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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7884 OF 2016

Smt. Suvarna Jagdish Dadhakar.)
Age 53 years, Occu. Nil at present,)
Residing at – C/o. Mr. Sameer Kulkarni)
Plot No. 32, ‘Sanchardoot’ Co- Hsg. Soc.)
Shivaji Nagar, Thane (W),)
District Thane 400 606 ... Petitioner

Vs.

1. DSPM’s K. V. Pendharkar College of)
Arts, Science & Commerce, Dombivali ,)
through its Principal, Special Plot No. 4,)
Opp. MIDC Office, K. V. Pendharkar)
College of Arts, Science & Commerce,)
Dombivali East, Tal – Kalyan)
District – Thane – 421 303)
2. Dombivfali Shikshan Prasarak Mandal,)
tthrough its Principal, Special Plot No. 4,)
Opp. MIDC Office, K. V. Pendharkar)
College of Arts, Science & Commerce,)
Dombivali East, Tal – Kalyan)
District – Thane – 421 303)
3. University of Mumbai,)
through its Vice-Chancellor, Fort, Mumbai)
4. The State of Maharashtra,)
through its Joint Director,)
Higher and Technical Education,)
Shaskiya Adhyapak Mahavidyalay)
Campus, Panvel, Dist. Raigad 401206 ... Respondents

WITH
WRIT PETITION No. 7885 OF 2016

Prof. Dr. Dilip Devidas Medhe,)
 . Aged 59 years, Occu. - Nil at present,)
 Residing at B-8, Kalyan-Dipti CHS)
 Near Hotel Paradise, Birla College Road,)
 Kalyan West, Tal- Kalyan, Dist. Thane ... Petitioner

Vs.

1. DSPM's K. V. Pendharkar College of)
 Arts, Science & Commerce, Dombivali ,)
 through its Principal, Special Plot No. 4,)
 Opp. MIDC Office, K. V. Pendharkar)
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4. The State of Maharashtra,)
 through its Joint Director,)
 Higher and Technical Education,)
 Shaskiya Adhyapak Mahavidyalay)
 Campus, Panvel, Dist. Raigad 401206 ... Respondents

Mr. R. G. Panchal a/w Anay Kori, Mohan Rawat & Anil Jaiswar, for
 the Petitioner in both petitions.

Ms. Anjali Purav-Yajurvedi a/w Swati Sharma for Respondent Nos. 1
 and 2.

Mr. Rui A. Rodrigues, for Respondent No. 3

Ms. M. S. Bane, AGP, for Respondent No. 4.

CORAM : C. V. BHADANG, J.

RESERVED FOR JUDGMENT ON : JANUARY 16, 2020

JUDGMENT PRONOUNCED ON : MAY 19, 2020

JUDGMENT :

1. In these petitions, rule was issued on 1.12.2016, which was made returnable early. The petitions are taken up for final hearing by consent of parties.

2. The challenge in these two petitions is to the common judgment and order dated 27th January, 2016 passed by the University and College Tribunal at Mumbai (for short the “Tribunal”) in Appeal Nos. 23 and 24 of 2013. As such both the petitions are being disposed by this common judgment. By the impugned judgment, the Tribunal has dismissed separate appeals filed by the Petitioners herein, challenging their dismissal from service.

3. The brief facts, necessary for the disposal of the petitions, may be stated thus:

. That the first respondent is a college of Arts, Science and Commerce, run by the second respondent Dombivli Shikshan Prasarak Mandal (for short “Trust”). The Petitioner Smt. Suvarna Dadhakar was working as a clerk in the library section, while the Petitioner Dr. Dilip Medhe was working as a professor in Economics in the first respondent college. According to the Petitioners, somewhere in

October, 2006, Employees Union under the name style as Raja Shahu Shikshak, Shiksheketa Karmachari Sanghatana (for short the “Sanghatana”) was formed, which was registered on 19th January, 2009 as a Trade Union. The petitioner Smt. Suvarna Dadhakar was elected as a Vice-Chairman, while the petitioner Dr. Dilip Medhe was elected as the Chairman of the said Sanghatana.

