

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

WRIT PETITION NO. 333 OF 2021

1. The President,
Bhagwan Shikshan Prasarak Mandal,
Georai, District Beed,
Shri Narayanrao Shrimantrao Mundhe,
Age : 81 years, Oc cu. Social Work,
R/o Bhagwan Nagar, Georai,
Tal. Georai, District Beed
2. Smt. Anuradha Arvind Mundhe,
Age : 51 years, Occu. Household and
Director of Bhagwan Shikshan Prasarak Mandal,
Georai, District Beed,
R/o Bhagwan Nagar, Georai,
Tal. Georai, District Beed

PETITIONERS

VERSUS

1. Dr. Shrihari Ramrao Dhond,
Age : 54 years, Occu. Service,
R/o Jalna, Tal. & Dist. Jalna
2. Joint Director of Higher Education,
Office of Joint Director of Higher Education,
Osmanpura, Aurangabad Division,
Aurangabad
3. Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad,
through its Registrar
4. Bhagwan Shikshan Prasarak Mandal,
Georai, District Beed,
through its Secretary

5. Rashtramata Indira Gandhi Senior
College, Jalna, District Jalna,
through its Principal

RESPONDENTS

WITH

CIVIL APPLICATION NO. 7983 OF 2021

IN

WRIT PETITION NO.333 OF 2021

Khandu s/o Tatyaba Niware,
Age : 64 years, Occu. Agril.
Secretary of Bhagwan Shikshan Prasarak Mandal,
Georai, Tq. Georai, District Beed,
R/o At Post Domalgaon,
Tq. Ambad, District Jalna

**APPLICANT
(INTERVENOR)**

VERSUS

1. The President,
Bhagwan Shikshan Prasarak Mandal,
Georai, District Beed,
Shri Narayanrao Shrimantrao Mundhe,
Age : 81 years, Oc cu. Social Work,
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Age : 51 years, Occu. Household and
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Georai, District Beed,
R/o Bhagwan Nagar, Georai,
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3. Dr. Shrihari Ramrao Dhond,
Age : 54 years, Occu. Service,
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4. Joint Director of Higher Education,
Office of Joint Director of Higher Education,

Osmanpura, Aurangabad Division,
Aurangabad

5. Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad,
through its Registrar
6. Bhagwan Shikshan Prasarak Mandal,
Georai, District Beed,
through its Secretary
7. Rashtramata Indira Gandhi Senior
College, Jalna, District Jalna

RESPONDENTS

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Mr. S.S.Thombre, Advocate for the petitioners
Mr. Girish Wani, Advocate holding for Mr. S.S. Randive,
Advocate for respondent No.1
Mr. P.N. Kutti, A.G.P. for respondent No.2/State
Mr. K.M. Suryawanshi, Advocate for respondent No.3 University
Mr. R.D. Biradar, Advocate for the applicant in Civil Application

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CORAM : MANGESH S. PATIL, J.

JUDGMENT RESERVED ON : 13.08.2021
JUDGMENT PRONOUNCED ON : 18.08.2021

JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned advocates for the respondents waive service. With the consent of both the sides the matter is heard finally at the stage of admission.

2] The matter arises out of and challenges the order passed by the

Presiding Officer of University and College Tribunal, Aurangabad in an Appeal under Section 81 of the Maharashtra Public Universities Act, 2016, by the management, styled as being represented through the President and its Director.

3] The respondent no.1 who was the Head of the Department of Marathi in the college being run by the management was also acting as Incharge Principal. He was suspended and served with the charge sheet and was held guilty in a Departmental Enquiry conducted pursuant to the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and was dismissed from service by the order dated 5/10/2017. He preferred the appeal which has been allowed granting him consequential reliefs. Hence this Writ Petition.

4] The learned advocate Mr.S.S.Thombre for the petitioners would vehemently submit that the Departmental Enquiry was duly conducted extending fullest opportunity to the respondent no.1 to defend himself. The evidence was recorded. He was given an opportunity to cross examine the witnesses. He was also heard and it is only after he refused to give reply to the final notice that the punishment was imposed. Since the charges were serious, the punishment of dismissal was also adequate. The allegations were quite serious ranging from theft, misappropriation, threatening the petitioner no.1,

molesting a girl student and even committing an offence under the Atrocities Act. It was a matter of some evidence which was sufficient for the Enquiry Officer to hold him guilty. The charges were to be proved on mere preponderance of probabilities. The respondent no.1 had failed to meet these charges and was rightly held guilty on the basis of plausible inferences deducible from the evidence on the record. Ignoring all such evidence the Tribunal has without any reason interfered with and has substituted its inferences and arrived at its own findings.

5] The learned advocate would submit that without there being reason and occasion the Tribunal has gone into the issue regarding rift in the management and the consequence of the successive change reports submitted before the office of the Charity Commissioner under the provisions of the Maharashtra Public Trusts Act and has unnecessarily arrived at some conclusion as to which was the Executive Committee legally in office.

