

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

**WRIT PETITION NO.1964 OF 2022**

1. Nirmal Krida and Samaj Prabodhan,  
Trust, Plot No.490, N-3, CIDCO,  
Aurangabad,  
Through its Chief Trustee,  
Dr. Datta Pathrikar.
2. The Principal,  
Nirmal Krida and Samaj Prabodhan  
Trust's Arts, Science and Commerce  
College, Badnapur, Taluka Badnapur,  
Dist. Jalna. ..Petitioner

Versus

1. The State of Maharashtra,  
Through its Secretary,  
Education Department,  
Mantralaya, Mumbai.
2. Mahesh S/o Gopalrao Undegaonkar,  
Age 40 years, Occ.: Nil,  
R/o Onkar Residency, Tuljabhawani  
Nagar, Jalgaon Road, Aurangabad.
3. The Joint Director of  
Higher Education, Aurangabad,  
Division, Aurangabad.
4. The Registrar,  
Dr. Babasaheb Ambedkar Marathwada University,  
University Campus, Aurangabad.

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Mr. V. D. Sapkal, Senior Advocate i/by Mr. Amol N. Kakade,  
Advocate for the Petitioners.  
Mr. K. B. Jadhavar, AGP for Respondents-State.  
Mr. V. D. Salunke and Mr. A. S. Kakade, Advocate for Respondent  
No.2.

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**CORAM : SANDEEP V. MARNE, J.**

**RESERVED ON : 18.11.2022.**  
**PRONOUNCED ON : 23.11.2022.**

**JUDGMENT**

1. Rule. Rule is made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the admission stage.

2. By this petition petitioners assail judgment and order dated 20.09.2021 passed by the Presiding Officer, University and College Tribunal, Aurangabad in Appeal No.BAMU-02 of 2020. By that order, the Tribunal has allowed the appeal filed by respondent no.2 and has set aside the order dated 29.11.2019 imposing penalty of dismissal from service. The respondent no.2 is directed to be reinstated alongwith back wages from the date of suspension till the date of reinstatement alongwith continuity in service.

3. Petitioner no. 1 is a Trust which runs and operates Nirmal Krida and Samaj Prabodhan Trust's Arts, Science and Commerce College. Petitioner no.2 is the Principal of the College. The respondent no.2 has been in employment of Petitioners since 09.07.2009 as Associate Professor.

4. Respondent no.2 was placed under suspension by order dated 09.01.2018. Memorandum of charge-sheet dated 29.06.2018 was served upon him alleging seven charges. The charges essentially emanated out of alleged conduct of respondent no.2 in putting his signature on nomination form of Dr. Shaikh Sharfoddin Shaikh Fakroddin in capacity as Principal in connection with the election to the Senate of Dr. Babasaheb Ambedkar Marathwada University. It was alleged in the memorandum of charge-sheet that respondent no.2 had no authority to act or sign as Principal of the College and he did so

unauthorizely. Another allegation was about participation in the process of preparation of the rubber stamp of the college in falsified manner and to use the same fraudulently on nomination form for election and other papers. It was also alleged the respondent no.2 used fictitious letterhead of the college with malafide intention. It was also alleged that respondent no.2 failed to take note of appointment order dated 02.08.2017 issued to Dr. Gawande Ganesh authorizing him to act as Vice-Principal during the Academic Year 2017-18. In the last charge, it was alleged that the respondent no.2's explanation was called in respect of FIR lodged against him vide letter dated 25.11.2017 and that he failed to submit any explanation.

5. The memorandum of Charge-sheet and suspension orders were issued by the Trust alleging that the principal of college was on leave during the period from 23.10.2017 to 02.11.2017 during which time she had handed over the charge to Dr. Gawande. That respondent no.2 put his signature on the nomination form of Dr. Shaikh Sharfoddin Shaikh Fakroddin, who was contesting election to the Senate of the University, in capacity as Principal without having any authority. The Principal, therefore, lodged a FIR with police on 09.11.2017. A show cause notice dated 25.11.2017 was issued to respondent no.2 calling for his explanation, but he failed to submit any reply. Therefore, Trust proceeded to issue memorandum of charge-sheet to respondent no.2.

6. Simultaneously with issuance of memorandum of charge-sheet, petitioner-Trust appointed committee consisting of Dr. M. D. Jahagirdar and Dr. G. T. Degaonkar to conduct disciplinary enquiry against respondent no.2. A communication to

that effect was given to the respondent no.2 by letter dated 29.06.2018. After receipt of the memorandum of charge-sheet and communication appointing Enquiry Committee, respondent no.2 submitted a letter dated 17.07.2018 in which he did not deal with the merits of the charges nor denied the same. He proceeded to reject the enquiry and proceedings by citing various reasons. He requested for cancellation of the disciplinary action and enquiry.