4. It further appears that somewhere in 1987, a Credit Society under the name and style as K. V. Pendharkar College Karmachari Sahakari Pat Pedhi (for short the “Credit Society”) came to be established in the college and in the year 2009 the petitioner Smt. Suvarna Dadhakar was elected as a Chairman while Professor Dr. Medhe was elected as Vice-Chairman of the said Credit Society.

5. According to the Petitioners, they were actively raising the grievances of the employees of the college, in respect of their various issues, which did not go down well, with the management. In short, according to the petitioners, the departmental action against the petitioners is the outcome of the vindictive attitude of the management, in order to victimise the petitioners for their bona fide activities of protecting interest of the employees.

6. Be that as it may, the petitioners were placed under suspension somewhere in July 2011 and a charge-sheet was served on

them in September, 2011 for their alleged act of misconduct viz. of insubordination, dereliction of duty, and in particular, the alleged close intimate relations, between the petitioners herein. It may be mentioned that issuance of the charge-sheet was preceded by a preliminary investigation, conducted by Dr. Suvarna Dev, the Vice-Principal of the college. The charge-sheet was issued by Mr. Prabhakar Desai, claiming to be the Chairman of the Trust.

7. The Petitioners filed their reply and traversed all the allegations and the charges levelled. On behalf of the petitioners, a contention was also raised about incompetency of Mr. Prabhakar Desai to initiate departmental action and to serve the charge-sheet, inasmuch as, according to the petitioners, at the relevant time, when the departmental action was taken, one Mr. Prabhakar Rao was the Chairman of the Trust. It was contended that Mr. Prabhakar Desai was elected as Chairman of the new managing committee on 23rd October, 2012, with effect from 1st November, 2012. It was pointed out that the relevant charge report filed by the management was accepted by the Charity authorities on 5th July, 2013. It was thus, contended that the initiation of the departmental action was incompetent. Insofar as petitioner Smt. Suvarna Dadhakar is concerned, it was also contended that the impugned action was taken under the provisions of the Model Code, which was repealed by the Government on 10.5.2010. It was

thus contended that the action taken under the repealed provisions was *non est*.

8. The departmental inquiries were entrusted to Mr. K. P. Gurav. Before the Inquiry Officer, the management examined as many as seven witnesses in the inquiry against Smt. Suvarna Dedhekar, while eight witnesses in the inquiry against Prof. Mr. Dilip Medhe. The petitioners examined themselves in their defence, apart from a common defence witness Mr. Suresh Chavan. There were certain documents produced before the Inquiry Officer.

9. The Inquiry Officer gave his report on 13.7.2013, which was accepted by the management and the petitioners came to be dismissed from service, inasmuch as, in the opinion of the management, the charges proved were serious, warranting a strict action.

10. Feeling aggrieved, the petitioners approached the College Tribunal by way of separate appeals, being Appeal Nos. 23 and 24 of 2013. The College Tribunal framed following points for determination:

- (1) Whether the enquiry conducted against the Appellants is biased, violating principles of natural justice?
- (2) Whether report and findings of the Enquiry Officer is

perverse and contrary to the rules and facts on record?

- (3) Whether the quantum of punishment awarded is disproportionate to the charges of the alleged misconduct?
- (4) Are Appellants entitled to get order of reinstatement with consequential relief of back wages, etc.?
- (5) What relief and order?

11. The Tribunal answered Point Nos. 1 to 3 in the negative and dismissed the appeals by the impugned judgment, which brings the petitioners to this Court.

12. I have heard Mr. Panchal, the learned counsel for the petitioners and Mrs. Anjali Purav, the learned counsel for the contesting first and the second respondent, in both petitions. The parties have also produced written-submissions on record. I have gone through the same.

13. Mr. Panchal, the learned counsel for the Petitioners made following submissions:

- (i) The service conditions of the petitioner Smt. Suvarna Dadhakar were governed by the Maharashtra Civil Service Rules (for short the “MCS Rules”) as per G. R. dated 10.5.2010. However, the departmental action was taken against her under the Standard Code, which was repealed by the aforesaid G.R.

