

(1)

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

901 WRIT PETITION NO.14764 OF 2021

**MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS**

VERSUS

ANIL RAMRAO HIWANT AND OTHERS

WITH

WRIT PETITION NO.14767 OF 2021

**MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS**

VERSUS

**RANJANSINGH GURCHARANSINGH SANDHU AND
OTHERS**

WITH

WRIT PETITION NO.14768 OF 2021

**MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS**

VERSUS

SHYAM SOPANRAO TUGAONKAR AND OTHERS

WITH

WRIT PETITION NO.14769 OF 2021

**MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS**

VERSUS

DHARAJI UTTAMRAO WAGHMARE AND OTHERS

WITH

WRIT PETITION NO.14770 OF 2021

**MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS**

VERSUS

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SHRIDHAR RAJANNA KURA AND OTHERS

WITH
WRIT PETITION NO.14781 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

VIKAS SITARAM KATAKDOUND AND OTHERS

WITH
WRIT PETITION NO.14782 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

VIJAY NARAYANRAO SAWANT AND OTHERS

WITH
WRIT PETITION NO.14783 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

MOHAMMED IMRAN KHAN OTHERS

WITH
WRIT PETITION NO.14784 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

VIJAY HARIHAR BHAGAT AND OTHERS

WITH
WRIT PETITION NO.14787 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS

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VERSUS

DINSH VIRBHADRA SHETTE AND OTHERS

WITH

WRIT PETITION NO.14788 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS

VERSUS

BALAPRASAD PURUSHOTTAM KURPATWAR AND
OTHERS

WITH

WRIT PETITION NO.14789 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS

VERSUS

DEVIDAS CHIMANJI HATKAR DIED LRS. KARUNA
DEVIDAS HATKAR AND OTHERS

WITH

WRIT PETITION NO.14790 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS

VERSUS

SATISH DILIP PAWAR AND OTHERS

WITH

WRIT PETITION NO.14778 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS

VERSUS

SAHEBRAO VINAYAKRAO DESHMUKH AND OTHERS

WITH

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WRIT PETITION NO.14796 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

SHRIKANT SHAMRAO THETE AND OTHERS

WITH

WRIT PETITION NO.14798 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

AKSHAY ARUN KAGBATTE AND OTHERS

WITH

WRIT PETITION NO.14795 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

SANJAY ANANDRAO SHINDE AND OTHERS

WITH

WRIT PETITION NO.14797 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

GANESH BABRUWAN DAPKE AND OTHERS

WITH

WRIT PETITION NO.14779 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

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ANKUSH KISANRAO RUDE AND OTHERS

WITH
WRIT PETITION NO.14772 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

PREMKUMAR DATTARAO SURYAWANSHI AND OTHERS

WITH
WRIT PETITION NO.14791 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

GAJANAN PRABHAKAR MALWATKAR AND OTHERS

WITH
WRIT PETITION NO.14775 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

VAISHALI CHANDRAKANT CHORMARE AND OTHERS

WITH
WRIT PETITION NO.14780 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

SANJAY VYANKANNA GORANTIWAR AND OTEHRS

WITH
WRIT PETITION NO.14785 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS

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VERSUS

GIRISH VYANKATRAO MULKE AND OTHERS

WITH

WRIT PETITION NO.14771 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS

VERSUS

PATHAN AJMAT KHAN OTHERS

WITH

WRIT PETITION NO.14774 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS

VERSUS

ULHAS MAROTI RATHOD AND OTHERS

WITH

WRIT PETITION NO.14792 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS

VERSUS

VIKAS ARJUNRAO PAWDE AND OTHERS

WITH

WRIT PETITION NO.14776 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS

VERSUS

BALGIR DIGAMBAR GIRI AND OTHERS

WITH

WRIT PETITION NO.14765 OF 2021

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MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

YASHWANT GOVINDRAO MOKHEDE AND OTHERS

WITH
WRIT PETITION NO.14777 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

SHIVAJI BALASAHEB KALE AND OTHERS

WITH
WRIT PETITION NO.14766 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

SACHIN NAVALCHAND RATHOD AND OTHERS

WITH
WRIT PETITION NO.14793 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

GOVIND VENKATRAO KURUMBHATTE AND OTHERS

WITH
WRIT PETITION NO.14794 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

GOVIND RAMRAO SHIVBHAKT AND OTHERS

WITH

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WRIT PETITION NO.14773 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