7. The Enquiry Committee issued two notices to respondent no.2 on 29.06.2018 and 14.11.2018 fixing two dates of enquiry on 09.08.2018 and 29.11.2018 respectively. Respondent no.2 did not participate in the enquiry proceedings. He instead approached the University and State Authorities complaining about his suspension and initiation of disciplinary enquiry. By his letter dated 07.08.2018 he communicated his inability to participate in the enquiry proceedings referring to the letter dated 06.08.2018 of the University stating that the University had directed the college to withdraw the enquiry proceedings.

8. Respondent no.2 filed Writ Petition No.1308/2018 before this Court challenging the FIR. By judgment and order dated 11.09.2018 this Court was pleased to quash the FIR lodged against respondent no.2. The petitioner-Trust has approached Supreme Court by filing SLP challenging the order of this Court, in which notices have been issued and SLP is pending.

9. It appears that, a correspondence was made by the University as well as the office of the Joint Director of Higher Education, Aurangabad questioning in suspension and initiation of disciplinary proceedings against respondent no.2. Especially, after quashing of the FIR by this Court, it appears that, petitioner-Trust was threatened with the action stopping the pay

bills by the office of the Joint Director of Higher Education. Also, Chairman of the Enquiry Committee Dr. M. D. Jahagirdar resigned from the Enquiry Committee on 20.11.2018. The petitioner-Trust in the meantime filed Writ Petition No.13927/2018 in this Court challenging various communications of the University and Joint Director of Higher Education Department. In that petition, a prayer was made to allow petitioners to proceed further in the disciplinary enquiry. While the petition remained pending, petitioner-Trust appointed new Enquiry Committee of Dr. G. T. Degaonkar (who was already in previous Committee) and Dr. C. M. Patil, who conducted an enquiry against respondent no.2. A communication in that regard is claimed to have been issued by petitioners to respondent no.2, which is disputed by him. The new Enquiry Committee issued communication dated 25.10.2019 fixing 13.11.2019 as the date for conducting enquiry. Again, in respect of the letter dated 25.10.2019 there is dispute between the parties about service thereof to respondent no.2. The respondent no.2 remained absent on the scheduled date of enquiry on 13.11.2019. The enquiry was conducted by examining three witnesses and by admission of several documents as Exhibits and the same was closed. The Enquiry Committee submitted enquiry report to petitioner-Trust on 17.11.2019 holding that all the charges levelled against respondent no.2 were proved. By letter dated 19.11.2019, the report of the Enquiry Officer was dispatched to respondent no.2 calling for his explanation within three days. He disputes service and receipt of the letter dated 19.11.2019. He did not submit any reply to the Enquiry Committee's report. The Chief Trustee of petitioner-Trust, therefore, proceeded to pass order dated

29.11.2019 holding respondent no.2 guilty of all the charges and imposed punishment of dismissal from service.

10. The respondent no.2 initially filed Writ Petition No.15518/2019 in this Court challenging the dismissal order, which was withdrawn by him on 02.01.2020 with liberty to avail alternate remedy. The respondent no.2 thereafter, filed Appeal No.BAMU-02 of 2020 before the University and College Tribunal, Aurangabad challenging the order of dismissal and seeking reinstatement in service. The Appeal of respondent no.2 was resisted by petitioners by filing affidavit-in-reply.

11. Simultaneously disciplinary proceedings also initiated against Dr. Shaikh Sharfoddin Shaikh Fakroddin, Assistant Professor (on whose nomination form petitioner had put signature in capacity as Principal). The enquiry proceedings were simultaneously held against both the individuals and Dr. Shaikh Sharfoddin Shaikh Fakroddin was also dismissed from service. He filed Appeal No.BAMU-03 of 2020 before the University and College Tribunal. The Tribunal proceeded to hear both the Appeals and delivered a common judgment and order dated 20.09.2021 allowing both the appeals. The Tribunal proceeded to set aside the punishment of dismissal of the duo. They have been directed to reinstated in service on the post held by them alongwith back wages from the date of suspension till reinstatement. The judgment and order dated 20.09.2021 passed by the Tribunal is subject matter of challenge in the petition.

