

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13961 OF 2017
WITH
WRIT PETITION NO. 1016 OF 2018

THE PRINCIPAL MAHATMA GANDHI SHIKSHAN MANDALS
VERSUS
THE JOINT DIRECTOR HIGHER AND TECHNICAL EDUCATION

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Advocate for Petitioners : Shri Darandale Abhijit C.
AGP for Respondent 1 : Shri Tambe S.K.
Advocate for Respondent 2 : Shri Mukhedkar Amit A.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 10, 2018
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PER COURT :-

1. By order dated 4.12.2017, passed by this Court (Coram : V.K. Jadhav, J.) and 1.10.2018 (Coram : Sunil P. Deshmukh, J.), both these matters are heard together since the petitioner / management in the first petition and the petitioner / employee in the second petition are aggrieved by the judgment of the University Tribunal, dated 13.10.2017, by which, Appeal No. NMU-01/2017 has been partly allowed.

2. The learned counsel for the management has contended in his petition that the ground on which the University Tribunal has vitiated the enquiry, is an unsustainable ground since the employee was permitted by the order of the learned Division Bench of this Court dated

23.6.2016 in Writ Petition No. 4833 of 2016, filed by the employee, to engage a friend or representative as his Defense Representative. He had prayed for leave to appoint an Advocate and the learned Division Bench had refused permission to engage an Advocate. He, therefore, submits that the impugned judgment of the University Tribunal vitiating the enquiry on the ground that the management did not permit the employee to engage an Advocate, is unsustainable and hence the order be set aside and the enquiry be restored.

3. Learned Advocate for the employee submits, on instructions taken from him as he is present in the Court that if this Court permits the management to treat the employee as deemed suspended from 1.12.2018 till the enquiry is finally concluded by the decision of the management, he would reserve his right to seek backwages in the event he suffers an adverse disciplinary action. He further prays on instructions, that after the enquiry is concluded and the management delivers its verdict, the said decision should not be implemented for a period of two weeks.

4. Learned Advocate for the management submits that in so far as the consent of the employee is concerned, the management would place the employee under suspension by applying the principle of deemed suspended from 1.12.2018 and shall forward his bills for suspension

allowance as per Rules to the Joint Director of Higher and Technical Education. He, however, opposes the request that the decision of the management should not be given effect to after the enquiry is completed.

5. The learned AGP submits that the suspension allowance would be cleared under the directions of this Court only if the management is a grant-in-aid institution and if no other employee has been engaged in place of this employee for whom the salary grants are already exhausted. Learned Advocate for the management makes a statement, on instructions, that no new employee is engaged in place of this appellant and salary grants which would have been normally allocable to this employee, have not been exhausted.

6. The Honourable Apex Court in the matter of State Bank of Patiala and others Vs. S.K.Sharma [AIR 1996 SC 1669], has concluded that an enquiry cannot be set aside as being vitiated, merely because a procedural right is violated. Such violation has to be tested on the touchstone of prejudice. Unless a substantive right is violated, the enquiry cannot be branded as being vitiated.

7. It is the case of the management that the employee attempted to misuse the order of the learned Division Bench, dated 23.6.2016, for

seeking appointment of an Advocate, which prayer was refused by the learned Division Bench and hence, the refusal of the employee to appoint any defense representative other than his friend who was a practicing Advocate, cannot be a ground for setting aside the enquiry. I find, prima facie, that the contention of the management is well placed. However, in the light of the statement made by the employee, who is present in the Court, as recorded above, I am not delivering a decision on this contention of the management.

8. In view of the above, both these petitioners are disposed off. The employee shall be deemed to be suspended w.e.f. 1.12.2018 and the Education Department would treat this employee to be deemed suspended accordingly. The management shall forthwith submit the proposal of the employee for payment of suspension allowance for the month of December, 2018 and for the forth coming months on regular basis till the enquiry culminates into a final decision of the management. The Education Department would accordingly, release the suspension allowance unless it notices that the salary grant from which the suspension allowance is to be paid to this employee, has already been exhausted by the management and if this is the situation, then the management will have to pay the suspension allowance.

9. Learned Advocate for the employee confirms his statements

made on 8.12.2016, when this matter was heard at length. The enquiry shall, therefore, be conducted in view of the following directions:-

(A) This employee shall tender his detailed additional reply to the charge sheet on/or before 21.12.2018, failing which the said request shall stand refused.

(B) Since the enquiry officer has been appointed as per the Standard Code of 1984 applicable to the non-agricultural Universities in the State of Maharashtra, the litigating sides would appear before the enquiry officer on 2.1.2019 at 11.00 am.

(C) The employee is at liberty to engage any friend, notwithstanding whether he is a teacher or a professor or a retired teacher, but shall not be an Advocate or a person who has acquired the degree of LL.B., as his defense representative and the said defense representative shall remain present on 2.1.2019.

(D) The management has examined 17 witnesses, who were discharged earlier as the employee denied to cross examine them. It shall keep each witness present, may not necessarily be in serial order of their examination, on every Wednesday and Saturday beginning from 2.1.2019, for cross-examination at 11.00 am.

(E) The Employee and his defense representative or if the defense representative is absent, he himself, would cross-examine each of such witnesses on each Wednesday and

Saturday and would complete the cross-examination on the specified date on which the cross-examination has begun.

(F) After such cross-examination of all 17 witnesses is concluded, the employee would lead his evidence on the 15th day after the last cross-examination. The management would cross-examine the employee within 7 days of the recording of his deposition.

(G) From the beginning of the evidence of employee, the enquiry officer would be at liberty to set the dates of enquiry as per his convenience.

(H) On the date the employee examines himself, he would submit a list of his witnesses and such persons should be connected with the subject matter of the enquiry.

(I) After the recording of oral evidence has concluded, the enquiry officer would be at liberty to file his enquiry report as per his convenience, but expeditiously, in accordance with the law and Rules.

(J) The suspension allowance shall be paid as per the Rules, till the management finally announces its decision.

(K) The request of the employee that the decision of the management should not be effected for two weeks is not accepted.

10. Needless to state, the impugned order stands modified, in view of

the above directions.

11. The management is at liberty to pray for withdrawal of the original record and proceedings of the enquiry from the College and University Tribunal and the Tribunal shall accordingly return the papers, by keeping on record a photostat copy of all the said documents, which are being returned, while receiving the originals.

12. The contention of the employee with regard to backwages from the date of his original termination 8.12.2016 is kept open to be considered in appropriate proceedings and all contentions of the parties are, therefore, kept open.

13. The statement of the learned Advocate for the management is recorded that there is one enquiry officer, one management representative and one person who writes the roznama and proceedings of the enquiry.

14. Learned Advocate for the employee makes a statement that the Contempt Petition filed by him shall be withdrawn.

(RAVINDRA V. GHUGE, J.)

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