

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 917 OF 2009

Ashok S/o Janardhan Shinde, **PETITIONER**
Aged 24 Years, Occ. Nil,
R/o. Sakla Plot, Parbhani,
District Parbhani

V E R S U S

- 1] Marathwada Krushi Vidyapith **RESPONDENTS**
Parbhani, Vasmat Road, Parbhani,
Taluka and District Parbhani,
Through its Vice-Chancellor
- 2] Marathwada Krushi Vidyapith
Parbhani, Vasmat Road, Parbhani,
Taluka and District Parbhani,
Through its Registrar

Mr. S.B. Ghatol Patil, Advocate for the
Petitioner
Mr. M.N. Nawandar, Advocate for Respondents

**CORAM : T.V. NALAWADE AND
K.L. WADANE, JJ.**

DATE : 5th March, 2018

ORAL JUDGMENT [PER T.V. NALAWADE, J.] :

This petition is filed under Articles 226 and 14 of the Constitution of India to challenge the order of termination from service made against the petitioner by the respondent, the University.

2. Both sides are heard.

3. The petitioner was working as 'Laboratory Boy' with the University w.e.f. 22nd January, 1999. In one crime' punishable under Section 307 of the Indian Penal Code as he was behind bars for more than 48 hours after the arrest, he came to be suspended in January, 2003. The charge-sheet was filed against him for the offence punishable under Section 307 of the Indian Penal Code. He remained under suspension during the trial, and ultimately, on 8th March, 2006, he was convicted for the offence punishable under Section 324 of the Indian Penal Code. Though he was convicted, the trial Court, Sessions Court gave him benefit of provisions of Section 4 of the Probation of Offenders

Act and he was directed to execute the bond of good behavior of three years. He challenged that decision by filing Appeal in this Court bearing No. 342 of 2006. Simultaneously, he made representation to the respondents for reinstating him in the service, but he was not re-instated. The Appeal came to be dismissed on 21st October, 2010. As he was not re-instated, he filed the present proceeding. After dismissal of the Appeal, he amended the Petition to claim the relief of setting aside order of termination from service issued against him.

4. The learned counsel for the petitioner submitted that, in the Appeal, even the conviction of the petitioner was stayed by this Court, and so, the respondents ought to have re-instated the present petitioner. This submission cannot be considered now as the Appeal itself came to be dismissed. The submissions made show that the Apex Court did not grant special leave to file Appeal to the present petitioner.

5. The learned counsel for the petitioner submitted that, the case, which was filed against him by the police, was in respect of the incident, which had taken place outside the campus of office of his work, and it had no connection with the duty assigned to the petitioner. Learned counsel further submitted that in view of the provisions of Section 12 of Probation of Offenders Act and the fact that the said offence had no connection with the duty of the petitioner, the respondents ought to have taken different stand and imposing of punishment of termination from service was not proper. On this point, he placed reliance on some observations made by the Apex Court in the case reported in **AIR 1985 Supreme Court 772 [Shankar Dass v. Union of India and another]**. In that case, the employee was convicted and sentenced in the case for the offence of wrong parking. In view of the facts of that case, the Apex Court held that the penalty was not proportionate and even the powers given under Article 311 [2] of the Constitution of India need to be exercised fairly,

justifiable and reasonable.

6. In the present matter, there was charge-sheet filed for committing offence of attempt of murder against the present petitioner and he was shown as the main accused. The facts of the present matter are different than the facts of case of Shankar Das [*cited supra*]. The learned counsel for the respondents placed reliance on the case reported in **A.I.R. 1990 Supreme Court 987 [Union of India and others v. Bakshi Ram]**. In that case, the Apex Court held that, release of offender on probation does not obliterate stigma of conviction and after giving of the benefit of Probation of Offenders Act, the employee cannot claim re-instatement in service. The reliance was also placed on the observations in another case reported in **1987 [Supp] Supreme Court Cases 39 [Tripathi Ram v. V.K. Seth and another]**. In that case, the Apex Court considered the provisions of Article 311 [2] second proviso of Constitution of India and Section 12 of the Probation of Offenders Act. The Apex Court has laid

down that the civil servant convicted for the criminal offence is not entitled of hearing by the Disciplinary Authority in Departmental Enquiry before imposing punishment of dismissal from service.

7. In view of the aforesaid provisions and the offence for which the conviction is given to the petitioner, this Court holds that there was no other option before the respondents than to see that the petitioner is dismissed from service. Learned counsel for the petitioner then submitted that the order of termination from service can be changed into removal from service as such order will help the petitioner in getting the other employment. He submits that if such order is made, that order will in true sense give effect to the provisions of Section 12 of the Probation of Offenders Act. There is force in this submission. The Honourable Apex Court in the case of ***Trikha Ram*** [cited above] also did the same thing. Thus, the order of termination from service can be changed into removal from service.

8. In the result, Writ Petition stands dismissed. However, the order of termination from service issued against the petitioner is to be read as 'removal from service', which will not prevent the petitioner from getting another employment.

Rule made absolute in abovesaid terms.

(K.L. WADANE, J.)

(T.V. NALAWADE, J.)