12. It must be observed here that, petitioners-Trust had filed Writ Petition No.1955/2022 in this Court challenging the order of the Tribunal passed in appeal filed by Dr. Shaikh

Sharfoddin Shaikh Fakroddin. Both the parties thereto filed compromise pursis dated 01.03.2022 in this Court under which petitioners-Trust agreed to reinstate Dr. Shaikh Sharfoddin Shaikh Fakroddin with effect from 01.03.2022 and he agreed to waive back wages from the date of termination till the date of reinstatement.

13. Appearing for petitioners Mr. Sapkal, the learned senior counsel would submit that, the findings recorded by the Tribunal are contrary to the pleadings of respondent no.2 in his appeal. Mr. Sapkal has taken me to the entire pleadings in the appeal filed by respondent no.2 before the Tribunal. He would submit that most of the findings recorded by the Tribunal are unsupported by the pleadings. Referring to the appeal filed by respondent no.2 Mr. Sapkal would contend that the charge of putting signature on nomination form of Dr. Shaikh Sharfoddin Shaikh Fakroddin is admitted by respondent no.2. He would rely upon the letter dated 14.10.2017 to demonstrate that Dr. Gawande was handed over charge of the post of Principal, who acted in that capacity during period of her leave. Mr. Sapkal would therefore contend that the main article of charge levelled against respondent no.2 stood proved on admission given by him in his appeal.

14. Mr. Sapkal would further submit that the enquiry proceedings were conducted by following principles of nature justice to the hilt. He would invite my attention to postal tracking reports in respect of letter appointing second Enquiry Committee, letters fixing dates of hearing by the Enquiry Committee and letter supplying copy of report of the Enquiry Committee to respondent no.2. He would particularly rely on letter dated

07.08.2018 of respondent no.2 to contend that he never had any intention of participation in the enquiry and therefore, despite receipt of notices of enquiry he chose to remain absent in the enquiry held by the Second Enquiry Committee.

15. Mr. Sapkal would further contend that enough evidence was available on record in respect of the findings recorded by the Enquiry Committee and disciplinary authority. He would submit that the charges of unauthorized signing on behalf of Principal and falsifying the record are serious charges for which penalty of dismissal from service is warranted. Alternatively, Mr. Sapkal would submit that after the Tribunal arrived at a conclusion that appropriate opportunity was not granted to respondent no.2 to defend himself, the Tribunal ought to have remanded the enquiry back rather than setting aside the dismissal order and directing payment of back wages.

16. Per contra Mr. Salunke, the learned counsel appearing for respondent no.2 would oppose the petition and support the order passed by the Tribunal. He places reliance on the findings recorded by this Court in its order quashing FIR. He would further submit that on account of quashing of FIR and recording of adverse observations against petitioner-Trust by this Court, disciplinary proceedings ought to have been withdrawn by petitioners. He would further submit that the same were actually withdrawn on account of Dr. Jahagirdar, the Chairman of the Enquiry Committee tendering his resignation. He would further submit that respondent no.2 was therefore under a bonafide impression that the enquiry was closed. That no intimation was given to respondent no.2 about constitution of Second Enquiry Committee and hearing conducted by it on 13.11.2019. He would

submit that the report of the Enquiry Committee was also not supplied to respondent no.2, that there was infraction of principles of natural justice in the conduct of the enquiry.

17. Mr. Salunke would further rely upon the conduct of petitioners in filing Writ Petition No.13927/2018 seeking relief of permission to proceed in the enquiry. He would submit that since no order was passed by this Court in that Writ Petition, it was presumed that no such permission was granted and therefore, petitioner-Trust could not have proceeded with enquiry. He would submit that petitioner-Trust created only a farce of enquiry. Under the guise of supply of notice of second enquiry, an envelope containing irrelevant documents was dispatched to respondent no.2. That the Tribunal has itself opened one such envelope and has recorded findings that it contained irrelevant documents. Mr. Salunke would further submit that the conduct of respondent no.2 in signing the nomination form in capacity as Principal was otherwise not blameworthy as several other documents were signed similarly in the past without any demure by petitioner-Trust. That respondent no.2 was appointed as officiating Principal and in that capacity has signed other documents for the Principal in the past. He would submit that this time the conduct of signing as Principal was selectively and deliberately picked up by petitioner-Trust as respondent no.2 supported the nomination of Dr. Shaikh Sharfoddin Shaikh Fakroddin against the group supported by petitioner-Trust which included the wife of the Chief Trustee. He would therefore submit that the entire proceedings were malafide in nature. Mr. Salunke would further submit that on account of non-payment of 75% subsistence allowance during

the pendency of the enquiry, the enquiry proceedings are otherwise vitiated. He prays for dismissal of the petition.

