

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.10857 OF 2018

Dr. Shaikh Imran s/o Shaikh Usman,
Age-40 years, Occu:Service,
R/o-Plot No.3, Rose Park, Majnu Hill,
Damdi Mahal, Near Pakiza Hall,
Aurangabad.

...PETITIONER

VERSUS

- 1) Maulana Azad Education Society,
Through its President,
Dr. Rafiq Zakaria Campus,
Rouza Baug, Aruangabad,
- 2) President,
Maulana Azad Education Society,
Dr. Rafiq Zakaria Campus,
Rouza Baug, Aurangabad,
- 3) Marathwada College of Education,
Through its Registrar,
Dr. Rafiq Zakaria Campus,
Rouza Baug,
Aurangabad,
- 4) Joint Director,
Higher Education,
Aurangabad Division,
Aurangabad,

- 5) Dr. Babasaheb Ambedkar Marathwada
University, University Campus,
Aurangabad,
Through its Registrar,
- 6) The State of Maharashtra,
Through its Secretary,
Higher & Technical Education
Department, Mantralaya,
Mumbai.

...RESPONDENTS

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Mr. V.J. Dixit, Senior Counsel I/b. Mr. Sushant
V. Dixit Advocate for Petitioner.

Mr. R.N. Dhorde, Senior Counsel I/b. Mr. V.R.
Dhorde Advocate for Respondent Nos.1 to 3.

Mr.A.R. Kale, A.G.P. for Respondent Nos.4 and 6

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**CORAM: S.S. SHINDE AND
SUNIL K. KOTWAL, JJ.**

DATE OF RESERVING JUDGMENT : 13TH DECEMBER, 2018

DATE OF PRONOUNCING JUDGMENT: 04TH JANUARY, 2019

JUDGMENT [PER S.S. SHINDE, J.]:

1. Rule. Rule made returnable forthwith and
heard finally with the consent of the learned
counsel appearing for the parties.

2. By way of filing this Writ Petition under Article 226 and 227 of the Constitution of India, the Petitioner seeks quashment of the departmental enquiry initiated against the Petitioner. It is also prayed that letter dated 20th August, 2018 appointing enquiry officer, is illegal and the enquiry conducted under the provisions of Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (for short "M.C.S. Rules") is not proper in view of the Uniform Statutes "Governing Terms and Conditions of service of Teachers Working in the Affiliated Colleges, Recognized Institutions, Autonomous Colleges, Community Colleges, Empowered Autonomous Colleges, Empowered Autonomous Cluster Institutions, Empowered Autonomous Skill Development Colleges in Maharashtra" (for short "Uniform Statutes"), and in particular Statute No.212. Therefore, it is prayed that the said letter may be quashed. The Petitioner also prays for staying the departmental

enquiry on the ground that the charges framed in the departmental enquiry and in criminal case are one and the same and therefore, the enquiry may be stayed till the trial in the criminal case is over. In support of his submissions, learned senior counsel appearing for the Petitioner has placed reliance upon the exposition of law in the case of Kusheshwar Dubey vs. Bharat Coking Coal Ltd. and others¹, and in the case of The Delhi Cloth and General Mills Ltd. vs. Khushal Bhan².

3. Mr. Dixit, learned senior counsel appearing for the Petitioner submits that the appointment of the enquiry officer is illegal. An alleged departmental enquiry being conducted, is not as per the provisions stipulated under Statute No.212 of Uniform Statutes. It is further submitted that Statute No.213 of the Uniform Statutes stipulates that enquiry officer may be

1 AIR 1988 S.C. 2118

2 AIR 1960 S.C. 806

appointed for conducting enquiry, if disciplinary authority forms opinion based on the reports of the preliminary enquiry that delinquent has committed misconduct which may result in major penalty. Unless disciplinary authority forms opinion that misconduct committed by the delinquent may result in major penalty, enquiry cannot be directed. The disciplinary authority may appoint enquiry officer who is retired Judge below the rank of District Judge, and no other person is competent to be appointed as enquiry officer. However, in the present case such enquiry officer is not appointed. It is further submitted that the alleged resignation of the Petitioner is already challenged before the competent Court. It is further submitted that false criminal cases have been registered against the Petitioner. The Petitioner has registered F.I.R. against the members of the Respondent Management. The entire exercise on behalf of the Respondent Management is

mala fide. In fact suspension order of the Petitioner was revoked and he joined the College, however, the said fact has been denied by the Respondents. Therefore, learned senior counsel appearing for the Petitioner, relying upon the grounds taken in the Petition, including grounds inserted by way of amendment to the Petition and also annexures to the Petition, submits that the Petition may be allowed.