- (ii) As per the PTR extract, issued on 7th December, 2011, Mr. Prabhakar Rao was the Chairman of the Trust. Mr. Prabhakar Desai, who has taken the action as a Chairman of the Trust is incompetent, inasmuch as, Mr. Desai became Chairman of the Trust with effect from 1st November, 2012, pursuant to the order dated 5th July, 2013 passed by the charity authority, accepting the change report No. 274/2013. It is submitted that the entries in the PTR are conclusive and have presumptive value under S. 21(2) of the Maharashtra Public Trust Act, 1950 (for short the “Trust Act”), which cannot be refuted by the contents of a magazine or the prospectus of the college. Thus, the finding that Mr. Desai became the Chairman of the Trust somewhere in 2011, is perverse, being against weight of the record. For this purpose, the learned counsel has placed reliance on the decision of the Supreme Court in the case of ***Union of India Vs. B. V. Gopinath***¹.
- (iii) The allegations against the petitioners do not constitute any specific misconduct, inasmuch as there is no clear definite or specific charge framed or proved, in the context of a specific conduct rule, as may be applicable. It is submitted that the petitioners were prejudiced on account of non-mentioning of a

1 (2014) 1 SCC 351

specific head of charge/s in relation to a conduct rule, as may be applicable. The departmental action is thus vitiated. Reliance in this regard is placed on the decision of the Supreme Court in the case of (i) ***Union of India Vs. Gyan Chand Chattar***²; (ii) ***Sawai Madhav Vs. State of Rajasthan***³; and (iii) ***Vijay Singh Vs. State of UP***⁴.

- (iv) The report of the detective agency, procured by the husband of the petitioner Smt. Dadhakar, could not have been used against the petitioners, in the absence of author of the said report, being examined as a witness and the petitioners having been afforded opportunity of cross-examining and challenging the said report. It is submitted that this has resulted into a clear breach of the principles of natural justice. The learned counsel has placed reliance on the decision of the Supreme Court in the case of ***Roop Singh Nevi Vs. Punjab National Bank & Ors.***⁵ in this regard.
- (v) No preliminary investigation, as mandated by statute 444 of the Bombay University was conducted in the case of petitioner Dr. Medhe, which has vitiated the action against him. It is

2 (2009) 12 SCC 78

3 1986 SCC (3) 454

4 (2012) 5 SCC 242.

5 (2009) 2 SCC 570

submitted that the college Tribunal failed to see that Mrs. Suvarna Deo (who claimed that she had conducted the preliminary investigation) had admitted that she did not maintain any written record of any such investigation. It is submitted that such preliminary investigation against an associate professor, has to be conducted by the principal, as per the relevant provisions, which is not shown to be conducted in this case.

- (vi) The charge-sheet served on the petitioner, itself required the petitioners to submit their reply to the inquiry officer, who was already appointed, which shows that the management had already formed an opinion to take action against the petitioners. This also shows that the management acted out of vengeance and in a prejudicial manner. It is submitted that the course adopted is contrary to the requirement of the management / disciplinary authority, applying its mind to the reply, and then deciding whether an inquiry is required to be conducted. For this purpose, the learned counsel has placed reliance on the decision of the Supreme Court in the case of ***State of Punjab Vs. V. K. Khanna***⁶; and the decision of the Madras High Court in the case of ***Abraham Ammalanathan***

Vs. The Dy. Inspector General of Police⁷.

- (vii) It is submitted that the action against the petitioners was taken with a view to vilify their character and reputation. It is submitted that the reputation as to the character of a person is part of fundamental right under Art. 21 of the Constitution of India, as held by the Supreme Court in the case of ***Board of Trustees of BPT Vs. Dilipkumar Raghavendranath⁸***. It is submitted that the action against the petitioners has breached their right to privacy. Reliance in this regard is placed on the decision of the Rajasthan High Court in the case of ***Mahesh Chand Sharma Vs. State of Rajasthan & Ors.⁹***. It is thus, submitted that the entire action against the Petitioners is vitiated on account of violation of their fundamental rights.
- (viii) It is submitted that the impugned judgment of the College Tribunal and dismissal of the petitioners be set aside with consequential relief of reinstatement, with full back-wages, as held by the Supreme Court in the case of ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya¹⁰***

