concerned supervisor from the outside source. The said notice letter dated 15th July, 2011 would also refer to the variations in reports of the said case as submitted by the Supervisory staff to the University and the report submitted by the concerned Flying Squad. That as such, to ascertain the correct facts of the case, the petitioner was required to appear before the Enquiry Committee on 30th July, 2011 with a further warning that, if it is found that the petitioner had shown serious negligence, then appropriate punishment would be inflicted by the Board of Examination. The petitioner, thereafter appeared before the Enquiry Committee and submitted his explanation regarding the

event that had happened. The Controller of Examinations, Maharashtra University of Health Sciences, Nashik vide communication dated 11th August, 2011 informed him that the Committee, after taking into consideration the reports of the “unfair means case” submitted by the supervisory staff of the exam centre, report of the concerned Flying Squad and after holding enquiry, reached a conclusion that the supervisory staff made inconsistency in their statements while reporting the matter to the University and thereby created unnecessary confusion which caused a difficulty in arriving at the right conclusion. It was informed that, in view of these facts, the Board of Examination had taken a serious view and held the supervisory staff being negligent while dealing with the reporting of the unfair means case of the said student and it amounts to misleading the University. On this premise, the following punishment was inflicted on the petitioner :-

“You have been debarred from participating
in any exam related work for six months i.e.
Winter 2011 exams.”

5. The petitioner thereafter sought review of the order dated 11th August, 2011 and had also approached the Vice-Chancellor, Maharashtra University of Health Sciences, Nashik for deleting the word “debarred” from the order passed by the Board of Examination. It appears that the petitioner's request was turned down by Resolution dated 23rd April, 2015. In the given set of facts, the petitioner again approached the Grievance Committee of the MUHS in January, 2016. However, the Committee refused to take cognizance for want of powers.

6. The petitioner, in these circumstances, approached this Court to quash and set aside the order dated 11th August, 2011 passed by the Unfair Means Enquiry Committee, which according to him is a stigma to his long standing unblemish career in Academics and blot to his repute. It is in these circumstances, he prays that the decision of the Unfair Means Enquiry Committee be quashed and set aside.

7. Though, respondents no.2 and 3 were

represented by their lawyers, they have chosen not to file reply and refute the allegations and contentions raised by the petitioner.

We have perused the first notice dated 15th July, 2011 whereby the petitioner was called upon to remain present before the Unfair Means Enquiry Committee. The notice would make a reference to some complaint from the Students of Vasantdada Dental College, Sangli alleging that the copying material was being provided to Ms. Patil by the concerned Supervisors from outside source, question is, as to whether petitioner could be held responsible for alleged “unfair practice” and whether respondent, Committee justified its action by inflicting subject penalty on petitioner.

It is not in dispute that at a given point of time, the petitioner was in-charge of the Centre. It appears from the record that the petitioner had appeared and submitted his explanation in the proceeding before the Committee. It also appears that the Grievance Committee had recorded the statements of supervisory staff in enquiry. However, impugned order dated 11th August, 2011 neither refers to a

complaint received from some students alleging copying material was supplied by the supervisory staff to Ms. Patil nor does it refer to statements of witnesses and/or explanation tendered by petitioner. The impugned order dated 11th August, 2011 nowhere attributes and/or records a finding as to in which manner and why the petitioner has been held guilty for misleading the University. The impugned order does not deal with the nature of alleged inconsistency in the reports submitted to the University by the supervisory staff and to the Flying Squad. The subject order is completely vague and it is not possible to ascertain as to on what basis, the Committee concluded, that the petitioner caused confusion by submitting diverse reports. The subject order is non-speaking and further more it also appears that the petitioner was not provided/supplied the material on the basis of which the notice dated 15th July, 2011 was issued to him. It may also be stated, that the contesting respondents did not even attempt to explain the alleged inconsistency in report or role attributed to petitioner either by filing reply or otherwise. On the

backdrop of these facts, punishment inflicted deserves to be quashed and set aside.

8. It cannot be ignored that the petitioner herein is a Professor in College with a Doctorate at his credit. He was elected as a Member Student of MUHS, Nashik and was appointed as a Senior Supervisor and Centre Observer for the University Examination from time to time for many years. It cannot be overlooked that the whole anxiety of the petitioner was to wipe out the stigma attached to his career by the impugned order, whereby he was “debarred” from participating in exam related work for six months. It is out of this anxiety, the petitioner had sought review of that order, however, the same was not done.

9. In view of the facts aforesaid and for the reasons stated hereinabove, the impugned order dated 11th August, 2011 is quashed and set aside. Petition is made absolute in terms of prayer clause (b).

(SANDEEP K. SHINDE, J)

(B.R. GAVAI, J)