18. In rejoinder Mr. Sapkal would invite my attention to the averments made in affidavit-in-reply filed to the present petition by respondent no.2 to the effect that respondent no.2 was handed over charge of the post of Principal by Smt. Meher Pathrikar. He would submit that this averment is contrary to the authorization given by Smt. Pathrikar in favour of Mr. Gawande. Mr. Sapkal would therefore submit that the findings of the Tribunal in paragraph 28 of the order that petitioner was also given authorization to sign the documents was clearly perverse.

19. Mr. Jadhavar, learned AGP appearing for the State submits that the State may not be resorted with any liability in respect of the disputes pertaining to petitioner-Trust and respondent no.2.

20. Rival contentions of the parties now fall for my consideration.

21. The Tribunal, while allowing the appeal filed by respondent no.2 has essentially determined and decided two issues viz. (i) whether the enquiry was conducted in a fair manner and (ii) whether respondent no.2 actually committed the misconduct alleged. The committed has answered both the issues in favour of respondent no.2 and has proceeded to direct reinstatement with full back wages. In the light of this position, it would be appropriate to examine the first issue of manner in which the enquiry has been conducted and whether there has been any infraction of principles of natural justice.

22. It would be appropriate to reproduce some of the findings recorded by the Tribunal for arriving at conclusion that respondent no.2 did not get a fair opportunity of defending himself in the enquiry. They are as under:

“13. ----- The statement of imputation and list of documents and list of witnesses to be examined by disciplinary authority, are not provided to the appellant. Therefore, appellants were not in position to submit parawise written statement, in the enquiry proceedings. Record shows that the enquiry committee of Dr. M. D. Jahagirdar and Dr. G. P. Degaonkar was appointed to conduct the departmental enquiry by order dated 29.06.2018. Subsequently Dr. M. D. Jahagirdar on 20.11.2018 expressed his inability to work as enquiry officer. Till that date also the statement of imputation, list of witnesses and list of documents was not provided to any appellant. Thus, prejudice has been caused to the both appellants, who could not submit their parawise written statement in defense as they were not aware, about details of imputation of misconduct and nature of evidence which will be placed before enquiry committee.

14. -----That application was decided on 11.09.2018 and the FIR as well as criminal proceeding initiated u/s 420, 468, 471 r/w 34 IPC was quashed. Even the deputy registrar of Dr. BAMU issued letter to the respondent no.2 on 06.08.2018 and directed him drop the enquiry by cancellation of appointed enquiry committee. The appellants also wrote letter to Dr. M. D. Jahagirdar, Chairman of the enquiry committee that the enquiry cannot be proceed further as the FIR lodged against the appellants was quashed by the Hon'ble High Court. On 20.10.2018 deputy registrar BAMU again directed the Principal of college to reinstate the appellant as criminal proceeding started against the appellant was quashed. Copy of this letter was also submitted to the both appellants. Even Joint Director of Higher Education, Aurangabad Division informed the respondent no.2 Principal to act upon the judgment of the Hon'ble High Court in Criminal Application No:-1308 of 2018. Therefore, after the decision of criminal application no:-1308 of 2018 the appellants were under

bonafide impression that the departmental enquiry proceeding initiated against them is dropped.

15. However, respondent nos.1 and 2 filed Writ Petition No:-13927 of 2018 before the Hon'ble High Court challenging the letters of reinstatement written by Deputy Registrar BAMU and sought permission to proceed further with the departmental enquiry against the appellants. The appellants were also made party to that Writ Petition. In view of this chain of events, the appellants were under bonafide impression that now the departmental enquiry cannot proceed further unless the permission is granted by Hon'ble High Court. That Writ Petition was kept pending till 24.02.2021.

16. However, by that time on 09.10.2019 the respondent no.1 appointed second enquiry committee and according to respondent nos.1 and 2 on 25.10.2019 the newly appointed enquiry committee issued notice to the appellants (M-94) and directed them to remain present before second enquiry committee on 13.11.2019. The service of this notice to the appellants is specifically denied by them. According to appellants in the envelope received by them some other irrelevant documents were set to them and therefore they could not remain present before enquiry committee on 13.11.2019. Ex-parte enquiry was held on 13.11.2019 and final report of enquiry was submitted to the respondent no.1 by the second enquiry committee on 17.11.2019. According to respondents on 19.11.2019 respondent no.1 issued show cause notice to the appellants together with copy of enquiry report and called their explanation. Service of this notice is also disputed by the appellants. According to the appellants in the envelope issued by respondent no.1 some irrelevant papers were found and not the enquiry report.

