

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3115 OF 2021

Viraj Vishnu Zagade	]	
Aged 34 yrs, Occu : Nil.	]	
Ex. Assistant Professor worked in	]	
Dr. Balasaheb Sawant Konkan Krishu	]	
Vidhyapeet, Dapoli, Dist : Ratnagiri	]	
r/o : A/p : Gimhavane (Teliwadi)	]	
ta. Post Dapoli, Dist. Ratnagiri.	]	...Petitioner.

Versus

1] The Vice Chancellor and	]	
Disciplinary Authority,	]	
Dr. Balasaheb Sawant Konkan	]	
Krusha Vidyapeeth, Dapoli,	]	
Dist : Ratnagiri	]	
2] The Member Secretary-cum-	]	
Assistant Registrar (Administration-1)	]	
Dr. Balasaheb Sawant Konkan	]	
Krusha Vidyapeeth, Dapoli,	]	
Dist : Ratnagiri	]	..Respondents.

Mr. Gaurav Bandiwadekar i/b Bhushan A. Bandiwadekar for the Petitioner.
Mr. Sammer Sawant for the Respondents.

CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.

Date : December 19, 2022.

Judgment [Per Sharmila U. Deshmukh, J.] :

1. Rule. Rule made returnable forthwith and with the

consent of parties taken up for final disposal.

2. After the departmental inquiry, the Petitioner was visited with the penalty of removal from service by the impugned order dated 28th December, 2018 passed by the disciplinary authority of Dr. Balasaheb Sawant Konkan Krushi Vidhyapeeth, Dapoli, District Ratnagiri-Respondent No.1, which was confirmed in an appeal by the Member Secretary-Assistant Registrar (Administration-1)-Respondent No.2 by the order dated 22nd August, 2019, which have been challenged in the present Petition.

3. Shorn of unnecessary details, the facts of the present case are as under:

. The Petitioner is a M.Sc. (Post-Harvest Management) and claims to have gained experience as an Agricultural Officer having worked as such in Mahatma Phule Krushi Tantra Vidyalaya, Asond, run by Savitribai Phule Shikshan Prasarak Mandal, at post Jaalgaon, taluka Dapoli, district Ratnagiri for a period from 1st September, 2008 to 31st December, 2009. In addition, it is claimed that the Petitioner also has the experience as manager of Maha-E-Seva Kendra, Dapoli Service Center Agency for the period from 1st January, 2010 to 13th December, 2010, and as Senior Research Analyst in Dr. Balasaheb Sawant Konkan Krushi Vidyapeeth, Dapoli,

district Ratnagiri for the period 2012-2013 to 2014-2015. It is the case of the Petitioner that necessary certificates evidencing his work experience had been issued by the concerned institutions.

Pursuant to an advertisement dated 19th December, 2016, Respondent No.1-Dr.Balasaheb Sawant Konkan Krushi Vidyapeeth, Dapoli, district Ratnagiri appointed the Petitioner as an Assistant Professor in the subject of "Post-Harvest Management of Fruit, Vegetable and Flower Crops" in the pay band of Rs.15,600-39,100 with grade pay of Rs.6,000 vide appointment order dated 18th April, 2017 after a valid selection process. One Siddesh P. Salvi who had applied for the said post was listed at Serial No.1 of the waiting list.

It appears that on 9th February, 2018 and 2nd April, 2018, complaints were made by Siddhesh P. Salvi raising a doubt about the experience of Petitioner as an Agricultural Officer in Mahatma Phule Krushi Tantra Vidyalyaya (for short, "***the said Vidyalyaya***"). Subsequent to the complaint being raised, Respondent no.1 issued a notice dated 23rd February, 2018 indicating that the complaint had been received in respect of the experience certificate and called upon the Petitioner to do the needful. By communication dated 26th March, 2018, Respondent no.1 was informed by the Petitioner that it is not possible for the Petitioner to get the experience certificate certified from the said Vidyalyaya as the said Vidyalyaya was closed

down since the year 2018 and there is no official person who can certify the same. On 23rd February, 2018, Respondent no.1 sought information from the Principal of said Vidyalaya about the genuineness of certificate, to which the Savitribai Phule Shikshan Prasarak Mandal responded by communication dated 29th March, 2018, that due to reduction in the strength of students, it was resolved that the said Vidyalaya be closed and there is no officer who is working in the said Vidyalaya. On 6th April, 2018 once again a communication was addressed by the Respondent No.1 to Savitribai Phule Shikshan Prasarak Mandal as regards the service of the Petitioner in the said Vidyalaya for the period 1st September, 2008 to 21st December, 2009.