14. Mrs. Purav, the learned counsel for the respondent Nos. 1 and 2 has made following submissions:

⁷ Writ Petition No. 12561 of 2005, dated 7.4.2011

⁸ (1983 (1) SCC 124

⁹ S.B. Civil W. P. No. 2067 / 1999 dated 7th March, 2019

¹⁰ (2013) 10 SCC 324

- (i) It is submitted that the grounds based of the repeal of the Standard Code and the Inquiry Officer being appointed, simultaneously with the issuance of the charge-sheet, were neither raised in the reply to the show-cause notice nor before the Tribunal. It is submitted that the ground so raised before this Court for the first time is by way of an afterthought and is not permissible.
- (ii) It is submitted that the petitioner Smt. Dadhadkar had admitted in her reply that she was governed by the Standard Code. It is submitted that the Inquiry Officer / management or the Tribunal had no opportunity to decide any such question as to the applicability of the Standard Code, and therefore, the petitioner Smt. Dadhadkar cannot be allowed to raise this ground before this Court for the first time. It is submitted that the charge-sheet issued to the petitioner Smt. Dadhakar was not issued under the provisions of the Standard Code Rules, 1984. It is submitted that the same was issued under the provisions of the MCS Rules. It is pointed out that the petitioners were represented by an advocate in the departmental inquiry and they claim to be aware of the repeal of the Code, and therefore, there is no reason why any such ground was not raised earlier.

It is submitted that even otherwise the procedure governing the departmental action against an employee under the Standard Code, as well as under the MCS Rules, is similar and no prejudice has been demonstrated in the matter.

- (iii) It is submitted that the principles of natural justice have been followed while conducting the departmental action against the petitioners. It is submitted that sufficient time was granted to the petitioners to file reply and furnish their explanation. It is submitted that at no point of time any grievance was raised about non grant of any such opportunity or about the alleged breach of principles of natural justice. It is pointed out that the petitioners submitted their explanation / reply on 23rd November, 2011, which would show that adequate opportunity was granted to the petitioners.
- (iv) It is submitted that the ground about the alleged absence of authority of Mr. Desai was raised before the Tribunal by way of an amendment, after the arguments were filed. The documents produced by the petitioners in support of said ground are old documents. It is pointed out that as per the resolution dated 16th April, 2011, Mr. Desai became the Chairman of the Trust and continued as such, when the

departmental action was taken against the petitioners. For this purpose, the learned counsel has referred to various documents at page 369, 391 and 392 of the compilation to urge that Mr. Desai was indeed working as the Chairman of the Trust.

- (v) The resolution dated 16th April, 2011 is sent by the earlier Chairman Dr. Prabhakar Rao, which was produced in the inquiry proceeding as well as before the Tribunal. It is pointed out that the petitioners in their evidence have admitted that Mr. Prabhakar Desai was the Chairman of the Trust since April 2011. That apart, the documents such as college magazine “Aksharvel” and the prospectus for the year 2011-12 also show that Mr. Desai was the Chairman of the Trust. It is submitted that PTR extract dated 7th December, 2011 on which the petitioners are placing reliance is for the earlier period i.e. upto 2009. It is submitted that as per Schedule III A read with Rule 13 (1 A) of the Rules, framed under the Trust Act, the Trust, has to inform the names of the members who are either deleted / removed, those who are continued and the ones who are newly admitted as members. It is submitted that there is no provision either in Schedule III A or Schedule I of the Rules to mention the post, position or designation of the said members

of the committee. It is submitted that petitioners are trying to misinterpret the provision of law by misreading the documents obtained by them from the office of the Charity Commissioner. The learned counsel has placed reliance on the decision of this Court in the case of ***Chembur Trombay Education Society and others Vs. D. K. Marathe & Ors.***¹¹ . It is submitted that the ratio in the case of V. V. Gopinath (Supra) is not applicable in this case.

- (vi) It is submitted that the report of the detective agency is not relied by the management and none of the management witnesses have made a reference or have deposed on the basis of the report of the detective agency. It is pointed out that even the Enquiry Officer has not relied on the said report while drawing his conclusions. It is submitted that, it is the petitioners who referred to the said in their reply to the charge-sheet and also while leading evidence and in such circumstances the ground based on the non examination of the report of detective agency is unsustainable. It is submitted that para 13 of the appeal memo filed by the petitioners before the Tribunal would indicate that they have understood and were aware of the nature of the allegations and the charges levelled

11 2002 (3) Bom.C. R. 161

against them. They not only cross examined the management witnesses but also examined themselves in defence alongwith a common witness Mr. Suresh Chavan. It is therefore submitted that the argument about their being no specific or clear charge, is misconceived.