17. Above discussed facts and documents placed on record, makes it clear that the appellants were mislead and deceived by respondent no.1 by filing Writ Petition No.13927 of 2018 before High Court seeking permission to proceed further with the departmental enquiry, after receiving letter from BAMU to cancel enquiry committee. Any prudent man would be under impression that unless Hon'ble High Court grants permission to the respondent no.1 to proceed with the DE against appellant, the same is kept in abeyance, till the date of passing positive order by Hon'ble High Court.

However, that writ petition was kept pending by respondent no.1 without obtaining any substantive order from the High Court, till 24.02.2021. However, during pendency of the Writ Petition No.13927 of 2018, respondent no.1 without obtaining any orders from the High Court to proceed with the departmental enquiry (in short DE), and without knowledge to the appellants, appointed new enquiry committee headed by Shri. D. T. Degaonkar as Chairman and Shri. C. M. Patil as the member on 09.10.2019 (Exhibit-M-14). The respondent no.1 also prepared memorandum of particulars of misconduct of appellants, list of witness and list of documents (Exhibit-A-15&16) on 09.10.2019. According to respondent no.1 this memorandum, list of witness and list of documents was sent to the appellants by RPAD on 19.10.2019. According to respondent no.1 that envelope was returned as the appellants refused to accept it. However, the appellants have specifically denied the service of notice of enquiry by respondent no.1 together with memorandum, list of witnesses and list of documents. To prove that, the said notice and accompanied documents were refused to accept by the appellant, the respondent nos.1 and 2 have placed on record postal track report. However, the envelope which was returned as refused by the appellant, is not placed on record. The postal track report shows that on 26.10.2019 the envelope sent to Mahesh Undegaonkar (Exh-M-98) was returned as refused. However, this report further indicate that the said envelope was delivered to the Mahesh Undegaonkar on 02.11.2019. According to appellants whatever postal envelopes were received by them from the respondent nos.1 and 2, contained only irrelevant documents. Therefore, I am doubtful whether the list of witness, documents and memorandum was actually served to the appellants. In view of further development to proved that the envelopes sent by respondent nos.1 and 2 and by newly appointed enquiry committee, did not contain relevant documents, or notices, the appellants have filed in this appeal the original envelopes with its contents, which were received by them. Document No.3 is postal envelope sent by enquiry committee chairman to appellant Mahesh Undegaonkar. It was sent by registered post on 29.10.2019. However, in the said envelope one copy of order passed by Hon'ble High Court in W.P. No:-13927 of 2018 dated 04.09.2019 was found. According to respondent nos.1 and 2 similar notice was issued by enquiry committee to appellant Shaikh Sharfoddin with the notice dated 25.10.2019

informing them the date 13.11.2019 was date of hearing of the DE. This envelope is document no.4 which was placed on record as additional evidence. This envelope was not opened and it was intact till its production. On 17.07.2021 this Tribunal personally opened this envelope in the open Court. This Court was shocked after noting that it contained only order of the High Court dated 04.09.2019 passed in Writ Petition No.13927 of 2018. Due endorsement is made by this Tribunal, regarding opening of this packed envelope on 17.07.2021. For identification, today these both envelopes are marked as (Exh-A & Exh-B). This indicates that contention of appellants is correct that they were not informed about appointment of new enquiry committee and date of hearing fixed by this committee.-----"

23. In the aforesaid manner the Tribunal has severely castigated petitioner-Trust about the manner in which the disciplinary enquiry has been conducted. It has recorded strong observations against petitioner-Trust. First, I deal with the issue of chargesheet not containing statement of imputations, list of witnesses and list of documents. I find that Petitioner never objected to this material not being supplied. Secondly and more importantly this aspect was not pleaded in the appeal filed by Respondent No. 2 before the Tribunal. Therefore finding of cause of prejudice couldn't have been recorded by the Tribunal in absence of pleadings. The charges levelled in the chargesheet are clear and unambiguous. No case of vagueness of charges was pleaded. Therefore non-supply of imputations of misconduct cannot ipso facto cause any prejudice to Respondent No. 2 in the matter of his defence. So far as non-supply of list of documents and witnesses is concerned, the defect was curable as such list could have been demanded by the Respondent No. 2, which he did not. Considering the nature of order that I propose to pass, this defect can easily be cured. The findings recorded by the Tribunal about cause of prejudice on account of non-supply of statement of

imputation, list of witnesses and list of documents are unsustainable.

