

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO.1386 OF 2016**

Dr. Susy Kuriakose  
Principal, Bhavan's Hazarimal Somani,  
College of Arts & Science &  
J.P. College of Commerce & Management  
Studies, Mumbai.  
Residing at Flat No. 6, Utkarsh,  
1035 JA Raul Marg, Prabhadevi,  
Mumbai – 400 025. .... Petitioner

Vs.

- 1 Bharatiya Vidya Bhavan  
Munshi Sadan,  
Kulapati K.M. Munshi Marg,  
Chowpatty, Mumbai – 400 007  
Through it's Executive Secretary.
- 2 Sudhir G. Chitale  
Former Principal of the College,  
Director of Colleges,  
Bharatiya Vidya Bhavan  
Munshi Nagar, Andheri (West)  
Mumbai.
- 3 The Registrar,  
University of Mumbai  
Mumbai.
- 4 Joint Director Higher Education  
Elphinston Technical School,  
Mahapalika Marg,  
Mumbai – 400 001 .... Respondents

Mr. Vikas Khanchandani a/w Karan Dogra and S.N. Verma i/by Singhanian & Co. for the Petitioner.

Mr. Sushil Mahadeshwar i/by Ranjana Todankar for Respondent nos. 1 and 2.

Mr. P.M. Palshikar, Advocate for Respondent no. 3.

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

Judgment Reserved on : 6<sup>th</sup> February, 2017

Judgment pronounced on : 8<sup>th</sup> March, 2017

**JUDGMENT :**

1 This petition filed under Article 226 of the Constitution of India is directed against the order dtd. 30<sup>th</sup> October, 2015 passed by the University and College Tribunal at Mumbai in Appeal No. 30 of 2011 against her dismissal on 12<sup>th</sup> July, 2011 from the post of Principal of College run by respondent no.1. The impugned order dismisses the petitioner's appeal. The brief factual background of the petition is that respondent no.1 is the registered Trust/Society, which is in the management of two colleges in Mumbai, including respondent no.1- College. The petitioner was, in the year 2003, duly selected by the Selection Committee of respondent no.1, the Trust and appointed as Principal in Bhavan's Hazarimal Somani College of Arts and Science and J.P. College of Commerce and Management Studies, Mumbai. On 20<sup>th</sup> March, 2009, she was

suspended from service and was served with charge-sheet with statement of allegations from the management. The charge-sheet stated that she had committed misconduct by violating the code of conduct laid down in Statute 439-B (h) viz. “a teacher shall not indulge in or resort to, directly or indirectly, any malpractice or unfair means in administration”. Thereafter the domestic enquiry was initiated by respondent no.1 by appointing a practising lawyer as the Enquiry Officer. While the first departmental enquiry was under progress, she was served with second show cause notice regarding purchase of computers in March, 2007 leading to the second departmental enquiry against her. After conclusion of both the enquiries, she was served with order of dismissal from service by respondent no.1 management on 12<sup>th</sup> July, 2011. The petitioner challenged the order of her dismissal from service alleging that the charges of misconduct framed against her were false and the action of dismissal taken against her was a result of a biased and perverse domestic enquiry against her. She alleged that the Departmental enquiry was also in breach of principles of natural justice.

2           The respondents contested the appeal before the College Tribunal alleging that the conduct of the petitioner in award of contract for civil work for more than Rs.9,00,000/- for the computer laboratory was arbitrary and without proper authority. Also the purchase of computer and furniture at the

cost of Rs.6,42,143/- was without authority. According to the respondents, the dismissal had preceded with the regular enquiry by appointing two different enquiry officers. They claim that the petitioner was given a fair and proper opportunity for defending herself. The respondents had adhered to the rule of law and the enquiry officers on the basis of oral and documentary evidence had concluded that charges of misconduct were proved against the petitioner. The report of the Enquiry Officers was accepted by respondent no.1, management, after due and proper application of mind. After taking note of the gravity of the charges against her, respondent no.1 took a conscious decision of her dismissal from service.

