

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

WRIT PETITION NO. 10611 OF 2018

1. Marathwada Shikshan Prasarak Mandal,
Deogiri College Campus, Aurangabad.
Through its Secretary,
Shri Satish S.o. Bhanudasrao Chavan,
Age: 56 years, Occ. Secretary,
R/o. Aurangabad.
2. Majalgaon Arts, Science and Commerce College,
Majalgaon, Tq. Majalgaon, District : Beed.
Through its Principal,
Shri Vyankat Pandurang Pawar,
Age: 52 years, Occ. Service,
R.o. Majalgaon, Tq. Majalgaon,
District. Beed. ...Petitioners.

Versus

1. Sawarupsingh Asaram Umbare,
Age: 40 years, Occ. Nil,
R/o. At PostNandarpur,
Tq. Kannad, Dist. Aurangabad.
2. The Joint Director (Higher Education)
Aurangabad Division,
Aurangabad. ...Respondents.

Advocate for Petitioners : Mr. N.B. Khandare h/f. Mr. D.J. Choudhary and
Mr. A.G. Choudhary,
Advocate for Respondent No. 1 : Mr. Amol Joshi h/f. Mr. A.S. Deshmukh.
AGP for Respondent No. 2 : Mr. S.N. Morampalle.

**CORAM : MANGESH S. PATIL, J.
DATE : 04.12.2020.**

Judgment:

Heard.

2. Rule. The Rule is made returnable forthwith. Learned Advocate for the respondent No. 1 and learned AGP for respondent No. 2 - State waive service. With the consent of the parties, the matter is heard finally at the stage of admission.

3. The Management and the College being run by it are impugning the judgment and order of the Presiding Officer, University and College Tribunal, Aurangabad, dated 20.06.2018, in Appeal No. BAMU – 01/2016 preferred by the respondent No. 1 under Section 59 of the Maharashtra Universities Act, 1994, against the order of dismissal dated 19.11.2015, whereby, the Tribunal quashed and set aside the punishment of dismissal but awarded a lesser punishment of permanently withholding two increments with future effect and directed his reinstatement with 50% of backwages from the date of dismissal i.e. 19.11.2015 till the date of his joining the duty and further directed continuity in service.

4. The learned Advocate for the petitioners submits that the parameters regarding judicial review in administrative matters are well settled. The scope is very limited. It is only if it is a case of no

evidence that a judicial review is permissible. Even in case of quantum of punishment, it is only if it is a case of grossly disproportionate punishment that a judicial review is permissible. He refers to the following decisions of the Supreme Court in support of his arguments:

- i. **B.C. Chaturvedi Vs. Union of India and others,**
(1995) 6 Supreme Court Cases 749,
- ii. **High Court of Judicature of Bombay, Through its**
Registrar Vs. Udaysingh S/o. Ganpatrao Niak
Nimbalkar and Others,
(1997) 5 Supreme Court Cases 129,
- iii. **R.S. Saini Vs. State of Punjab and Others,**
(1999) 8 Supreme Court Cases 90,
- iv. **State of Rajasthan and Another Vs. Mohd. Ayub Naz,**
(2006) 1 Supreme Court Cases 589.

5. As far as the facts are concerned, the learned Advocate Mr. Khandare for the petitioners submits that there was enough material before the Enquiry Officer to prove the charges No. 3, 5, 6 and 7. There was no perversity or arbitrariness. The charge regarding conviction for the offence punishable under Section 117 read with 110 of the Maharashtra Police Act, was sufficient to dismiss the respondent No. 1 being an offence of the kind contemplated under Rule 42 (g) and

42 (p) of the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of Non-Teaching Employees) Rules, 1984, (hereinafter the Standard Code). Similarly, continuous absence for more than two years was also a serious charge and demonstrated his negligence in discharging the duty as contemplated under Rule 42 (i). Such continuous absence was duly proved. Cumulative effect of proof regarding the major charges of conviction in a criminal case coupled with continuous absence from duty are sufficient and justified imposition of a major penalty of dismissal. By no stretch of imagination, it can be said that the punishment imposed was grossly disproportionate so as to enable the Tribunal to cause any interference in exercise of the judicial power. He would therefore, submit that giving a complete go-bye to the settled principles, the Tribunal by the impugned judgment and order, has injudiciously replaced the punishment of dismissal and has imposed a lesser punishment. The Tribunal has, therefore, exercised the discretion and judicial power injudiciously. This Court should intervene under writ jurisdiction.

