

BDP-SPS-TAC

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7226 OF 2018**

Prof. Dr. Mandakini Narayan Wagh	 Petitioner.
V/s	
Nutan Vidya Prasarak Mandal and Others	 Respondents.

**WITH
WRIT PETITION NO.5419 OF 2018**

Nutan Vidya Prasarak Mandal and Ors.	 Petitioners.
V/s	
The State of Maharashtra and Ors.	 Respondents.

Mr. Sambhaji S. Tope for the Petitioner in WP/7226 of 2018 and for Respondent No.4 in WP/5419 of 2018.

Mr. P.B. Shah i/b Kayval P. Shah for Respondent Nos. 1 to 3 in WP/7226/2018 and for the Petitioner in WP/5419/2018.

Mr. P.P. Pujari, AGP for Respondent Nos. 1, 3 in WP/5419/2018.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 21, 2022

P.C.:-

1] Both these Petitions are directed against the judgment and order of the University and College Tribunal, Pune in Appeal No.1 of 2016 dated 25/1/2018 whereby termination order of the Respondent/employee dated 18/12/2015 came to be quashed and set aside with direction to reinstate her in service with effect from 18/12/2015 without back-wages. Punishment of termination is substituted with that of stoppage of

increment for one year with effect on future increments i.e. having permanent effect of postponing the future increments. The impugned order was directed to be complied with by Respondent-Management who is a Petitioner in Writ Petition No.5419 of 2018.

2] Facts giving rise for deciding the present Petitions are as under:-

3] Claim of the employee is, she was appointed as Lecturer in Respondent-Institution vide order dated 30/9/1991. After unblemished service for 21 years, she was served with show-cause notice dated 9/12/2013 to which she claimed to have submitted reply on 16/12/2013. Said show cause notice was followed with her suspension on 23/4/2014. The employee accordingly was served with charge-sheet with following charges:-

(i) In spite of specific directions, Petitioner-employee has failed to publish NAAC Gradation Certificate ('A' Grade) on the first page of college magazine in the capacity of its Editor.

(ii) Submitting false report about receipt of 2000 copies of magazine in the capacity of Editor to the Management.

(iii) Making false complaints to the various authorities including Police Officers, Principal, Home Minister, Vice-Chancellor etc, thereby maligning the image of College Authorities and

brining disrepute to the Institution.

(iv) Having failed to submit answer sheets allocated to her for assessment and proceeding on long leave without intimation.

4] In the inquiry report, it is claimed that Petitioner-employee has failed to appear and cooperate in the inquiry and as such charges against the Petitioner-employee were held to be proved which led to issuance of order of termination.

5] Contentions of Mr. Tope, learned Counsel appearing for the Petitioner-employee are, Petitioner-employee was victimized by the Respondent-Institution as its Secretary was biased/carrying animosity against her. Nature of charge against the Petitioner-employee was too vague. He would claim that charges are structured in such a manner to ensure that the Petitioner is removed from the service. According to him termination order is in disproportionate to the alleged charge of moral turpitude against the Petitioner-employee. He would urge that failure of the Petitioner-employee to submit assessed answer-sheets of the students of the Examination of College, was because of her adverse health condition, as she suffered cardiac arrest. Mr. Tope would further urge that order of termination is signed by the Secretary of the Society who has deposed as witness in the inquiry proceedings. That being so, order

impugned to the extent of denying back-wages, so also imposing punishment of stoppage of increment for one year with effect on future increments i.e. having permanent effect of postponing the future increments is not sustainable and is liable to be quashed and set aside. He would further urge that publication of NAAC Gradation Certificate in the Magazine was never part of duty of the Petitioner-employee. According to him, Respondent-employer has failed to examine the Principal who was in charge of publication of such Certificate and as such, said charge was not proved.

6] According to him, charge as regards receipt of 2000 copies of Magazine has nothing to do with discharge of official duty as a teacher. It is claimed that, copies were duly received by the Management as was certified. In addition, he would invite my attention to the nature of charge as regards alleged complaints made by the Petitioner-employee to various authorities about her victimization. He would urge that remedy available to the Petitioner-employee of bringing her grievance to the notice of appropriate public authorities cannot be scuttled by giving it colour of lodging false complaints. As far as issue of answer sheets is concerned, he would urge that prevailing circumstances were not within the control of the Petitioner-employee as she suffered cardiac arrest. He

would urge that failure to submit mark-sheet was unintentional. For bonafide reasons i.e. adverse health condition of the Petitioner-employee same was not complied within time. According to him, Tribunal was justified in recording finding that not only charges were not proved against the Petitioner-employee but the punishment imposed is also not sustainable. According to him, Petitioner-employee was approved teacher and that being so, she should have been awarded back-wages with reinstatement. He would urge that Respondent-employer has failed to establish that during the period of suspension and till termination is set aside, Petitioner was not gainfully employed. As such, he would urge that impugned order to the extent of denying back-wages, so also imposing punishment of stoppage of increment for one year with cumulative effect is not sustainable.

