

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4666 OF 2021
WITH WP/7455/2021 WITH CA/9133/2021 IN WP/7455/2021

SHAIKH GULAB SHAIKH MUNIR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.A.A.Kokad, Advocate for the petitioner in WP No.4666/2021.
Mr.S.S.Kazi, Advocate for the petitioner in WP No.7455/2021.
Mr.S.B.Pulkundwar, AGP for respondent Nos. 1 to 3 in WP No.4666/2021 and for respondent Nos. 1 to 4 in WP No.7455/2021.
Mr.K.D.Pote h/f Mr.A.G.Ambetkar and Mr.Aniket Patil, Advocate for respondent No.4 in WP No.4666/2021 and for respondent Nos. 5 and 6 in WP No.7455/2021.

(CORAM : RAVINDRA V. GHUGE AND
S.G. MEHARE, JJ.)

DATE : MARCH 3, 2022

PER COURT :

1. Having heard the learned Advocates for the respective sides, it is apparent that the dispute between the petitioner/employee and the Management is as follows :-

[a] The petitioner claims that he was not allowed to sign the muster roll and was therefore not allowed to mark his attendance. Consequentially, he was not paid his salary for the said period.

[b] The Management alleges that the petitioner did not report for

duties, did not perform his duties and therefore the attendance record indicates that he is unauthorizedly absent.

[c] The petitioner claims that he should be paid his salary for the period that he has worked.

[d] The Management alleges that when he did not attend the duties and did not perform his duties, he cannot be paid his salary by applying the principles of "no work no pay".

2. The Management has served a statement of charges in accordance with the MEPS Rules, 1981 on the petitioner and has constituted an Enquiry Committee.

3. The petitioner contends that a defective Enquiry Committee has been formed.

4. This Court (Coram : S.V.Gangapurwala and R.N.Laddha, JJ) has observed in it's order dated 03/09/2021 that if the enquiry is vitiated for non payment of subsistence allowance, the petitioner can agitate this issue and once the enquiry is vitiated, the petitioner would get all his benefits. Same principles apply even to the case of a defective

Enquiry Committee. For the reasons of legal defects in the Constitution of the Enquiry Committee, the entire enquiry can be vitiated. In the backdrop of such a situation, the petitioner would be entitled for all the benefits.

5. This Court can not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India to resolve disputed issues as to whether the petitioner worked, whether the petitioner was absent, whether the petitioner was not allowed to mark his attendance, whether the Management is anti pathetic towards the petitioner etc. If the Management has alleged that the petitioner was remaining unauthorizedly absent, the Management will have to prove the charges against the petitioner. Non payment of salary for such disputed period, cannot be a issue that can be dealt with by this Court since it would be within the realm of the departmental enquiry to be considered in accordance with the MEPS Rules, 1981.

6. In view of the above, both these petitions are dismissed. Needless to state that as we have observed that all the contentions of the petitioner and the Management would be subject matter of the

enquiry, all the contentions of the parties are left open.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)