24. Respondent No. 2 has not participated in the inquiry. His non-participation particularly before reconstituted enquiry committee is attributed by the Tribunal essentially to a bonafide impression that he carried to the effect that the disciplinary enquiry was dropped by petitioner-Trust. The findings with regard to presumption of dropping of enquiry are drawn on the basis of the following three factors:

- (i) FIR containing some allegations was quashed by this Court.
- (ii) Chairperson of the earlier Enquiry Committee Dr. Jahagirdar had resigned from Enquiry Committee.
- (iii) Petitioner-Trust had filed Writ Petition No.13927/2018 seeking permission to proceed in the enquiry and no order was passed therein granting such permission.

On the basis of the aforesaid three factors, the Tribunal has held that respondent no.2 was under bonafide impression that the enquiry was dropped by petitioner-Trust.

25. I proceed to deal with each of three factors. It is well settled law that mere quashing of FIR or acquittal of an employee in criminal case would have no impact on disciplinary enquiry. The purpose of two proceedings is entirely different. In several judgments, the Apex Court has held that even after acquittal of an employee, it is permissible to initiate disciplinary enquiry on the basis of same allegation. There is no dearth of judgments on this issue. I may refer to only two recent decisions of Apex Court. In **Karnataka Power Transmission Corpn. Ltd. v. C.**

**Nagaraju**, (2019) 10 SCC 367, the Supreme Court has held as under:

*“9. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. [Ajit Kumar Nag v. Indian Oil Corpn. Ltd., (2005) 7 SCC 764 : 2005 SCC (L&S) 1020] In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different. [State of Rajasthan v. B.K. Meena, (1996) 6 SCC 417 : 1996 SCC (L&S) 1455]*

*13. Having considered the submissions made on behalf of the appellant and Respondent 1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a criminal court does not preclude a departmental inquiry against the delinquent officer. The disciplinary authority is not bound by the judgment of the criminal court if the evidence that is produced in the departmental inquiry is different from that produced during the criminal trial. The object of a departmental inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a departmental inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the inquiry officer in the disciplinary proceedings, which is different from the evidence available to the criminal court, is justified and needed no interference by the High Court.”*

26. In recent judgment in **State of Karnataka v. Umesh**, (2022) 6 SCC 563 the Supreme Court has held as under:

“16. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.”

27. Therefore, merely because FIR is quashed by this Court, the same could not have been reason for petitioner-Trust to drop the disciplinary proceedings. The proceedings were rightly not dropped by petitioner-Trust. Therefore, no presumption could have been drawn either by respondent no.2 or by the Tribunal that mere quashing of FIR would automatically entail dropping of disciplinary proceedings. Various communications issued by the University and by the Joint Director of Higher Education calling upon petitioner-Trust to drop the enquiry proceedings were clearly contrary to the settled law in catena of judgments of the Apex Court.

28. Coming to the second factor of resignation of Dr. Jahagirdar, Chairperson of the first Enquiry Committee, it is trite that the enquiry officer is appointed only for the purpose of recording of evidence who may also submit a report about his opinion about the proof of charges. However, opinion expressed by the enquiry officer is not binding on the disciplinary authority,

who is empowered to differ with the same. The decision to continue or drop the enquiry cannot be taken by the enquiry officer in any manner. The disciplinary authority alone can take decision in that regard. Therefore, merely because one of the members of the Enquiry Committee tendered resignation from such Committee, no presumption could have been raised that the enquiry proceedings were dropped. If Dr. Jahagirdar tendered resignation from Enquiry Committee, petitioner-Trust was competent in law to replace him with another person or to direct the other member in the Committee to conduct an enquiry. In my view therefore presumption of dropping of enquiry on the basis of resignation by Dr. Jahagirdar drawn by the Tribunal is clearly erroneous.

29. The last factor relied upon by the Tribunal for raising a presumption of dropping of enquiry is filing of Writ Petition No.13927/2018 by petitioner-Trust seeking permission to proceed with the enquiry. In my view, there was no reason for petitioner-Trust to seek permission of this Court to proceed with the enquiry. As long as the Memorandum of Charge-sheet was not dropped, the disciplinary authority was empowered to continue with the enquiry and it did not need permission of this Court to proceed further. Writ Petition No.13927/2018 was required to be filed by petitioner-Trust possibly because of repeated communications from the University and the Joint Director of Higher Education threatening it with the stoppage of salary grant, if respondent no.2 was not reinstated. The petition was filed essentially to challenge those communications. Mere because an additional prayer was made in the petition seeking leave of this Court to continue with the enquiry, it cannot be presumed that such permission was indeed necessary. Therefore, non-

granting of that prayer by this Court could not have been a reason for respondent no.2 or the Tribunal to raise a presumption that petitioner-Trust could not proceed ahead with the enquiry. Writ Petition No.13927/2018 was subsequently disposed of on 24.10.2021 on account of imposition of penalty in the proceedings on respondent no.2. Be that as it may. Since no permission of this Court was necessary to proceed with the enquiry, the relief sought in that regard in Writ Petition No.13927/2018 was inconsequential.

