

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11802 OF 2021

1. Maulana Azad Educational Trust ,
Dr.Rafiq Zakaria Campus,
Rauza Baugh,
Aurangabad - 431001
Through its Chairman,

2. The Managing Trustee,
Maulana Azad Educational Trust,
109-A, 01st floor, Dalmal Towers,
Free Press Journal Road,
Nariman Point,
Mumbai

3. Y.B.Chavan College of Pharmacy,
Dr.Rafiq Zakaria Campus,
Rauza Baugh,
Aurangabad - 431001
Through It's Incharge Principal

-- PETITIONERS

VERSUS

1. Obaid M.Shaikh,
Age-39 years, Occu-Nil,
R/o Plot No.41, National Colony,
Geeta Nagar, Aurangabad

2. Dr.Babasaheb Ambedkar
Marathwada University,
University Campus,
Through It's Registrar

-- RESPONDENTS

Mr.Y.R.Marlapalle, Advocate for the petitioners.
Mr.A.N.Kakade, Advocate for respondent No.1.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 18, 2022

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. Heard the learned Advocate for the petitioners and the learned Advocate for respondent No.1.

The writ petition is instituted by the petitioner/Management being aggrieved by the judgment delivered by the University and College Tribunal in an appeal filed by the respondents vide Appeal No.BAMU-40/2020, dated 12/07/2021. The learned Advocate for the petitioner fairly states that the challenge in the writ petition is restricted to the direction issued for payment of back wages / arrears of salary directed to be paid to the appellant in terms of direction No.(v) in the impugned judgment. The learned Advocate do not dispute that since there was a technical flaw in the enquiry initially conducted against the respondent/employee, the Tribunal has directed his re-instatement and liberty was granted to the Management to initiate de novo enquiry

against him, from the initial stage in terms of Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules and the procedure prescribed under the said rules has been directed to be strictly adhered to. He would further invite my attention to direction No.8 issued by the Tribunal, where the decision was directed to be taken within a period of 6 months from the date of receipt of R & P on completion of the denovo enquiry.

3. On perusal of the impugned judgment of the Tribunal dated 12/07/2021, I do not think there is any illegality in the impugned order since on rendering a finding to the effect that without following the procedure prescribed against a permanent employee, the termination/dismissal could not have been effected and therefore it was incumbent upon the Management to follow the procedure prescribed in Rule 8 and 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules. Hence on this technical ground, the termination order is set aside with liberty being granted to the Management to initiate a denovo enquiry as prescribed by the Rules of 1981.

4. On the termination order being set aside, it is informed that the

respondent / employee came to be reinstated on 15/09/2021 and he discharged his duties for some period of time, and to be precise till 20/11/2021 when he was placed under suspension contemplating a fresh departmental enquiry, in terms of the MCSR Rules, 1981.

The learned Advocate for the petitioners states that in the wake of the aforesaid subsequent events, the directions issued by the Tribunal to pay the arrears / back wages on setting aside the order of termination, need not be determined at this stage, but it shall be dependent upon the outcome of the denovo enquiry and he place reliance upon the decision of the Apex Court in case of **Chairman-cum-Managing Director, Coal India Limited and others Vs. Ananta Saha and others**, [(2011) 5 SCC 142], where the Apex Court has collated the principles pertaining to a denovo / fresh enquiry being required to be undertaken, in absence of an enquiry being conducted or an enquiry which is not conducted as per the prescribed norms and the issue as to the payment of back wages has been specifically focused upon.

My attention is invited to paragraph No.47 of the said judgment where the earlier decision of the Apex Court in case of **Managing Director, ECIL Vs. B. Karunakar** [AIR 1994 SC 1074] has been relied upon. The observations of their Lordships are gainfully reproduced

hereinafter as under :-

"47. It is settled legal proposition that result of the fresh inquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the inquiry in such a fact-situation relates back to the date of imposition of punishment, earlier stands fortified by the large number of judgments of this Court and particularly in *R. Thiruvirkolam v. Presiding Officer & Anr.*, AIR 1997 SC 637; *Punjab Dairy Development Corporation Ltd. & Anr. v. Kala Singh etc.*, AIR 1997 SC 2661; and *Graphite India Ltd. & Ors. v. Durgapur Project Ltd. & Ors.*, (1999) 7 SCC 645.

48. In *Managing Director, ECIL, Hyderabad etc. v. B. Karunakar and Union of India v. Y.S. Sandhu, Ex. Inspector*, AIR 2009 SC 161, this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the inquiry afresh from the stage where it stood before alleged vulnerability surfaced. However, for the purpose of holding the fresh inquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages etc. is determined by the disciplinary authority in accordance with law after the fresh inquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of

universal application can be laid for such cases. Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of re-instatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide: [U.P.SRTC v. Mitthu Singh](#), AIR 2006 SCC 3018; [Secy., Akola Taluka Education Society & Anr. v. Shivaji & Ors.](#), (2007) 9 SCC 564; and [Managing Director, Balasaheb Desai Sahakari S.K. Limited v. Kashinath Ganapati Kambale](#), (2009) 2 SCC 288)."

5. In the wake of the aforesaid authoritative pronouncements, when the enquiry conducted against the respondent has been set aside on the technical ground and the fresh enquiry is now already initiated and is in progress, the issue of back wages can be deferred till the outcome of the said enquiry. On this limited aspect, the impugned judgment passed by the School Tribunal deserve an interference and by upholding the impugned judgment, barring the directions contained in Clause 5 of the operative portion of the order, the order is upheld. As far as the issue of back wages / the arrears to be paid and on culmination of the enquiry proceedings, if it again result into an order of termination and whether it shall relate back to the date of earlier termination order,

which has been set aside by the Presiding Officer of the School Tribunal vide the impugned judgment shall be decided at the time when the fresh decision is taken upon the culmination of the enquiry proceeding against the respondents. With the aforesaid clarification being issued, the impugned judgment deserves to be upheld with the modification as set out above being restricted to direction No.(v) of the impugned order. Writ petition is disposed off in the aforesaid terms and being partly allowed.

6. Rule is made partly absolute in the aforesaid terms.

(BHARATI H. DANGRE, J.)