

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO. 1198 OF 2021

Murlidhar Keru Satav and Anr.

... Petitioners

Versus

State of Maharashtra and Ors.

... Respondents

Mr. Ranjit D. Shinde a/w Mr. Ajinkya M. Udane for the Petitioners.

Mr. N. K. Rajpurohit, AGP for the State-Respondent Nos. 1 and 2.

Mr. Prathamesh Bhargude a/w Mr. Sumit Sonare for the Respondent
No.3 and 4-Management.

**CORAM: R. D. DHANUKA AND
ABHAY AHUJA, JJ.**

DATE : 2nd DECEMBER, 2021.

P.C. :-

1. Rule. Mr. Rajpurohit, learned AGP for the respondent nos. 1 and 2 waives service. Mr. Bhargude, learned counsel for the respondent nos. 3 and 4 waives service. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for quashing and setting aside the order dated 13th January, 2020 passed by the respondent no.2 thereby setting aside the promotions granted to the petitioner.

3. The enquiry was initiated by respondent no.2 against the petitioners in view of the complaint filed by the another employee against the petitioners alleging fraud alleged to have been practiced by

the petitioners. The said complaint was filed by Shri A. S. Takawane on 15th January, 2018. The respondent no.2 appointed a committee of one Shri Sandeep Jadhav, the Junior Administrative Officer in the office of the Joint Director (Higher Education) who submitted his report on 28th February, 2019. It is the case of the petitioners that neither the copy of the said complaint filed by Shri A. S. Takawane was served upon the petitioners nor any opportunity was given to the petitioners for producing relevant documents. The Management was also not served with any notice before recommending any action against the petitioners as per said report.

4. A perusal of the impugned order clearly indicates that the respondent no.2 had violated the principles of natural justice. It is not placed on record that the copy of the complaint made by Shri A. S. Takawane alleging fraud on the part of the petitioners was served upon the petitioners pursuant to which the enquiry committee was appointed by the respondent no.2.

5. The question as to whether any fraud was practiced by the petitioners or not in granting promotion to the petitioner with retrospective effect or not, the presence of Management was also necessary before the enquiry committee. It is not the case of the Management that the petitioners have practiced any fraud in promoting the petitioners themselves with retrospective effect. It is the case of the Management that the post was lying vacant and thus petitioners who were due for promotion were appointed on the said vacant post.

6. If the enquiry officer would have issued notice to the Management also with an opportunity to produce and to controvert the allegations made in the complaint filed by Shri A. S. Takawane and if the enquiry officer would have served a copy of the complaint upon the petitioner with an opportunity to deal with the said complaint, the situation would have been different.

7. In our view, the entire procedure followed by the enquiry officer appointed by the Joint Director is in gross violation of principles of natural justice. Consequently, the order passed by the respondent no.2 on the basis of such enquiry report submitted by the one man committee comprising of Shri Sandeep Jadhav is also illegal.

8. We accordingly pass the following order :-

- (a) The impugned order dated 13th January, 2020 is quashed and set aside. The proceedings are restored to file.
- (b) The respondent no.2 is directed to appoint another enquiry officer to verify the correctness of the complaint filed by Shri A. S. Takawane against the petitioners within three weeks from today. The name of the newly appointed enquiry officer shall be communicated to the petitioners as well as the Management within one week thereafter.
- (c) A copy of the said complaint dated 15th January, 2018 filed by Shri A. S. Takawane shall be furnished upon the petitioners as well as the Management within two weeks from today. The petitioners as well as the Management would be at liberty to file reply to the said complaint and to produce the relevant documents before the Enquiry Committee within four weeks from the date of receipt of copy of the said complaint from the enquiry officer. The

enquiry officer shall pass an appropriate order after considering the reply of the petitioners as well as the Management and after hearing their arguments in accordance with law and without being influenced by the observations made and conclusion drawn in the impugned order which is the subject matter of this petition, within eight weeks from the date of petitioners and Management filing their respective reply to the said complaint.

- (d) If on the basis of such report, respondent no.2 proposes to take any action against the petitioners, the principles of natural justice shall be followed by the respondent no.2 by giving a show-cause notice and opportunity to file their reply. The Management also would be at liberty to file reply to such notice before the respondent no.2 and explain their say. The respondent no.2 shall pass an order after hearing the petitioners as well as the Management and after considering the pleadings, documents and material on record, if any. The respondent no.2 shall pass an order within eight weeks from the date of hearing the petitioners and the Management and shall communicate the order within one week from the date of passing of such order. If the order is adverse against the petitioners and/or the Management, the aggrieved party would be at liberty to file appropriate proceedings. If the said complaint filed by Shri A. S. Takawane is found baseless by the respondent no.2, the respondent no.2 shall release the arrears and all consequential retiral benefits in favour of the petitioners within four weeks from the date of passing of such order.
- (e) Writ Petition is allowed in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.

[ABHAY AHUJA, J.]

[R. D. DHANUKA, J.]