- (vii) It is submitted that admittedly the preliminary investigation was conducted by Mrs. Suvarna Deo, as required under statute 444 (C) of the Bombay University. It is submitted that the statute does not contemplate any specific procedure for conducting the preliminary investigation, which itself, from its very nature, has to be discreet. It is pointed out that there is a distinction between preliminary investigation and preliminary enquiry. It is submitted that Principal has clearly stated that she had conducted preliminary investigation as per her letter dated 30th June, 2011 addressed to the Chairman of the Trust. It is submitted that proper procedure, as contemplated under MCS Rules has been followed. It is submitted that the judgments relied by the petitioners are not applicable in this case.
- (viii) It is submitted that the charges and the allegations levelled against the petitioners are proved by cogent and acceptable

evidence. It is submitted that it is not even the ground made out that the charges are not proved. It is submitted that the petitioners are only trying to raise certain grounds which are hyper-technical in nature, many of which were not raised earlier. It is submitted that the petitioners are now trying to urge that the action was taken in order to vilify their character and reputation, which cannot be accepted, particularly when the charges and the allegations have been proved. Insofar as the punishment of dismissal is concerned, it is submitted that the acts and the misconduct attributed to the petitioners are such, which cannot be permitted or tolerated in an educational institution and therefore, the findings of the Inquiry Officer as well as the punishment awarded is legal and proper.

- (ix) Lastly, it is submitted that the Tribunal has taken into account all relevant circumstances and has confirmed the action taken against the petitioners. The impugned judgment does not demonstrate any perversity and therefore the petitions be dismissed.

15. I have carefully considered the rival circumstances and the submission made by the parties. The contentions now fall for determination, which are taken *ad seriatem*.

16. **The ground that the action is *non est* as it is taken under the Standard Code, which is repealed.**

. This ground is only pertaining to the case of Mrs. Suvarna Dhadkar who was a non teaching employee in the college. It indeed appears that by GR dated 20.5.2010 the government had repealed the standard code of the year 1984 and had directed that, till the application of common statutes, the provisions of the MCS Rules shall be applicable to the non teaching staff. It may be mentioned that the standard code was applicable since 1.5.1985. At the outset it appears that this ground was neither raised before the disciplinary authority/inquiry officer nor before the tribunal. Quite to the contrary the perusal of para 10 of the impugned judgment would show that it was the contention raised on behalf of the petitioner Mrs. Dhadkar that the provisions of Rule 46 of the Standard Code were not followed which has resulted into conduction of a biased inquiry. Normally this court would be slow in allowing a party to raise a ground, which was not raised before the authorities/tribunal below. For this alone the said ground in my considered view cannot be accepted. However in order to give a quitus to the matter and as the parties have addressed their rival contentions on the point I find it appropriate to consider the same. According to the respondent the charge sheet was not issued under the standard code and the same was issued under the MCS Rules. We are

presently concerned with the contention on behalf of the petitioner that the charge-sheet was issued under the Standard Code which was repealed. In this regard it is necessary to note that the charge sheet does not make any reference to the standard code. A perusal of the memorandum dated 9.9.2011 shows that the action was proposed to be taken under the “provisions as applicable”. As noticed earlier it was the contention on behalf of the petitioner Mrs Dhadkar that the provisions of Rule 46 of the standard code were not followed by the disciplinary authority which has been considered by the tribunal. Even in the reply dated 25.10.2011 sent by Mrs. Dhadkar to the chairman of the trust it was claimed that the charges are not levelled as per the standard code. Thus now the petitioner cannot be allowed to turn around and claim that the action was not taken as per the MCS Rules. It is also the contention of the respondent that even otherwise the procedure for issuance of the charge sheet and conduction of the inquiry is similar under the standard code and the MCS Rules. Although an attempt was made on behalf of the petitioner that there is a distinction in as much as the MCS rules only contemplate such misconduct at designated places and not out side, it is not possible to accept the same because assuming it to be so for the sake of arguments, the nature of the misconduct as alleged in this case is on the college premises also. For the aforesaid reason the ground based on

the repeal of the standard code to my mind cannot be accepted.