30. Thus, none of the three factors taken into consideration by the Tribunal for raising inference that the enquiry proceedings were dropped were relevant. The inference drawn by the Tribunal is thus erroneous. In my view, therefore, petitioner-Trust rightly proceeded with the enquiry by replacement of Dr. Jahagirdar with another member in the Committee.

31. Now coming to the aspect of conduct of enquiry by newly constituted Committee, I find that the Committee was constituted by a communication dated 09.10.2019. The Enquiry Committee so reconstituted addressed communication dated 25.10.2019 to respondent no.2 communicating the date of hearing as 13.11.2019. It is the petitioners' case that the said letter dated 25.10.2019 was sought to be served upon respondent no.2 by registered post A.D. and that he refused to accept the envelope. Reliance is placed on tracking report of Postal Department containing report 'item returned refused'. On the other hand, respondent no.2 would contend that he never received letter dated 25.10.2019 and was unaware of the date of enquiry.

32. In absence of respondent no.2, the reconstituted Enquiry Committee proceeded to conduct an enquiry on 13.11.2019. It took on record 105 documents and marked them as Exhibits. It also examined three witnesses namely Dr. Meher Datta Pathrikar, Dr. Ganesh Bapurao Gawande and Shri. Bhagwan Tukaram Lahane. Since respondent no.2 was absent, cross-examination could not be conducted. The enquiry was closed on 13.11.2019 itself and it was recorded that report of the enquiry would be presented to the disciplinary authority.

33. The Enquiry Committee prepared its report four days thereafter on 17.11.2019 holding that all the charges levelled against respondent no.2 were proved. By communication dated 19.11.2019, the Chief Trustee of petitioner-Trust attempted to serve the said report on to respondent no.2. Again there is dispute about the service of this communication. The petitioners have relied upon the postal tracking report to show that the letter dated 19.11.2019 alongwith the enquiry report of the enquiry office was accepted by respondent no.2 on 21.11.2019. The respondent no.2 disputes this position. On account of non-receipt of any response, Petitioners proceeded to pass order dated 19.11.2019 imposing penalty of dismissal from service.

34. Serious disputes were raised by respondent no.2 before the Tribunal about service of the notice of reconstitution of Enquiry Committee, the notice of fixing date of hearing and communication containing report of Enquiry Committee. It was case of respondent no.2 before the Tribunal that he did receive one envelope which contained irrelevant documents. One sealed envelope was produced before the Tribunal which the Tribunal opened itself and found that some irrelevant documents were

included therein. There are factual disputes in this regard. I do not wish to delve further in the same. Momentarily I assume that Respondent No. 2 received/deemed to have received those communication and proceed to determine whether the inquiry conducted is fair.

35. As observed hereinabove, the reconstituted Committee was appointed on 09.10.2019. It decided to commence the enquiry on 25.10.2019 and issued notice to respondent no.2 fixing 13.11.2019 as date for conducting enquiry. On one single day, the entire enquiry was concluded. Four days thereafter, the report of Enquiry Committee was prepared. petitioner-Trust acted on the Enquiry Committee report within two days thereafter and issued letter dated 19.11.2019 calling for representation of respondent no.2. Only 3 days were granted to submit response. On non-receipt of any response from respondent no.2 resulted in order of dismissal being passed on 29.11.2019.

36. In the aforesaid manner in respect of the disciplinary proceedings which were pending since 29.06.2018, the entire proceedings from the stage of reconstitution of Enquiry Committee till passing of final order of dismissal was completed within about 50 days. Momentarily assuming that respondent no.2 was in receipt of the communications fixing date of enquiry on 13.11.2019 and that he failed to remain present on that day, the closure of entire enquiry on one single day by the Enquiry Committee does not inspire confidence. Rather it raises serious doubts about the intention of the Committee to follow any principles of natural justice. Admittedly, there was no prior intimation to respondent no.2 about summoning of any witnesses. Memorandum of charge-sheet did not contain the names of the

witnesses, which were proposed to be examined. However, it appears that, the Enquiry Committee examined three management witnesses on 13.11.2019 and immediately thereafter marked 105 documents as Exhibits. If respondent no.2 was absent on 13.11.2019, in my view, the Enquiry Committee could have given one opportunity to him to cross-examine three witnesses, which was not done. The Committee proceeded to close the enquiry on 13.11.2019 itself and submitted its report within four days thereafter on 17.11.2019. The action of disciplinary authority in providing only three days' time to submit response on the report of the Enquiry Committee was also clearly inadequate and amounts to denial of fair chance of defense.