6] The learned advocate would further submit that there was no plausible reason for the respondent no.1 not to deposit the admission fees in the account of the college with Dena Bank but instead he deposited all such money received in his account with Bank of Maharashtra. He had threatened the petitioner no.1 in the college premises about which a Non Cognizable

Report was also filed on the record. He was held guilty by an Internal Committee constituted in view of the Vishakha judgment and was censured on that count and there was no need for the Enquiry Officer to call upon the victim as a witness to substantiate that charge. It is in view of such concrete material that the Enquiry Officer had rightly held the respondent no.1 guilty on all the charges and the Tribunal overlooked the evidence as illegal and overturned it. The whole approach of the Tribunal is wrong and therefore the impugned judgment and order be quashed and set aside.

7] The learned advocate for the respondent no.1 Mr.Wani vehemently submitted that there were several infirmities in the enquiry in which he was found guilty. The charges were vague and there was no concrete evidence to substantiate the charges. Plausible explanations were furnished by him which ought to have been considered and accepted. The victim was not called as a witness and even her statement recorded before the Internal Committee was not produced on record. Even the report brought on record demonstrated that it was merely signed by only one out of 5 members. Even its copy was not given to him so as to enable him to defend. He would further point out that in fact the alleged incident had taken place in the year 2012 and had ended in issuing a censure. It is thereafter that the respondent no.1 continued to officiate and was even recognized as an Incharge Principal by the University

and after lapse of 5 years he was made to face the self-same charge once again. It was clearly a case of double jeopardy. He would further submit that because of the rift in the management, between the President and the Secretary, it was difficult for the respondent no.1 to discharge the duties as Incharge Principal. It is at the instance of the petitioner no.1 himself that Dena bank refused to allow him to operate the account. Several efforts were made by him, however, the bank even went against the legal advice it had sought and faced with the inevitable situation, he had to open a new bank account with Bank of Maharashtra. He operated it to deposit the money received by the college in whatever form and to spend it for all the legal purposes.

8] The learned advocate would also point out that even the charge in respect of causing insult of a Scheduled Caste person was of the year 2004 and it was also subsequently compromised and that person had never thereafter made any grievance anywhere.

9] The learned advocate would therefore submit that the very fact that without there being any evidence on any of these charges or a very little evidence, the Enquiry Officer had found respondent no.1 guilty on all the charges, clearly demonstrates bias, sufficient to vitiate the enquiry. He would therefore submit that the learned Member of the Tribunal has minutely gone

through the entire record of the Departmental Enquiry and has reached a reasonable conclusion scrutinizing every piece of evidence and has rightly demonstrated as to how the enquiry report was perverse and arbitrary though it has not been mentioned in so many words.

10] The learned advocate for the Intervener who has filed the Civil Application is the Secretary of the Trust running the college and tried to argue as to how there has been a dispute in the management and as to how he is entitled to defend as a Secretary and also tried to impress as to how he is entitled to be heard in this matter.

11] I have carefully considered the rival submissions and perused the record as also the impugned judgment and order. At the outset it is necessary to note that it is quite apparent from the record and even both the sides are fair enough to admit that there has been a dispute in the management and primarily between petitioner no.1 - President and the Secretary the Intervener. Several change reports have been filed. Those were rejected. It is for the Charity Commissioner to ponder upon and decide as to who actually is entitled to hold the office. The fact remains that the respondent no.1 has never questioned the competence of the enquiry that was conducted against him. On the contrary he whole heartedly, as is demonstrated by the Tribunal,

participated in the enquiry at every stage. Meaning thereby that as far as the initiation of a Departmental Enquiry and its result he has not sought to impugn its jurisdiction and competence. Even the learned advocate Mr.Wani fairly conceded that the respondent no.1 could have at the inception raised that objection but had not done so. Therefore, in my considered view, it is not necessary to indulge into the dispute in the members of the managing committee inter se. Precisely for this reason, even the learned advocate for the Intervener was put a similar query and was not allowed to argue on the merits of the present matter which revolves around the legality or otherwise of the result of the Departmental Enquiry and legality or otherwise of the impugned judgment and order setting aside it. It is for this very reason that the Civil Application filed by the Intervener is liable to be rejected.

12] Going back to the matter in controversy it is apparent that the respondent no.1 was facing charges which can be articulated in following manner. Committing theft, misappropriation by not depositing the money in the Dena Bank account of the college, threatening the petitioner no.1 President, committing misconduct by refusing to respond to the communication by the management, sexually harassing a girl student and committing atrocities with a colleague in order to defame the management.

13] As far as the first charge regarding theft and misappropriation etc. is concerned as is cursorily mentioned hereinabove there was a rift in the management. There was enough evidence to demonstrate that the respondent no.1 was not allowed to operate the account with the Dena bank. He had made attempts to do that, however the bank was adamant. Even it defied the legal advice of its own advocate. In fact the account was also subsequently sealed when the petitioner no.1 lodged a police complaint. It is at the backdrop of such state of affairs that since the respondent no.1 was acting Principal duly appointed and recognized as such could not have any other alternative but to deposit the money somewhere. If accordingly he had done so by opening the account with the Bank of Maharashtra, no fault can be found much less to jump to the conclusion that it was a case of misappropriation. Rather the charge itself was vague and did not clearly disclose as to what is the extent of such misappropriation with all particulars. There was absolutely no evidence to prove the charge of such misappropriation in the form of some audit or otherwise. The Tribunal has precisely pointed out from the material on the record and proceedings of the Departmental Enquiry to demonstrate all such state of affairs. The Tribunal has considered all such material while reaching an objective conclusion which clearly demonstrates as to how it was clearly overlooked during the

Departmental Enquiry.