17. **The ground that Mr. Desai had no authority to issue the charge-sheet as he became the Chairman of the Trust only on 1.11.2012.**

. According to the petitioners Mr. Desai became the chairman of the trust on 1.11.2012 when the change report No. 274/2013 was accepted by the charity authorities and therefore the charge-sheet issued prior thereto by Mr. Desai claiming to be the chairman of the trust is incompetent. For this purpose reliance is placed on behalf of the petitioners on the copy of the PTR extract issued on 7.12.2011.

18. On the contrary according to the respondent, Mr Desai is the founder trustee of the trust. He became chairman of the trust as per resolution dated 16.4.2011 and prior to that he was the treasurer of the trust. It is pointed out that the resolution dated 16.4.2011 which is signed by the earlier chairman Dr. Prabhakar Rao was produced before the Inquiry officer and the tribunal. It is pointed out that the PTR extract dated 12.2011 is of the earlier period that is up to 2009.

19. The Tribunal has found that Mr. Desai came to be appointed as the chairman somewhere in the year 2011 by the standing committee. The tribunal has placed reliance on the order passed by the

Charity commissioner in this regard. A perusal of para 9 of the impugned judgment does not show that the tribunal has relied on the prospectus or the college magazine to hold that Mr. Desai was the chairman appointed in the year 2011. The reliance placed by the petitioners on the PTR extract dt. 7.12.2011 to my mind is misplaced. It is true that the said extract shows Mr. Prabhakar Rao as the chairman and Mr. Prabhakar Desai as the Jt Secretary. However it is significant to note that the said entry is the original entry taken as per the enquiry of the year 1972. Merely because the certified copy is issued in the year 2011 does not show that the same position continued or was in existence in the year 2011. To put it otherwise the entries in the PTR register are recorded chronologically as and when the changes which are reported as per the provisions of the Trust Act occur in the trust. A party can obtain a certified copy of any such entry. The date of issuance of such certified copy, which for instance is in respect of an old entry, may not necessarily depict the position of the trustees as on the date of the obtaining of the said certified copy as the said copy may be of an old entry. It is significant to note that the change report of the year 2013 on which heavy reliance is placed on behalf of the petitioners is filed by Mr Desai in his capacity as the chairman of the trust.

20. Reliance placed on the decision in the case of B. V. Gopinath to my mind is misplaced. In that case action was taken against an officer of the Indian Revenue Service (IRS) under Rule 14 (3) of the Central Civil Services Rules wherein the disciplinary authority is the finance minister. It was held that in terms of the applicable provisions it was not enough that the initiation of the departmental proceedings is approved by the finance minister but the charges have also to be approved by the Minister and the authority to draw the heads of charges could not have been delegated. The case clearly turned on its own facts. That apart once it is found in the present case that Mr Desai was the chairman, on the date of the issuance of the charge-sheet, certainly the ratio would not be applicable.

21. According to the respondent the management has not relied upon the report of the detective agency nor the enquiry officer has relied on the same while returning his findings. Although Annexure III to the charge sheet indeed mentions the secret/confidential report dt. 12.2.2009 it does not appear that the said report was pressed into service before the Inquiry Officer, inasmuch as the management has not examined the author of the said report. The inquiry officer has also not relied on the said report while returning his

findings. That apart, in the present case otherwise there is sufficient evidence which was laid before the inquiry officer to sustain the charges on the basis of preponderance of probability and the kind of proof which is insisted upon and is required in a departmental action.

22. In the case of Roopsing Negi (supra) an employee of a nationalized bank was proceeded against on the charge of having stolen a bank draft book. It appears that there was parallel FIR lodged with the police and there was investigation conducted by the police on the same. In the departmental inquiry no evidence was led to prove the papers of the investigation by the police and merely the investigation papers were tendered. It was in these circumstances found that the mere tendering of the documents without their proof and FIR could not be treated as evidence. It appears that in that case. Reliance was place on a purported confession by the delinquent/officer before the police, which the delinquent officer, claimed to have been obtained by coercion. It was held that the confession which was relied upon ought have been proved. It can thus clearly be seen that the case turned on its own facts.