RUSHIKESH RAMESHWAR YENNAWAR AND OTHERS

WITH

WRIT PETITION NO.14786 OF 2021

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

CHAKRADHAR PURBHAJI MUNGAL AND OTHERS

WITH

WRIT PETITION NO.3320 OF 2022

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

DHIRAJ WAMANRAO BIDVE AND OTHERS

WITH

WRIT PETITION NO.3316 OF 2022

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

SHIVKUMAR MURLIDHAR SAPARE AND OTHERS

WITH

WRIT PETITION NO.3317 OF 2022

MATOSHRI PRATISTHAN THROUGH ITS SECRETARY
AND OTHERS
VERSUS

PRAFULL VITHALRAO DHOLE AND OTHERS

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Mr S. S. Bora, Advocate for petitioners;

Mr N. T. Bhagat, A.G.P. for respondents/State

Mr S. B. Deshpande and Shri. A. G. Talhar, Advocate for
respondent No.1 in respective writ petitions

Mr C. V. Dharurkar, Advocate for respondent No.4 except in Writ
Petition No.14779/2021

CORAM : RAVINDRA V. GHUGE, J**DATE : 16th March, 2022****PER COURT:**

1. In all these petitions filed by the same petitioner/
Management, respondent No.1/Employees are identically placed.
Hence, by the consent of the parties, these matters were heard
together on 14/03/2022 and today.

2. The learned Advocate for the petitioner/Management has
strenuously criticized the impugned order delivered by the
University and College Tribunal, Aurangabad. It is a common
Judgment delivered by the University Tribunal, in which the
operative part of the order reads as under :

“O R D E R

*I) SRTMU-12 OF 2019, SRTMU-13 OF 2019,
SRTMU-14 OF 2019, SRTMU-15 OF 2019, SRTMU-
16 OF 2019, SRTMU-18 OF 2019, SRTMU-21 OF
2019, SRTMU-22 OF 2019, SRTMU-23 OF 2019,
SRTMU-24 OF 2019, SRTMU-25 OF 2019, SRTMU-
26 OF 2019, SRTMU-27 OF 2019, SRTMU-28 OF
2019, SRTMU-29 OF 2019, SRTMU-30 OF 2019,*

SRTMU-31 OF 2019, SRTMU-32 OF 2019, SRTMU-33 OF 2019, SRTMU-34 OF 2019, SRTMU-35 OF 2019, SRTMU-36 OF 2019, SRTMU-37 OF 2019, SRTMU-38 OF 2019, SRTMU-39 OF 2019, SRTMU-42 OF 2019, SRTMU-43 OF 2019, SRTMU-44 OF 2019, SRTMU-45 OF 2019, SRTMU-46 OF 2019, SRTMU-47 OF 2019, SRTMU-49 OF 2019, SRTMU-50 OF 2019, SRTMU-51 OF 2019, SRTMU-52 OF 2019, SRTMU-53 OF 2019, SRTMU-54 OF 2019, SRTMU-55 OF 2019, SRTMU-56 OF 2019 WITH SRTMU-04 OF 2020 are allowed.

ii) The impugned termination orders of the appellants in above appeals, are set aside.

(iii) Respondent Nos.1 to 3 are directed to reinstate the appellants, within period of three months from the date of passing of this order, on the same post held by them before termination.

(iv) In Appeal Nos.:- 30/2019, 22/2019, L.Rs of the appellants are entitled to back wages from the date of termination till the date of death of the appellants.

(v) In rest of the appeals, except Appeal Nos.:- 17/2019, 19/2019, 20/2019, 37/2019, 40/2019, 41/2019, 48/2019, appellants are entitled to full back wages from the date of termination till the date of reinstatement. Back wages be paid by Respondent Nos. 1 to 3 within three months from the date of passing this order.

vi) Appeal Nos.:-17/2019, 19/2019, 20/2019, 37/2019, 40/2019, 41/2019, 48/2019 are dismissed.

vii) Parties to bear their respective costs.

vii) The original judgment be kept in Appeal No. 12 of 2019 and copies of the judgment, be kept in remaining appeals.”

3. I have considered the strenuous submissions of the litigating parties and having gone through the record with their assistance. Issue is that, the impugned termination orders have been set aside by the Tribunal on the ground that they are stigmatic. All these employees have been working with the Management in the same Institute on different positions in between one year to 10 years. Each one of them were issued with an identical order of discontinuation. Reference has been made to their first appointment order.

4. The order of discontinuation specifically mentions the following charges, reproduced verbatim :-

“1.

2 . As per engagement order it is also clarified that, if you found irregular and negligent your appointment will be terminated.