6. The Learned Advocate Mr. Joshi for the respondent No. 1 submits that assuming for the sake of arguments that the charges were duly proved as proposed by the Enquiry Officer, the punishment was

palpably disproportionate. The respondent No. 1 was merely convicted for a trifle offence of misbehavior in public punishable under Section 117 read with 110 of the Maharashtra Police Act and was merely sentenced to pay a fine of Rs. 700/-. Besides, the offence did not involve any ingredient of the offender being under intoxication and the conviction cannot be said to be for an offence involving moral turpitude.

7. As far as the charge regarding continuous absenteeism is concerned, as the record suggests, initially the enquiry was proceeded against the respondent No. 1. It was aborted by the petitioners on the ground that it was not properly conducted. A fresh enquiry commenced. He was made to face the enquiry and was never allowed to join the duty during the course of the enquiry. He was never served with any memorandum or notice for resuming duties. He being a poor employee could have merely made requests to the Principal of the College and once even issued a legal notice dated 29.09.2014 through his Advocate. He had made a written representation dated 13.09.2013 to the Secretary of the petitioner No. 1 requesting him to allow him to resume duty. Again he had made another representation on 02.12.2013 for his transfer from Majalgaon to Aurangabad. He would submit that instead of demonstrating as to what action was taken on

these communications, only a muster roll was produced before the Enquiry Officer to demonstrate that he was absent from the duty. Therefore, the learned Tribunal was justified in concluding that there was not enough material to prove the Charge No. 7 of continuous absence.

8. I have carefully gone through the impugned judgment and order and the papers. The charges that were levelled against the respondent No. 1 and stated to have been duly proved during the enquiry are as under:

“3. You were on night duty in the night of 26/5/2004, and it was noticed in the morning of 27/5/2004 about the loss of steel gate of the garden, and as such you committed negligence in discharge of duty.

5. JMFC, Court Majalgaon imposed fine of Rs. 700/- on you by holding you guilty under Sec. 110 and 117 of Bombay Police Act. The allegations against you were that you visited the college on 14/9/2012 on consuming alcohol. You abused the students and used the arrogant language to staff members. Police Inspector, Majalgaon reduced into writing the complaint and you were produced before the learned JMFC who imposed above fine.

6. Your service record shows that you are in habit of remaining absent from duty without permission and there

was no improvement in your work despite issuance of without pay letter to you from time to time.

7. You continuously remained absent from duty without permission w.e.f. 27/7/2012 to 18/9/2014 while you were working as Laboratory Attendant at Majalgaon College, District Beed.

8. You failed to obey the orders issued by the superiors.”

9. Before advertng to the proof regarding the charges and its scrutiny by the Tribunal, it would be appropriate to reiterate and bear in mind the principles regulating the power of a judicial review in the matters of administrative decisions. It is trite as has been laid down in catena of decisions including the decisions cited by the learned Advocate for the petitioners (supra), a scope of judicial review is limited. If it is a case of ‘some evidence’ in proof of the charge, the Court/Tribunal cannot re-appreciate the evidence and substitute its findings. It can resort to re-appreciation of evidence/material and substitution of findings only if it is a case of ‘no evidence’.

10. Bearing in mind these principles, if one turns to the matter in hand, as regards Charge No. 3 regarding missing steel gate of the garden in the night intervening 26.05.2004 and 27.05.2004, as is

pointed out by the Tribunal in the impugned order, in fact there was absolutely no evidence to prove the Charge. The witness examined also had no personal knowledge about the fact and if this be so, it was clearly a case of no evidence to prove the Charge. In the absence of iota of material, the Tribunal was justified in re-appreciating the evidence in this respect and in concluding that the Charge was not proved.