4. On the other hand, Mr. Dhorde, learned senior counsel appearing for Respondent Nos.1 to 3, relying upon the affidavit in reply and additional affidavit in reply filed on behalf of Respondent Management, submits that the conduct of the Petitioner is not befitting to the status of Principal/ Professor of the College. There are various complaints pending against the Petitioner. Learned senior counsel invites our attention to the averments in the reply and submits that even

the female employees have made complaints against the Petitioner. The Petitioner has been involved in many illegal activities. He invites our attention to the alleged illegal activities of the Petitioner which are mentioned in detail in the affidavit in reply and in additional affidavit in reply filed on behalf of Respondent Management. It is submitted that Uniform Statutes are not brought into force, therefore, enquiry is conducted under the provisions of M.C.S. Rules. It is submitted that the Petitioner has an alternate efficacious remedy for redressal of his grievances. The Petition raises disputed questions of facts and therefore, the same may not be entertained. He invites our attention to the Judgment and order dated 26th April, 2018, passed by the Division Bench of this Court (CORAM: S.V. GANGAPURWALA AND A.M. DHAVALA, JJ.) in Writ Petition No.3110 of 2017, and submits that inspite of directions given by this Court, the Petitioner has not co-operated

for the enquiry. He submits that the suspension of the Petitioner was challenged in the aforesaid Writ Petition, however, this Court has rejected the said Petition and directed to conclude the enquiry within six months from the date of passing such order. The Petitioner was directed to co-operate for such enquiry. However, instead of participating in the departmental enquiry, the Petitioner has avoided the enquiry and filed this Petition. The Petitioner, by way of filing various proceedings, is trying to obstruct the departmental enquiry. Therefore, enquiry officer proceeded with the enquiry ex-parte and submitted report of enquiry. It is submitted that, charge/charges framed in the departmental enquiry are quite different and nothing to do with criminal cases initiated against the Petitioner. In support of his submissions, learned counsel placed reliance on the ratio laid down in the case of Depot Manager, A.P. State Road Transport

Corporation vs. Mohd. Yousuf Miya and others³. Therefore, learned senior counsel appearing for the Respondent Management, relying upon the averments in the affidavit in reply and also additional affidavit in reply, submits that the Petition is devoid of merits and the same may be dismissed.

5. We have given careful consideration to the submissions of Mr. Dixit, learned senior counsel appearing for the Petitioner and also Mr. Dhorde, learned senior counsel appearing for Respondent Nos.1 to 3. We have carefully perused the pleadings and grounds taken in the Petition, annexures thereto, replies filed by the Respondents and also rejoinder filed by the Petitioner.

6. At the outset, it would be apt to refer

³ (1997) 2 S.C.C. 699

to the Judgment of the Division Bench (CORAM: S.V. GANGAPURWALA AND A.M. DHAVALA, JJ.) of this Court in Writ Petition No.3110 of 2017, dated 26th April, 2018. In the said Judgment, the Court was constrained to observe that "it is with great anguish we pen this order." There are observations about conduct of the parties in Para 2 and 3 of the said Judgment. The Court has referred in brief, the facts of the case in Para 4 and 5. The Court has extensively referred to the arguments advanced by Mr. Dixit, learned senior counsel appearing for the Petitioner. The Court has also made extensive reference to the arguments advanced by Mr. Dhorde, learned senior counsel appearing for the Respondent Management and its officials. In the present proceedings also both the learned senior counsel have repeated the arguments which were advanced while hearing the aforesaid Writ Petition. Therefore, to avoid the repetition, the same are not extensively referred. It appears that

in the said Judgment, this Court has taken note of the fact that Ex-Principal of Respondent No.3 College had filed criminal case against the Petitioner, in which the Petitioner was arrested and was behind the bars for more than 48 hours. Pursuant to arrest, the Petitioner was suspended by the Respondent Management. It appears that, it was argued before the Court that there was oral revocation of the suspension of the Petitioner. However, the said contention has not been accepted by this Court. In Para 8 of the said Judgment, the Court has extensively dealt with the said aspect. There is also reference to the police complaint filed by the Petitioner against the members of the Respondent Management. The Court has made reference to the affidavit filed by the President of the society Mrs. Fatma Rafiq Zakaria on 14th January, 2018, stating that the Petitioner was suspended. There are other criminal cases filed against the Petitioner and that the Petitioner has

indulged in fabricating, destroying/ taking away different records. The Petitioner is not attending the Headquarters. The charges in the departmental enquiry were sought to be served upon him but no response was received from the Petitioner. It is further stated that affidavit dated 5th December, 2017 of Dr. Farooqui Maqdoom Mohiuddin Riazuddin Ahmed, is without authority of the Management.