37. Considering the manner in which the inquiry is conducted coupled with serious dispute about service of intimation of inquiry and inquiry committee report, it is difficult to arrive at a finding that a fair opportunity was granted to Respondent No. 2 to defend himself.

38. Therefore, while I differ with the reasons recorded by the Tribunal, I do agree with its ultimate conclusion that respondent no.2 did not receive fair opportunity of defence in the disciplinary enquiry.

39. Coming to the next aspect where the Tribunal has gone into the merits of the charges and has arrived at a finding that respondent no.2 did not commit the misconduct alleged in the charges. I am of the view that the Tribunal has committed serious infirmity in that issue. After having arrived at a finding that the enquiry was not properly conducted, it was incumbent for the Tribunal to remand back the enquiry rather than going into the

issue of adequacy or otherwise of evidence for proof of charges. It would be appropriate to refer to the Judgment of Apex Court in **LIC v. A. Masilamani**, (2013) 6 SCC 530

*16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] , Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293 : 2003 SCC (L&S) 1033] , U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264 : 2006 SCC (L&S) 78] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126] .)*  
(emphasis supplied)

40. More recently, in **Inspector of Panchayats and District Collector, Salema vs. S. Arichandran and Others** 2022 SCC OnLine SC 1282, the Apex Court has reiterated the principle as under:

*14. At the outset, it is required to be noted that the learned Single Judge has set aside the order of dismissal passed by the Disciplinary Authority on the ground that the same was in breach of principles of Natural Justice, in as much as, the copy of the Inquiry Officer's Report was not furnished to the delinquent and his comments were not called for on the Inquiry Officer's Report. It is to be noted that the respondent - delinquent was facing the departmental inquiry with respect to a very serious charge of misappropriation. Therefore, the High Court ought to have remitted the matter back to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated.*

Thus, it was not open for the Tribunal to go into merits of the charges or to direct reinstatement after recording finding of

inquiry not being fairly conducted. Therefore, all the findings recorded by Tribunal with regard to the issue nos.3 to 10 are erroneous and deserve to be set aside.

41. While having held that the conduct of the enquiry by the reconstituted Enquiry Committee was not appropriate, the conduct of respondent no.2 throughout the proceedings is also not free from blemish. The respondent no.2 consistently sought to challenge the authority of petitioner-Trust to initiate disciplinary proceedings against him. In his very first response dated 17.07.2018 he proceeded to 'reject' the disciplinary proceedings. It is incomprehensible as to how an employee can 'reject' disciplinary proceedings initiated against him. Being an employer, petitioner-Trust had every right to place respondent no.2 under suspension and to initiate disciplinary enquiry against him. He later consistently exhibited desire not to participate in inquiry. This conduct of respondent no.2 does not commend me. Remand of inquiry would entail, suspension of Respondent No. 2. Since the management alone is not responsible for delay in conclusion of proceedings, Respondent No. 2 shall not be entitled to enhancement in subsistence allowance during the period of suspension. Also, it is expected that respondent no.2 would duly cooperate in the inquiry.

42. I therefore proceed to pass the following order:

### **ORDER**

A. The judgment and order dated 20.09.2021 passed by the Presiding Officer, University and College Tribunal, Aurangabad in Appeal No.BAMU-02 of 2020 is set aside to the extent of directing reinstatement of respondent no.2 with back wages.

- B. The order of the Tribunal directing setting aside order dated 29.11.2019 imposing penalty of dismissal from service of respondent no.2 is maintained.
- C. The disciplinary proceedings are remanded for conducting fresh enquiry after following provisions of applicable rules and principles of natural justice. The disciplinary proceedings be concluded within a period of three months from today.
- D. Intervening period from the date of dismissal from service ie. 29.11.2019 till passing of final order in proceedings shall be treated as suspension and respondent no.2 shall be entitled to be paid subsistence allowance during that period. He shall however not be entitled to enhancement of subsistence allowance. The responsibility of payment of subsistence allowance shall rest on Petitioners.
43. All the points on merits of the charges are left open.
44. Writ Petition is partly allowed. Rule is made partly absolute in above terms.

**(SANDEEP V. MARNE)**  
**JUDGE**