11. As far as Charge No. 5 is concerned, obviously it was duly proved since the respondent No. 1 was convicted. But it is to be borne in mind that he was held guilty for breach of Rule 42 (g) of the Standard Code which requires conviction in respect of an offence involving moral turpitude. Considering the fact that the ingredients of the offence did not contain anything about misbehavior under the influence of liquor and as there was medical examination report of respondent No. 1 to the effect that he had not consumed alcohol, it was indeed incorrect and illegal to hold the Charge to have been proved under Rule 42 (g) of the Standard Code.

12. The offence punishable under Section 117 read with 110 of the Maharashtra Police Act reads thus:

“110. Behaving indecently in public

No person shall wilfully and indecently expose his person in any street or public place or within sight of and in such manner as to be seen from, any street or public place, whether from within any house or building or not, or use indecent language or behave indecently or riotously, or in a disorderly manner in a street or place of public resort or in any office, station or station house.

117. Penalties for offenders under Sections 99 to 116

Any person who contravenes any of the provisions of sections 99 to 116 (both inclusive) shall, on conviction, be punished with fine which may extend to [twelve hundred rupees].”

13. It is in view of the trifle nature of this offence coupled with the fact that the respondent No. 1 was not found to be intoxicated during the said incident, it was indeed a case of no evidence rather than some evidence. The Tribunal in my considered view was clearly within its jurisdiction and power to make such observations by appreciating the material in concluding that though there was a conviction, it was not for an offence involving moral turpitude as is required by Rule 42 (g) of the Standard Code.

14. So far as the other Charge Nos. 6, 7, 8 as regards continuous absenteeism and disobedience, the Tribunal has found that though the

respondent No. 1 was absent, there was enough material to show that he had made attempts to resume duty and had even made written representations to the Secretary of the Management at least on two occasions and also had served a legal notice, but no effort was made during the course of enquiry to collect these materials. The Tribunal also found that even an attempt was made by the respondent No. 1 for resuming duty by making the application to the Principal of the College. Therefore, it is concluded by the Tribunal that mere absence of signature on the Muster roll was not sufficient to prove the Charge and that there was enough material to show that the absence was not unreasonable.

15. Even if this Court indulges in scrutinizing the observations and the conclusions of the Tribunal, those are unassailable and unerringly point out that sheer absence from duty in all probability because of the dispute between the Management and the employee, is indeed a fact which needs to be borne in mind while ascertaining as to if such absenteeism should be taken as the deliberate absence from duty so as to attract a major penalty of dismissal.

16. The Tribunal has concluded the Charge No. 8 (supra) to have been proved regarding disobedience.

17. Now coming to the proportionality of punishment, after going through several decisions including the decision in the case of **B.C. Chaturvedi** (supra), the Tribunal having considered totality of the facts and circumstances has reduced the sentence of dismissal as mentioned herein above by resorting to the powers vested in the Tribunal under Section 61 of the Maharashtra Universities Act. When the legislature has conferred such a power on the Tribunal and when the Tribunal has given a plausible explanation for reducing the sentence, this Court in exercise of writ jurisdiction cannot replace its own finding in place of the one given by the Tribunal in exercise of power under Section 61.

18. The Charges which stand proved even taking their cumulative effect are only about a conviction for a trifle offence which does not involve moral turpitude and absenteeism during the period of dispute between the Management and the employee. The punishment of dismissal is imposed by the Management primarily, as can be seen from the order of the dismissal, under a mistaken belief about conviction of the respondent No. 1 for an offence involving moral turpitude which is not a fact. No error is committed by the Tribunal in resorting to the provision of Section 61 and reducing the punishment which was palpably grossly disproportionate.

19. As far as the further relief being granted by the Tribunal regarding backwages, it is pertinent to note that no backwages have been awarded for a period prior to his dismissal. Respondent has been held to be entitled to 50% of the backwages, that too from the date of his dismissal i.e. 19.11.2015.

20. It is necessary to note before parting with the judgment that pursuant to the impugned order of the Tribunal, the petitioners have allowed the respondent No. 1 to join the duty and the latter has resumed the duty. The learned Advocates of both the sides have made such a statement at the Bar.

21. Taking into account all the aforementioned facts and circumstances, there is no substance in this petition and it is liable to be dismissed.

22. The petition is dismissed. Rule is discharged.

(MANGESH S. PATIL, J.)