7. It is further to note that, in the said Judgment and order dated 26th April, 2018, passed in Writ Petition No.3110 of 2017, the Court declined to quash the order of suspension. The Court in Para 10 of the Judgment, has observed that serious allegations are made in each and every criminal case filed by the parties against each other, which certainly is not in the interest of the institution. The Court has also taken note of alleged resignation tendered by the Petitioner on 10th October, 2016, and observed that already

the Petitioner has availed of an appropriate remedy for quashing of such resignation. The Court has taken note in Para 15 of the Judgment that, the charges were framed against the Petitioner and were sought to be served upon the Petitioner long back and in view of that, the suspension would not be ipso facto revoked.

8. Thus, following order was passed in the said Writ Petition No.3110 of 2017:-

"ORDER

A) The respondents shall pay subsistence allowance to the Petitioner as per rules from the date of suspension till date within four weeks and shall regularly pay the subsistence allowance.

B) The respondents shall conclude the departmental enquiry within six (6) months.

C) The petitioner shall co-operate in conclusion of the departmental enquiry.

D) In case the departmental inquiry is not concluded within six (6) months upon the petitioner co-operating the departmental inquiry, then the order of suspension shall stand revoked by culmination of six (6) months from the date of this order.

E) The aforesaid order is passed hoping that petitioner would co-operate in the departmental inquiry.

F) In case the petitioner does not co-operate in the departmental inquiry, then the respondents are at liberty to take appropriate steps in the matter.

17. The Writ Petition accordingly stands disposed of with aforesaid observations and directions."

9. Prima facie, it appears that the Petitioner has not adhered to the directions

issued by this Court to co-operate in conclusion of the departmental enquiry. It is also relevant to mention that the aforesaid Judgment and order was challenged before the Hon'ble Supreme Court, however, the Hon'ble Supreme Court did not entertain the challenge to aforesaid Judgment and order, and the Special Leave Petition filed by the Petitioner was dismissed on 11th July, 2018.

10. The perusal of the documents placed on record and letter written by the President of disciplinary authority on 21st August, 2018, makes it clear that the Respondent authorities made every endeavour to serve the charge-sheet upon the Petitioner, but the Petitioner avoided to accept the same. The same is clear from reading the contents of the said letter, which is placed on record at Exhibit-P (Page No.119 of the compilation of the Writ Petition). We have carefully perused the charge and we are of the

opinion that said charge framed, IS independent and separate from the criminal case, except charge No.1 which is overlapping. However, in the facts of this case, the Petitioner, inspite of directions of this Court to participate in the departmental enquiry and co-operate for conclusion of the same, did not follow the said directions and avoided to participate in the enquiry. Therefore, prima facie it appears that the Petitioner has no regards to directions issued by this Court to him to participate and co-operate for departmental enquiry, and therefore, he is not entitled for discretionary or equitable relief.

11. Be that as it may, as already observed, the charge in the departmental enquiry IS independent and separate, and such enquiry has been conducted and we do not find that the charge-sheet which is further culminated into enquiry can be quashed at this stage.

12. So far application of Uniform Statutes is concerned, the said Statute is not yet brought into force and therefore, the submission of senior counsel appearing for the Petitioner that enquiry is not conducted under the said Uniform Statutes and therefore the same is vitiated, is devoid of any substance. Respondent Nos.1 to 3 have filed the additional affidavit and stated that, despite of service of notices by Registered Post A.D. which were unclaimed and thereafter despite of publishing the notice in the newspaper, the Petitioner did not remain present, therefore the enquiry officer passed an order proceeding the enquiry ex-parte according to the rules. It is further submitted that witnesses were examined on behalf of the Respondent Management and the enquiry has been concluded on 6th October, 2018, by the enquiry officer. Therefore, keeping in view the fact that the enquiry has been complete, there

is no question of entertaining the prayer of the Petitioner to quash the charge-sheet or to interfere in such proceedings, and particularly keeping in view the directions issued by the Division Bench (CORAM: S.V. GANGAPURWALA AND A.M. DHAVALA, JJ.) in Writ Petition No.3110 of 2017.

13. In the light of discussion in foregoing paragraphs, the Petition is liable to be rejected and accordingly the Writ Petition stands rejected. No order as to costs. Rule stands discharged.

. An observations made herein before are prima facie in nature and confined to present Petition only.

[SUNIL K. KOTWAL, J.]

asb/DEC18

[S.S. SHINDE, J.]