

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

WRIT PETITION NO. 217 OF 2021

Sambhaji Shankarrao Sarpate

...Petitioner

Versus

Matoshri Pratisthan
Through It's President / Secretary
Integrated Campus, Jijau Nagar at Khupsarwade
Nanded-Latur Highway, Nanded & Ors.

...Respondents

.....

Mr. A. G. Talhar, Advocate for the petitioner
Mr. P. S. Patil, AGP for respondent No. 6
Mr. A. S. More, Advocate for respondent No. 4
Mr. N. U. Telgaonkar, Advocate for respondent No. 3
Respondent nos. 1, 2 and 5 served.

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AND

WRIT PETITION NO. 240 OF 2021

Grish S/o Nagnathrao Deore

...Petitioner

Versus

Matoshri Pratisthan
Through It's President / Secretary
Integrated Campus, Jijau Nagar at Khupsarwade
Nanded-Latur Highway, Nanded & Ors.

...Respondents

.....

Mr. A. G. Talhar, Advocate for the petitioner
Mr. P. S. Patil, AGP for respondent No. 6
Mr. V. S. Kadam, Advocate for respondent No. 4
Mr. N. U. Telgaonkar, Advocate for respondent No. 3
Respondent nos. 1, 2 and 5 served.

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**CORAM : DIPANKAR DATTA, CJ
AND
MANGESH S. PATIL, J.**

DATE : SEPTEMBER 28, 2021

PER COURT : -

1. Since questions of law and facts involved in both the writ petitions are common, we propose to dispose of the same by this common order.

2. The main prayer in W.P. 217 of 2021 is for quashing of the action of the respondents 1 and 2 in conducting departmental inquiry against the petitioner after termination of his service. There is also a prayer for quashing of the order dated 12.12.2020 passed by the respondent no. 3 (Inquiry Officer). While rejecting the prayer of the petitioner for stay of further inquiry, he called upon the petitioner to participate in the inquiry.

3. The pleaded case in W.P. 217 of 2021 reveals that the petitioner has approached the Presiding Officer, University and College Tribunal, Aurangabad (hereafter “the Tribunal”, for short) by presenting an appeal under Section 81 of the Maharashtra Public Universities Act, 2016 (hereafter “the said Act”, for short) bearing Appeal No. SRTMU-17/2019. The subject matter of challenge in the said appeal is an oral

order of termination of service, said to have been passed against the petitioner.

4. The facts giving rise to W.P. No. 240 Of 2021 are not too dissimilar. An appeal bearing Appeal No. SRTMU-48/2019 is pending before the Tribunal, preferred by the petitioner against a similar oral order of termination and the prayers in the writ petition are also identical.

5. Contention of Mr. A. G. Talhar, learned advocate appearing for the petitioners, is that there can be no inquiry after termination of service and that initiation of inquiry, post-termination, is a ploy on the part of the respondents 1 and 2 to avoid the proceedings of the appeals pending before the Tribunal and/or render the same infructuous.

6. We have read the affidavit-in-reply filed on behalf of the respondents 1 and 2 in response to Appeal No. SRTMU-17/2019. It is the specific contention of such respondents that the appeal before the Presiding Officer is not maintainable and, in fact, premature since departmental inquiry is pending against the petitioner. We have also noticed from paragraph 12 of the said affidavit-in-reply a stand taken by the respondents 1 and 2 that the provisions of the said Act are not

applicable to the petitioner, since he is not a permanent teaching staff. Since the petitioner was appointed on *ad hoc* and purely temporary basis, the management was constrained to discontinue the services of the petitioner and there is no illegality or irregularity committed directing such discontinuance of *ad hoc* services of the petitioner.

7. Whether or not such discontinuance would amount to termination of service is a question that the Tribunal has to answer. We need not enter into the controversy as regards maintainability of the petitioners' appeals at this stage, for, the same is admittedly pending before the Tribunal. All the contentious issues are left open for being agitated by the parties before the Presiding Officer of the Tribunal for a decision by him on the merits thereof.

8. Insofar as the present writ petitions are concerned, we find that the Inquiry Officer appointed by the respondents 1 and 2, in *seisin* of the inquiry, has rejected the petitioners' prayers for stay. Such respondents having earlier employed the petitioners could legitimately claim a right to investigate facts by initiating an inquiry. At the stage of inquiry, the Court does not ordinarily interfere. No exceptional reason too has been shown for such interference. However, since an inquiry cannot be initiated against any employee after termination of his service but inquiry is, in fact, pending against

the petitioners, the present facts and circumstances tend to suggest that the petitioners still continue to be in the employment of the respondents 1 and 2. We, however, make it clear that no conclusive opinion on the petitioners' status as to whether they are permanent employees or *ad hoc* employees is required to be given at this stage and, as such, we decline to do so. It would be open to the petitioners to participate in the inquiry before the Inquiry Officer and raise all points that are available to them in defence. The Inquiry Officer is encouraged to proceed expeditiously, in accordance with law.

9. Since there is no valid reason to interdict the inquiry, both the writ petitions are dismissed but with liberty to the petitioners as aforesaid. No costs.

10. Needless to observe, the Presiding Officer of the Tribunal will proceed to decide the appeals pending before him without being influenced by dismissal of these writ petitions.

[MANGESH S. PATIL, J.]

[CHIEF JUSTICE]