14] As regards the charge regarding giving threats to kill the petitioner no.1, the Tribunal has demonstrated as to how though the incident is alleged to have occurred on 22/2/2016 but the Non Cognizable Report was lodged by the petitioner no.1 on 18/5/2016. It was also noticed that except the bald and highly interested words of petitioner no.1 in his testimony before the Enquiry Officer there was no corroboration. Since the relations between the petitioner no.1 and the Secretary were strained, something more was required to establish the charge particularly when the petitioner no.1 was apparently acting against the respondent no.1. It is for this reason that the Tribunal has also reached a reasonable and plausible conclusion, that even this charge was not proved.

15] As regards the charge regarding misconduct in not accepting the correspondence from management, the Tribunal has pointed out that it was barely on 2 to 3 occasions that the letters purportedly sent by the management were refused to be accepted by the respondent no.1. However, the Tribunal has rightly expressed the view that such refusal to accept couple of correspondence would not constitute misconduct under the Maharashtra Civil Services (Discipline and Appeal) Rules.

16] While negating the charge regarding sexual harassment of a girl student, the Tribunal has noted that the victim was not examined as a witness thereby depriving the respondent no.1 delinquent an opportunity to cross examine her. It also noticed that the incident had taken place in the year 2010 and the enquiry by Internal committee had ended in issuing a censure and it is after a lapse of several years that again the self same charge was levelled against the respondent no.1 illegally and would constitute a double jeopardy. The Tribunal has also pointed out that even the statement of the victim recorded before the Internal Committee was neither provided to him nor was it produced on the record. Even the report itself was signed by only one member out of 5 members committee. True it is that the Tribunal apparently has gone astray in assessing evidence in the form of letter of the victim whereby she had made a grievance, to reach an independent conclusion as to how it did not constitute sexual harassment but then the fact remains that apart from the fact that the respondent no.1 was already censured and thereafter appointed as Incharge Principal after few years and was duly recognized as such and it is only after 5-6 years that he was once again made to face the charge that too without examining the girl student and extending him an opportunity to cross examine her and even not producing her statement recorded before the Internal Committee, are the facts and

circumstances which clearly established that even this charge was not duly proved.

17] More importantly as is mentioned in the impugned judgment and order even the statement of the victim recorded by the Internal Committee was never produced before the Tribunal. Even in the present Writ Petition, inspite of specific order passed on 2/8/2021, the petitioners have not produced on the record any statement of the victim recorded by the Internal Committee and only her letter dated 13/10/2010 is placed on the record. It is in view of such state of affair, no exception can be taken to the conclusion reached by the Tribunal that this charge of sexually harassing a girl student was not duly established.

18] In this regard it is also noticed and pointed out by the Tribunal that the petitioner no.1 had submitted an application with the police dated 29/7/2014 specifically mentioning that inspite of such allegations regarding sexual harassment, an enquiry was held by the Internal Committee and the respondent no.1 was censured and no further action was taken against him. The Tribunal has therefore concluded that it is clearly demonstrated that the management had imposed minor punishment of censure and had closed the matter. It is therefore, quite apparent that this charge was not proved as has

been rightly concluded by the Tribunal.

19] Coming to the last charge regarding indecent behaviour towards a Scheduled Caste teacher, the Tribunal demonstrated that the incident had taken place on 14/4/2004 but the concerned teacher had amicably settled the dispute. The fact was also admitted by the petitioner no.1 during his cross examination. It was for the first time after a lapse of more than 10 years that the respondent no.1 was made to face the charge which was clearly a stale one.

20] Resultantly, a careful scrutiny of the impugned judgment and order demonstrates that the petitioners had digged deep to find out bits and pieces to frame the respondent no.1. The very fact that the Enquiry Officer apart from ignoring above state of affairs and material, had held him guilty on every count, clearly demonstrates a clear bias and his inability to act judiciously. If such was the state of affairs, when the Tribunal has undertaken a fresh scrutiny of the material and has reasoned a conclusion which palpably demonstrates that the report of the Departmental Enquiry was clearly perverse, arbitrary and capricious, I find no illegality in the impugned judgment and order.

21] Simultaneously, since it was due to the fault of the management that

the respondent no.1 was dismissed, no exception can be taken to the further directions in the impugned order granting consequential reliefs and holding that the State Government would not be liable to pay the arrears.

22] The Writ Petition is dismissed.

23] The Rule is discharged.

24] The Civil Application Is rejected.

[MANGESH S. PATIL, J.]

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