Faced with the situation, Respondent No.1 issued a show cause notice to the Petitioner dated 3rd May, 2018 stating the experience certificate is being held invalid and it is observed that *prima facie* the administration has been misled by the certificate, thereby there is violation of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short, "***the Rules***") and as to why departmental inquiry should not be initiated against him under Rule 8(2) of the Rules. On 4th July, 2018 Departmental inquiry charge-sheet was issued to the Petitioner on 4th July, 2018 framing two articles of charge, to which the Petitioner filed his reply on 17th

July, 2018 and 20th August, 2018 denying the charges. The departmental inquiry was initiated by the Respondent No 1 and on 31st October, 2018 the inquiry Officer submitted report of the inquiry, which was accepted by Respondent No.1. By impugned order dated 28th December, 2018 the Petitioner was visited with a penalty of removal from service. An appeal was filed before Respondent No.1 on 5th February, 2019, which resulted in dismissal on 9th October, 2018. Petitioner is now before us challenging the order of the Disciplinary Authority as well as the Appellate Authority.

4. Heard Mr. Bandiwadekar, learned counsel appearing for the Petitioner and Mr. Sameer Sawant, learned counsel appearing for the Respondents.

5. Mr. Bandiwadekar, learned counsel for the Petitioner submits that the authorities failed to take into consideration that due to closure of the said Vidyalaya, which was affirmed by communication of Savitribai Phule Shikshan Prasarak Mandal, it was not possible for the Petitioner to get the genuineness of the experience certificate certified and for no fault on the part of the Petitioner and without there being any evidence on record, the experience certificate has been held to be invalid. He would further

urge that based on the experience certificate, the appointment order has been issued which is proof of the fact that the Petitioner had produced the certificate. He has invited attention of this Court to the communication dated 29th March, 2018 issued by the Savitribai Phule Shikshan Prasarak Mandal which specifically states that the said Vidyalaya is closed and there is no person who is working in the said Vidyalaya. He further invited the attention of this Court to the communication dated 17th February, 2020 which is annexed at page 117 to the petition, issued by Savitribai Phule Shikshan Prasarak Mandal affirming that the Petitioner was working as an Agricultural Officer with the said Vidyalaya for the period 1st September 2008 to 31st December 2009, and would urge that although the said certificate has been issued after the departmental inquiry and the appellate proceedings are disposed of, the same should be considered by this Court. He further submits that no opportunity of showing cause to the findings of the inquiry officer was granted to the Petitioner before the passing of impugned order by the disciplinary authority.

6. *Per contra*, Mr. Sawant, learned counsel for the Respondents submits that one of the essential conditions for appointment to the post of assistant professor, as laid down in the statutes of the

Maharashtra Agricultural Universities Statutes, 1990 is the requirement of experience of working as an agricultural officer. He has invited the attention of this Court to the appointment order dated 18th April 2017 and in particular to Condition No.6 therein, which reserves the right of the University to summarily terminate the services of Petitioner, if it is found that the Petitioner has submitted false or wrong information and/or documents regarding the eligibility and essential qualifications. He would further urge that evidence on record would show that no such certificate had been issued by the said Vidyalaya, and therefore, the impugned orders are required to be upheld.

7. We have considered the rival submissions of the parties.

8. The appointment of Petitioner was to the post of assistant professor in the discipline of "Post Harvest Management of Fruit, Vegetable and Flower Crops". Appendix III of The Maharashtra Agricultural Universities (Krishi Vidyapeeths) Statutes, 1990 prescribing the qualification to the post of assistant professor is reproduced as under :

"(1) Ph.D in respective subject or Master's degree in the respective subject with two years experience in teaching, research or extension education.

(2) Evidence of published papers in recognized journals.”

9. The Petitioner holding a Master’s degree was required to be armed with experience of two years for being considered for the post of assistant professor. Selection committee had taken into consideration the experience certificate issued by the said Vidyalaya and the certificates issued by the Tehsildar, Dapoli and the Respondent-University while assessing the qualification of the Petitioner during the selection process. The experience certificate being an essential qualification for occupying the post of assistant professor, the burden was upon the Petitioner to satisfy the Respondents about the genuineness of the certificate.

10. The disciplinary authority has drawn up the substance of the imputations of misconduct into definite article of charge that along with his application for appointment, the Petitioner had submitted false certificates thereby misleading the institution. In order to prove these charges, the presenting officer has examined Dr. K. H. Poojari, Dr. S. G. Bhave, Dr. S. S. Narkhede, Dr. S. T. Indulkar, Dr. P.P.Relekar, Dr. J.M. Talathi, Mr. U. B. Gimhavanekar, the Petitioner, Shir. Vaibhav Prakash Sanas, Shri. Siddhesh Prakash Salvi and Shri. Tushar Atmaram Bagkar. As the inquiry officer has exonerated the Petitioner of the charge of submission of false certificate of 2010 of

Tehsildhar, Dapoli, it is not necessary for us to examine in detail the evidence of all the witnesses and we need to confine ourselves only in respect of the charge of submission of false experience certificate of the said Vidyalaya.