23. **The ground that the allegations do not constitute any misconduct in the absence of clear, definite and specific charge**

. I have gone through the Article of Charges (Annexure I)

and the statement of Imputation of Misconduct and Misbehavior (Annexure II) of the Charge sheet and in my considered view they sufficiently set out the details of the allegations and the charges of insubordination, dereliction of duty and the alleged close intimacy between the petitioners. It is significant to note that both the petitioners filed their detailed replies to the charges so levelled, cross examined the management witnesses at length and also examined themselves in addition to examining a common defence witness while refuting the charges which would clearly indicate that they were aware of the allegations and the charges levelled. The tribunal in this regard has made a detailed reference to the allegations made and has held them to be proved against the petitioners in para 16 onward of the impugned judgment. I do not find that the ground as arrayed by the petitioners can be sustained.

24. In the case of *Gyan Chand Chattar* (supra) it was found on facts that the initiation of the inquiry against the respondent employee (who was working as a shroff in the western railways) was an outcome of anguish of the superior officers as there had been agitation by the railway staff demanding the pay and allowances. On facts it was found that the enquiry officer had taken into consideration non existing material and failed to consider relevant material and the

finding of fact recorded was not sustainable.

25. In the case of Sawai Singh a superintendent “Sheep and Wool” Nagaur, was appointed as a returning officer to conduct panchayat Election of Panchayat Samiti. He was charged of having illegally favored one of the contesting candidates, by wrongly rejecting the nomination paper of another candidate by committing forgery that is by erasing the word ‘panch’, on the nomination paper. In that case on facts it was found that the charges were vague and the evidence adduced was perfunctory and did not at all bring home the guilt of the accused.

26. In the case of *Vijay Singh* (supra), a sub inspector of police had arrested an accused for an offence under the excise act and after investigation had filed a charge sheet against the accused. During the pendency of the case, a notice was issued to the delinquent police officer, as to why the integrity certificate, issued to him, be not cancelled, inasmuch as, it was found that the delinquent police officer, while conducting the investigation did not record the criminal antecedents of the accused. Here again on facts it was found that a too trivial matter had been dragged disproportionately and there was nothing on record to show that the nature of the allegations would fall within the meaning of ‘misconduct’ for which disciplinary action could

be initiated.

27. The principles apart, all the three cases turned on their own facts. It is evident that whether a charge is specific or vague, whether it is proved by sufficient evidence and the issue of proportionality of the punishment, would depend on the facts and circumstances of each case.

28. **No preliminary investigation as mandated by Statute 444 of the Mumbai university was carried out vitiating the action.**

. This ground only pertains to the case of Petitioner Dr. Medhe. It appears that a similar ground was also raised in respect of petitioner Mrs. Dhadkar, on the ground of non compliance of Rule 46 of the standard code. However the later ground appears to have been given up, inasmuch as, it is now contended that the standard Code is repealed. Be that as it may, I have gone through Statute No 444 which speaks of preliminary investigation before initiating an action. In this case the management has examined Mrs. Suvarna Deo Vice Principal who has stated about conduction of the preliminary investigation. She had accordingly written to the Chairman on 30.6.2011. The only contention on behalf of the petitioner, is that no record of such investigation has been maintained. At least, on the basis of Statute no 444, it is not shown on behalf of the petitioner that the said statute

contemplates or envisages a formal or a full-fledged investigation. Statute 444 does not provide in express terms about record of any such investigation being maintained. The learned counsel for the respondent appears to be right that in a given case such investigation could be discreet depending upon the nature of the allegations and the charges levelled. That apart in my considered view once the charges are proved on the basis of the evidence led in the inquiry the issue about absence of the record of any such preliminary investigation would pale into insignificance.

