

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

WRIT PETITION NO. 8964 OF 2019

Rajesh S/o Subhashrao Devkar

.. Petitioner

Versus

The State of Maharashtra and Others

.. Respondents

Mr. V. M. Vibhute, Advocate for Petitioner.

Mr. K. N. Lokhande, AGP for Respondent No. 1

Mr. A. D. Aghav, Advocate for Respondent No. 2.

Mr. A. V. Hon, Advocate for Respondent No. 3 to 5.

**CORAM : S. V. GANGAPURWALA &
 MANGESH S. PATIL, JJ**

DATED : 06th AUGUST, 2019.

PER COURT:-

1. The petitioner assails the order of termination.
2. The learned Counsel for the petitioner submits that the Presiding Officer of the College and University Tribunal, Aurangabad is not available and that is why he had filed Writ Petition before this Court. Today also the presiding officer of the College and University Tribunal is not appointed and the said post is vacant.
3. We have heard Mr. Vibhute, learned Counsel for the petitioner and Mr. Hon, learned Counsel for Respondent Nos. 3 to 5.
4. The petitioner assails the order of termination on the ground that the petitioner is terminated without enquiry. The order of termination is

stigmatic. To substantiate its contention the learned Counsel relies on the judgment of the Apex Court in a case of ***V. P. Ahuja Vs. The State of Punjab reported in (2000) 3 SCC 239.***

5. Mr. Hon, the learned Counsel for the respondent / institution submits that the allegations against the petitioner were grave. The behaviour of the petitioner was objectionable. Considering the gravity of the complaints and the allegations, the institution had to terminate the services of the petitioner. The petitioner had not completed his probation period. The institution has right to terminate the petitioner. The learned Counsel relies on the judgment of the Apex Court in a case of ***Secretary, Lucy Sequeira Trust And Another Vs. Kailash Ramesh Tandel And Others reported in (2019) 6 SCC 155.***

6. The petitioner was appointed as an Assistant Professor for the subject of Computer Engineering by respondent No. 3 on 10.02.2017. The probation period as per the appointment order is 24 (twenty four) months.

7. On or about 06.07.2018, the impugned termination order is issued. The text of the termination order reads thus :

Ref :- Appointment Letter dated 10th February, 2017

Subject : Termination of Appointment from the post of Assistant Professor.

Dear Mr. Rajesh S. Devkar

With reference to above said subject matter, you had been appointed as Assistant Professor vide appointment letter dated 10th

February 2017 in our Vilasrao Deshmukh Foundation School of Engineering and Technology at Latur. As per the terms and conditions mentioned in your appointment letter, you was on probation for 24 (Twenty Four) months from the date of joining and the said period is still not completed.

Since your joining it comes to our notice that your conduct towards the students basically with girl students was not proper. We have received many verbal complaints from the students that you are misbehaving with them. The same was also communicated to you many times and also had given many opportunities for rectifying your unprofessional behaviour and misconduct. You have accepted your misbehaviour vide your letter dated 27th June 2018 that you have done wrong activities with one of the student by sending her dirty messages through Whats App.

The management has observed that, your conduct over the past few weeks have tantamounted to extreme unprofessional behaviour and entail gross misconduct. Hence the management has decided to terminate you and the decision will come into effect immediately from today itself.

At VDF School of Engineering and Technology campus, we hold ourselves to highest ethical standards and unfortunately your actions and unprofessional behaviour are miserably affecting the decorum of Campus. We anticipate that if remained unchecked, your actions would set up a precedent for our pupils and peers to emulate. In light of this, it is imperative that your services be terminated forthright.

We therefore are left with no other choice but to issue you this notice of termination dated 05.07.2018 with immediate effect.

We direct you to return all the School's material, documents or equipment etc. immediately to the management.

8. It is undisputed that the petitioner is terminated during the period of probation. The management has got right to terminate the services of the petitioner during probation, if the management is not satisfied with the services of the petitioner without an enquiry. However, if the order of termination is stigmatic, then certainly the petitioner is required to be given an opportunity to put forth his stand. In such cases, the proper procedure for termination of an employee is required to be adhered too. Reading the text of the termination order, it is manifest that the order of termination is stigmatic. The Apex Court in a case of ***V. P. Ahuja Vs. The State of Punjab (supra)*** observed that if the order on the face of it was stigmatic and punitive, the termination order could not be passed without holding a regular enquiry.

9. The judgment in a case of ***Secretary Lucy Sequeira Trust And Another (supra)*** relied by the respondent would not inure to the benefit of the respondents in as much as, in the said cases also, the employee was terminated after conducting the departmental enquiry.

10. The learned Counsel for the respondents on instructions submits that the institution would conduct enquiry and would complete the same within a period of five (05) weeks from today.

11. In view of the above, the impugned termination order is quashed and set aside. The petitioner shall be deemed to be reinstated on the date the order of termination was passed. The petitioner shall be deemed to be under suspension from the date of termination. The petitioner shall be entitled for the subsistence allowance as per rules till the enquiry is concluded and fresh decision is taken by the institution.

12. Writ Petition accordingly is disposed of. No costs.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

P.S.B.