11. Suffice for our purpose is the evidence of Shri. Tushar Bagkar, former Principal of the said Vidyalaya, who is claimed to have issued the subject certificate dated 1st January 2010. The subject certificate which is annexed at Page 31 of the petition bears Outward No.1339/2010 and is dated 1st January, 2010. In his deposition before the inquiry officer, Shri. Bagkar has specifically deposed that during the service tenure of Shri. Bagkar, for the period 15th July 2009 to 29th September 2011, the Petitioner was not on the establishment of said Vidyalaya and as a principal of the said Vidyalaya, he has not issued any certificate to the Petitioner. On being shown photocopies of documents addressed to Special Social Welfare Officer, Ratnagiri bearing Outward No.1339 dated 25/11/2009, Outward No.1351 dated 23/12/2009, Outward Nos.1360 and 1361 dated 21/1/2010, he has admitted that he has issued these documents which bear his signature.

12. We have perused the experience certificate which is at page 31 of the Petition. The certificate bears the signature of Shri.

Bagkar, as Principal, Mahatma Phule Agriculture Technical School, Asond, Tal: Dapoli, Ratnagiri bearing Outward No.1339 and is dated 1st January, 2010. It is clear from the evidence of Shri. Bagkar that Outward No.1339 could not have been given in the month of January, 2010 since the subsequent Outward Number i.e. 1351 has been given in the month of December, 2009 itself. Shri. Bagkar has also admitted that the document bearing Outward No.1339 is dated 25th November, 2009 has been issued by him to the Special Social Welfare Officer, Ratnagiri. Shri Bagkar has denied that he has issued the certificate to the Petitioner and, in our opinion, the evidence of Shri. Bagkar clinches the issue and the inquiry officer has rightly come to a finding that the experience certificate is not a genuine document.

13. The Respondent-disciplinary authority after detailed deliberation has accepted the finding of the inquiry officer and held the Petitioner liable for punishment under Rule 5(1)(viii) of MCS Rules, which has been confirmed in an appeal.

14. One of the submissions of Mr. Bandiwadekar was that the Petitioner was not given an opportunity to show cause against the report of inquiry officer. This submission cannot be accepted in view of sub-rule (4) of rule-9 of the said Rules, which reads thus :

“(4) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of sub-rule (1) of rule 5, should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed;

Provided that, in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice, and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant.”

15. We have been called upon to exercise our powers of judicial review and quash the order of disciplinary authority whereby the Petitioner has been imposed the punishment of removal from service, and to be granted all consequential benefits. It is the settled position that in matters of departmental inquiry, the Court in exercise of powers of the judicial review does not act as an appellate forum over the findings of disciplinary authority. This Court is not expected to re-appreciate the evidence on the basis on which the findings have been arrived at in the course of disciplinary

inquiry and this Court must restrict its review to determine as to whether there is perversity in the findings so as to warrant interference by this Court. In this context, it would be worthwhile to refer to the decision of Apex Court in the case of State of Rajasthan v. Heem Singh [AIR 2020 SC 5455], wherein the Apex Court has held

as :

“In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy – deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has

recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to re-appreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

16. Mr. Bandiwadekar, learned counsel for the Petitioner has not made any submission on the findings of inquiry officer. The submission of Shri. Bandiwadekar is that due to the closure of the institution, it was not possible for the Petitioner to get the experience certificate certified by the said Vidyalaya. In order to satisfy ourselves about the finding of guilt of Petitioner, we have perused the evidence on record and in particular the evidence of Shri. Tushar Bagkar, the former principal of the said Vidyalaya, who is stated to have issued the experience certificate produced by the Petitioner along with his application. Shri. Bagkar has in reply to a specific question by the inquiry officer – as to whether during his

tenure Shri. Bagkar had issued an experience certificate to the Petitioner, has answered in the negative and has also deposed that although signature on the certificate appears to be his signature, he has not signed the certificate. In view of this categorical deposition by Shri. Tushar Bagkar, we are not inclined to accept the subsequent certificate issued by Savitribai Phule Shikshan Prasarak Mandal dated 17th February, 2020, particularly when by two communications dated 23rd February, 2018 and 6th April, 2018 Respondent No.1 had sought information from Savitribai Phule Shikshan Prasarak Mandal and had not been furnished with any information. The charge with which the Petitioner is faced is about the submission of a false experience certificate of the said Vidyalaya. We are satisfied that the evidence on record of Shri. Tushar Bagkar is sufficient for the inquiry officer to come to the conclusion that a false certificate has been submitted by the Petitioner. In matters of disciplinary inquiry, the strict rules of evidence are not applicable and on perusal of the evidence on record, it cannot be said that the conclusion arrived at by the inquiry officer is insufficient to prove the charge of submission of a false experience certificate. We have also considered the specific condition of the order of appointment reserving the right of University to terminate the services for submission of false information.

17. Considering the evidence of Shri. Tushar Bagkar, we find no infirmity in the decision of disciplinary authority and the appellate authority. In our opinion, there is no merit in the writ petition and the writ petition is accordingly dismissed.

[Sharmila U. Deshmukh, J.]

[Nitin W. Sambre, J.]