29. The ground that the inquiry officer was appointed simultaneously with the issuance of the charge sheet which shows that the disciplinary authority was prejudiced and the action was taken to vilify the character and reputation of the petitioners

It is not possible to accept the said contention. The Charge-sheet/memorandum dated 9.9.2011 issued to Mrs. Dhadkar, in the last para reads as under:

“Mrs. Suvarna Dadhkar is directed to submit within ten days from the receipt of this Memorandum, a Written Statement of Defence and also to state whether she desires to be heard in person. Mrs. Suvarna Dadhkar is being informed that Departmental Enquiry will be held only in respect of Articles of Charges which are not admitted by her. She should therefore, specifically admit or deny each charge leveled against her. She is further informed that if

she does not submit her Written Statement of defence on or before the stipulated time as above or does not appear before the Enquiring Authority on the date/s informed to her, the Inquiring Authority may hold the enquiry against her as ex-parte.”

Similar memorandum is issued to Dr Medhe

30. It can thus be seen that the petitioners were required to specifically admit or deny the charges and were put to notice that departmental enquiry will be held only in respect of the articles of charge which are not admitted. I find that this is in substantial compliance of the requirements. No prejudice has been shown to have been caused to the petitioners in the matter. It is necessary to note that a proved misconduct would rule out the case of victimization or the action being the out come of vengeance or out of any ulterior motive.

31. In the case of *V. K. Khanna (supra)* the Supreme Court has held that there is no straight jacket formula, for determining what is fairplay-in-action and it would depend on the facts and circumstances of each case.

32. The case of *Abraham Amalanahan (supra)*, is clearly distinguishable on facts. In that case the petitioner who was working as a head constable was transferred under the orders of the Superintendent of police Kancheepuram. It was alleged that the petitioner went to the office of the superintendent of police and used

abusive language for transferring him. The high court found that no complaint of the incident was given. The superintendent of police who was involved in the incident himself had directed police inspector to conduct preliminary inquiry. It is he who approved the enquiry report and the charge memo. It was in these circumstances, held that the action of appointing an inquiry officer even before the receipt of the reply from the petitioner showed bias in as much as the superintendent of police who was a party to the incident was involved in the decision making process.

33. In the case of Dilipkumar Nadkarni the issue was whether denial of an opportunity to the delinquent to engage an advocate to defend him in the inquiry where the employer appoints a presenting officer who is a legally trained mind, would vitiate the inquiry and the supreme court held in the affirmative. It is difficult as to see as how the case, can come to the aid of the petitioners in this case..

34. Lastly, in the case of Mahesh Chand Sharma the petitioner who was working as an inspector in the Rajasthan Police, was alleged to be having illicit relations with a lady constable. The petitioner Maheshchand was asked to get his DNA test conducted for having a child out of the said illicit relationship. The High Court found that the action was merely taken on the basis of complaint/ of a stranger. It was

found that the authorities exceeded their powers by directing such a test being conducted on the basis of complaint of a stranger when there was no such complaint by the wife or children of the petitioner. The High Court has also deliberated on the acceptability of polygamy as a custom in Nepal (it is not known whether the lady belonged to Nepal) and some such customs in Rajashtan in the context of what is immoral. The court found that concept of morality is not a rigid concept and what is considered as immoral in one society may not necessarily be so in other society. It is not possible to deduce any ratio having a persuasive value, from the judgment, which may be attracted in this case.

35. It is now well settled that strict rules of evidence do not apply to a departmental inquiry and in a given case there not even a prohibition from acting on hearsay evidence if it is found to be reliable and acceptable. The scope of interference by the tribunal as noticed in the impugned judgment is also limited, in as much as the tribunal is not sitting in appeal over the action or the findings recorded . It is only when the action or the finding is based on no evidence or is absolutely perverse that the tribunal can justifiably interfere.

36. I have gone through the findings recorded by the inquiry officer as also the judgment of the tribunal. It does appear that the

challenge is essentially on certain technical issues of a peripheral nature, as noticed and dealt with above and there is no serious challenge to the findings of fact recorded by the inquiry officer as having been based on no evidence or they being perverse. Even otherwise the findings can be sustained on the basis of the evidence led, in the context of the standard of proof which is insisted upon and required. The impugned judgment does not call for interference in the extraordinary and/or supervisory jurisdiction of this court. The petitions are without any merit and are dismissed. Rule is discharged with no order as to costs.

Sd/-
C. V. BHADANG, J.

Vinayak
P.
Halemath

Digitally signed
by Vinayak P.
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