

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10715 OF 2016

Vidya Pratisthan (Maharashtra)
Ahmednagar Region, Ahmednagar
Through Ravindra s/o.Maruti Chobhe,
Age 44 years, Occ : Service as a
Principal, Vidya Pratisthan
D.Ed. College, Kedgaon
Tq. & Dist. Ahmednagar.

PETITIONER

VERSUS

- 1] The State of Maharashtra
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32.
- 2] The Director of Higher
Education, Maharashtra State,
Pune.
- 3] The Joint Director of Higher
Education, Pune Region,
Pune.
- 4] Mukund Das Takwale,
Age- 46 yrs. Occu-Nil,
R/o. C/o.Suhas Durge,
Tange Galli, Opp.District Court,
Ahmednagar.
[Amended as per Court's
Order dtd.28.11.2017]

RESPONDENTS

...

Mr.A.N.Kakade, Advocate for the Petitioner
Mr.S.B.Yawalkar, Addl.G.P. for the Respondent/
State
Mr.L.V.Sangeet, Advocate for respondent no.4

...

**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 30.01.2018
Pronounced on : 05.02.2018

JUDGMENT: (Per S.S.Shinde, J.):

1] Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

2] This Petition is filed with the following prayers:

B) That by issuing writ of mandamus or any other appropriate writ, order or directions in like nature, the impugned communication dated 11.7.2016 issued by respondent no.2 may kindly be quashed and set aside.

C) That by issuing appropriate writ, order or directions in like nature, the enquiry may kindly be conducted against the respondent no. 2 and 3 for misuse of their power and report may kindly be submitted to this Hon'ble Court.

3] It is the case of the petitioner that, respondent no.4, namely Mukund Das Takwale, who was working as a Peon, was absent from duty since 11.09.2006, without taking permission from the superiors. Though several notices were given to him to join duty, he did not join duty. Therefore, show cause notice was issued to respondent no.4 on 08.06.2007, as to why his increment should not be stopped. In spite of service of show notice to respondent no.4, he did not turn up to join the duties, therefore, the management decided to stop his increments. Thereafter, the management issued a communication on 24.06.2008 to respondent no.4, and informed that, the management has decided to conduct departmental enquiry for the misconduct committed by him.

4] It is further the case of the petitioner that, the first meeting of the Enquiry Committee was held on 01.07.2008, in

which the management gave their evidence, and respondent no.4, who was present, sought time for giving his evidence. On the next date also, again he sought time. However, did not give oral or documentary evidence. As no evidence was given by respondent no.4, the enquiry was proceeded without evidence on the part of respondent no.4. On the basis of report of Enquiry Committee, show cause notice dated 01.08.2008 was issued to respondent no.4, as to why his services should not be terminated. Respondent no.4 did not respond to the said show cause notice though served, therefore, the management, by its order dated 16.08.2008, terminated the services of respondent no.4.

5] It is further the case of the petitioner that, the said order is not challenged by respondent no.4 before any court of law till this date, and as such, the same has attained finality. For the first

time, in the year 2016, respondent no.4 made a complaint to respondent no.3, and on the basis of said complaint, he conducted hearing on 10.06.2016. By communication dated 11.07.2016, respondent no.2 directed to the present petitioner-society to reinstate respondent no.4 in service as a Peon, whose services were terminated in the year 2008, on the basis of the report of the departmental enquiry. Hence the present Petition is filed.

6] Learned counsel appearing for the petitioner submits that, the order of termination, which was passed in the year 2008, had been questioned before the Joint Director of Education, who had no jurisdiction to pass the impugned order. In that view of the matter, on this ground alone, the impugned order deserves to be quashed and set aside.

7] On the other hand, learned AGP appearing for respondent-State relying upon the averments in the affidavit-in-reply filed on behalf of respondent nos.1 to 3 submits that, the services of respondent no.4 were terminated by the petitioner-management in the year 2008 on the basis of report of Enquiry Committee. On the basis of said enquiry report, show cause notice was issued to respondent no.4, and thereafter, his services were terminated. It is submitted that, after affording opportunity of hearing, the impugned order was passed. It is submitted that, it is true that, the management is the authority to initiate an enquiry against its employees as per the norms, and also to inflict punishment depending upon enquiry report. It is submitted that, the impugned order is in the nature of recommendation to the management.

The power vested in the Joint Director is traceable in the Government Resolution dated 17th May, 1994.

8] Learned counsel appearing for respondent no.4, relying upon the averments in the affidavit-in-reply, submits that, respondent no.4 was working with the petitioner as a Peon on permanent vacant post from 02.10.1990. The approval was also granted to his appointment. He was rendering the services diligently. The petitioner management intentionally shown respondent no.4 absent from the duty, and prepared a false and fabricated record. When respondent no.4 asked for documents in respect of the enquiry, the same were not supplied to him. No fair opportunity was given to him by the Committee. The enquiry was completed within one day. As per the report annexed with the Writ Petition at Page 28, it is shown that one Man Committee for enquiry was constituted

on 01.07.2008. On 03.07.2008, he was present in the meeting; though he sought time, no time has been granted to him. Within one day i.e. on 03.07.2008 itself, the enquiry shown to be concluded, and services of respondent no.4 were terminated on 03.08.2008. No opportunity has been given to respondent no.4. No termination order is served upon him. Therefore, there is no question to challenge the same before the appropriate forum. Respondent no.4 has made several representations to the petitioner as well as to the respondents. On the basis of representation made by respondent no.4, the Deputy Director, Higher Education, Pune called explanation from the petitioner. After going through the record, the Deputy Director, Higher Education, Pune came to the conclusion that, the petitioner has not followed the procedure as per law in respect of initiation of enquiry and termination of

the permanent employee from the service. Therefore, respondent no.2 has passed the order dated 11.07.2016, thereby directing the petitioner to reinstate the respondent no.4 on the post of Peon. The impugned order passed by respondent no.2 is just and legal. Therefore, learned counsel submits that, the Petition may be dismissed.

9] We have considered the submissions of the learned counsel appearing for the respective parties. With their able assistance, we have perused the pleadings, and grounds taken in the Petition, annexures thereto, replies filed by respondent nos.1 to 3 and respondent no.4. Admittedly, the order of termination of respondent no.4 was issued in the year 2008. Belatedly, in the year 2016, respondent no.4 approached the Joint Director of Higher & Technical Education, Pune, and the said authority has directed the petitioner to reinstate

respondent no.4 in the school. In the first place, there was inordinate delay, which remained unexplained on behalf of the respondent no.4 in approaching the Joint Director of Higher and Technical Education, Pune, and *secondly*, there is appropriate forum created by the Statute for challenging the order of termination. Therefore, in our *prima facie* opinion, for the aforesaid two reasons, the impugned communication/order dated 11.07.2016 passed by the Joint Director of Higher & Technical Education, Pune, cannot legally sustain, hence the same is quashed and set aside.

10] Rule is made absolute on above terms. The Petition is allowed to above extent, and the same stands disposed of.

11] We make it clear that, in case respondent no.4 wishes to avail of an appropriate remedy as available in law, this

judgment and order shall not be construed as an impediment to approach the appropriate forum. We have not expressed any opinion about availability of the appropriate forum or inordinate delay on the part of respondent no.4 for redressal of his grievance. The parties are at liberty to agitate ground of delay, in case respondent no.4 initiates the proceeding before the appropriate forum in future.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

DDC