3. The college authorities on its reviewal found your work to be extremely unsatisfactory.

4. You are not performing your duties from 5.4.2019 and remained absent without prior permission of Dean School of Engineering.

5. You were found in the college premises out of the duty room during your prescribed college hours.

6. Your consistent behaviour of not attending the

duties resulted in incomplete syllabus.

7. From the attendance register it is observed that many times you remain absent in the college without taking prior permission of the Dean, which result a great academic loss of the student.”

5. It is undisputed that the Management has not conducted any departmental enquiry with regard to any of these employees. Considering the law laid down in **Radhey Sham Gupta Vs. U.P. State Agro Corporation Ltd. and Anr., [(1999) 2 SCC 21]** and in **Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, [(1993) 3 SCC 60]**, even if an employee is a temporary or on probation, a stigmatic termination from service is held to be an anathema, since the order of discontinuation is normally to be produced by the employee while seeking a new employment. The prospective employer insists on the Character Certificate or the Service Certificate of the erstwhile employer and along with the same, the order of discontinuation is also perused. It is well settled that, if such an order or material, which a prospective employer is likely to peruse, is likely to create a picture which is prejudicial to the interest of the employee, future prospects of employment are jeopardized.

6. It is also well settled that, if an employer finds that the service of a probationer is not suitable for the organization, an innocuous order of disengagement mentioning that his services are not suitable, would not amount to a stigmatic termination.

7. It appears from the record that the learned Tribunal was not cited two Judgments delivered by the Hon'ble Apex Court. Firstly, the view taken in **Bharat Forge Company Ltd. v/s A.B.Zodge , 1996 (73) FLR 1754 : AIR 1996 SC 1556**, wherein, the Hon'ble Apex Court has concluded that, if an employee is terminated by issuance of a stigmatic order containing allegations of misconduct and no enquiry is conducted or in a case, where the enquiry conducted has been set aside/vitiated, it would be a case of no enquiry having been conducted. The employer then has the liberty to conduct an enquiry. In Labour Legislation, the Tribunal quashing the enquiry then assumes the role of the Enquiry Officer and a denovo enquiry is conducted in the Court. Secondly, in cases of employees, who are in the education field, be it the teaching or non-teaching staff, the law laid down in **Vidya Vikas Mandal and ors. Vs. the Education Officer and others, 2007 (11) SCC 352**, would be applicable. It has been held that the dismissal/termination of such employee is to be quashed and set

aside and notionally such employee shall be reinstated in service. However, from the date of his termination, he shall be treated to be under suspension and a departmental enquiry will have to be conducted by the employer by paying suspension allowance from the termination, till the enquiry is concluded and a final decision is arrived at by the employer.

8. Paragraph 9 of Vidya Vikas Mandal (supra) reads as under :

“9. In view of the order now passed by this Court, the Rule 36(2) (a) is now to be invoked and as per the said Rule, one member from amongst the members of the Management is to be nominated by the Management or by the President of the Management if so authorised by the Management, and one member is to be nominated from amongst the employees of any private school and the third member to be chosen by the Chief Executive Officer from the panel of teachers on who State/National Award has been conferred. We direct the Management of the School to constitute the Committee in accordance with Sub-Rules (i) (ii) & (iii) of Rule 36(2)(a) to go into the matter afresh. The respondent No. 2, the employee, will be now treated under suspension and he will be entitled to the subsistence allowance as per rules with effect from the date of termination of his services. The inquiry shall be completed by the Committee within a period of six months from the date of their nomination/constitution.”

9. In view of the above, these petitions are partly allowed and the directions set out in Clause (v) of the impugned order stands modified as under :-

(v-a) In rest of the appeals, except Appeal Nos.17/2019, 19/2019, 20/2019, 37/2019, 40/2019, 41/2019 and 48/2019, the appellants would be notionally treated to have been reinstated in service and from the date of their termination, they would be treated as being under suspension, till a final decision by the employer is arrived at.

(v-b) If the employer decides to issue an innocuous order to the temporaries or daily wagers or probationers, who are not deemed to be permanent, this relief would apply till the date of their disengagement.

(v-c) In cases, where the Management deems it appropriate to conduct a departmental enquiry, this relief would apply till the final decision is arrived at by the employer after concluding the departmental enquiry.

(v-d) Needless to state, the Management would be duty bound to pay subsistence allowance regularly along

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with the arrears to each of these employees, subject to the above directions.

(RAVINDRA V. GHUGE, J.)

sjk