3 Considering the rival contentions, the College Tribunal framed following points for it's consideration.

| Sr. No. | Points                                                                                                                                                                               |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1       | Whether the two enquiries conducted against the appellant were biased, violating principles of natural justice?                                                                      |
| 2       | Whether report and findings of the Enquiry Officers is perverse and contrary to the rules and facts on record                                                                        |
| 3       | Whether the quantum of punishment awarded is disproportionate to the charges of the alleged misconduct, the Appellant is entitled to get the relief of reinstatement and back-wages? |

For the reasons stated in the impugned order, it answered the same in the negative and dismissed the appeal.

4           Before considering the challenge of the petitioner to the impugned order, it would be convenient to note the scope of judicial review into the administrative action by respondent no.1. It is well established position in law that in departmental proceedings, the disciplinary authority is the sole judge of affairs and the court should not normally interfere with the factual findings unless it finds that the same are based either on no evidence or that the findings are wholly perverse or legally untenable. The exercise of power of judicial review is not concerned with the correctness of the findings of the fact on the basis of which the orders are made so long as those findings are supported by evidence and have been arrived at through proceedings, which cannot be faulted with for procedural illegalities or irregularities which would vitiate the process by which the decision was arrived at. If there is some relevant material, which the authority has accepted and which material may reasonably support the conclusion that the officer is guilty, this Court cannot in exercise of its jurisdiction under Article 226 of the Constitution of India to review the material and to arrive at an independent findings on the materials. In other words the judicial review is directed not against the decision but is confined to examination of the process of arriving at the decision. Therefore if an enquiry has been properly held, the

question of adequacy or reliability of the evidence cannot be canvassed before the High Court. The challenge by the petitioner to the impugned order will have to be considered strictly within this scope of judicial review.

5           The first grievance made by the petitioner before the College Tribunal was that respondent no.1 had flouted the principles of natural justice by starting the second departmental enquiry even before the first enquiry could be completed. Her second grievance was that she was refused permission to defend her through an advocate, which had an adverse effect on her defence.

6           As regards the grievance of the petitioner that she was refused permission to engage services of a lawyer, it has been rightly held by the Tribunal that there is no vested right in a charge-sheeted employee to represent either through a lawyer or through any other person unless statute or rules provide for such a right. No such provision is relied upon by the petitioner. The other grievance is of simultaneous enquiries conducted against the petitioner. The petitioner does not state as to what is the prejudice caused to her by the two enquiries. In fact as noted in the impugned order, the petitioner had complete opportunity to defend herself. She has not only cross-examined the witnesses of respondent no.1 but also examined several witnesses in support of her defence. Therefore, the enquiry is not vitiated on that court.

7           Next two aspects that can be considered within the same constraints are the propriety of the inference drawn by the Enquiry Officer and the propriety of the punishment awarded to the petitioner. The enquiry under judicial review would include ensuring that the affirmative finding on misconduct is supported by the evidence on record and in ensuring that the punishment is proportionate to the misconduct established. The impugned order discusses these aspects. The Tribunal has extensively discussed the evidence on record including the deposition of the witnesses and cross-examination of the petitioner herself. On appreciation of her evidence, it has concluded that the admissions given by the petitioner in her cross-examination support the allegations of misconduct. It has further noted that the most important piece of evidence, which completely demolishes the stand of the petitioner of having consented the expert team as well as of having gone ahead with the proposed project is of unequivocal admission of having assigned the civil work to the contractor at a revised enhanced rate, for which she had made no reference to the technical team of respondent no.1. The reasons stated for this lapse by her is that at the relevant time, she had several personal problems, because of which she was under stress and the aspect might have slipped from her mind. The Tribunal further found that from perusal of the documentary as well as oral evidence, the petitioner had for the reasons best known to her very

conveniently allotted the contract to M/s Jinesh on a revised quotation without bothering the points raised by the expert technical committee. She did not bother to seek advice and guidance from Mr. Navalkar. Thus, it is seen that the inference drawn by the Enquiry Officer as regards the affirmative finding on the misconduct on the part of the petitioner is supported by the evidence on record and hence cannot be disturbed. Similarly, considering the position held by the petitioner and the nature of misconduct, respondent no.1 was within its authority and right to award the punishment of dismissal. In the circumstance, the petition is dismissed.

**(Smt. R.P. SondurBaldota, J.)**