7] Mr. Shah, learned Counsel appearing on behalf of the employer while opposing the aforesaid prayer of employee and while substantiating claim of the employer-Management of setting aside order of reinstatement, would urge that employee was served with charge-sheet and she has chosen not to appear before the Inquiry Officer. According to him, non-publication of NAAC Gradation Certificate in the beginning of the college magazine was an intentional act on the part of the employee

as she always acted against the interest of the Institution. According to him, the conduct of the employee narrated in the inquiry report apparently speaks of complete non-cooperative attitude on her part and at times conduct of the employee was against the interest of the students and Institution. So as to substantiate his aforesaid contentions, he has invited my attention to various complaints lodged by the employee with the authorities with baseless allegations. He would urge that failure to submit assessed answer sheets is not on the ground of ill-health as can be inferred from her conduct as she was active in pursuing her false complaints against the office bearers and staff of the employer before various authorities. According to him, various communications issued to the employee for getting answer-sheets assessed and also facilitating collection of the same were not responded to intentionally which according to him is a very serious default. He would as such urge that punishment of termination imposed is well justified as the employee has not participated in the inquiry proceedings which has resulted into acceptance of charges by her.

8] In this backdrop, Mr. Shah would urge that the order impugned be set aside and order of termination passed by the Management is liable to be restored by allowing the Petition of the employer and Petition of the

employee seeking back-wages and setting aside stoppage of increment for one year with effect on future increments i.e. having permanent effect of postponing the future increments is liable to be dismissed.

9] I have appreciated the aforesaid contentions.

10] As far as charge No.1 in relation to displaying NAAC issued 'A' Grade Certificate on the last cover page of the magazine is concerned, in my opinion, Tribunal was justified in recording findings in favour of the Petitioner-employee.

11] Fact remains that Petitioner-employee has failed to submit explanation to the charge levelled against her before the Inquiry Committee. Upon perusal of the report of the Inquiry Committee, it is apparent that sufficient opportunity was given to submit her explanation so also to appear before the Inquiry Committee to cross-examine the witnesses of the Respondent-employer. Petitioner has chosen not to honour any of the opportunities offered by the Inquiry Officer.

Rather, conduct of the Petitioner as could be inferred from the inquiry proceedings and the report of the Inquiry Officer is, stubborn and non-cooperative. It appears that the Petitioner has submitted an explanation on 24/05/2014 to the Management objecting the charges levelled against her. In spite of absence of the Petitioner, said explanation

was taken on record and marked Exhibit-9 by the Inquiry Officer. The contents explained in said Exhibit-9 were duly taken into account by the Inquiry Officer. Inquiry Officer has noted that charges against the Petitioner were duly proved. Inquiry Officer then noted that Petitioner-employee has failed to adhere to the Model Code of Conduct for Teachers and her conduct was not befitting status of academician/teacher to subserve the interest of students and Educational Institution. Inquiry Officer while doing so has taken into account the charge-sheet served on the Petitioner vide communication dated 23/4/2014, notice of inquiry dated 29/6/2015, various notices issued by the employer from time to time calling upon her to attend the inquiry proceedings, and recorded his findings against the Petitioner-employee vide his report dated 15/10/2015.

12] Respondent-Management in meeting held on 31/10/2015 passed a Resolution and decided to serve show cause notice which was served on 10/11/2015. Explanation was tendered by the Petitioner on 29/11/2015 and the decision of terminating services of the Petitioner was taken by the Managing Committee of the Respondent-Society in its meeting held on 12/12/2015.

13] In the aforesaid backdrop, if we appreciate very charges levelled

against the Petitioner, the findings recorded by the Inquiry Officer and also by the Tribunal on the said issues, what can be noticed is, Tribunal, in my opinion, justified in recording finding in favour of the Petitioner on charge No. 1 viz (i) publication of certificate on the last page of the college magazine, (ii) drawing incorrect report of acknowledging 2000 copies of magazine by the Petitioner in the capacity of Editor and (iii) complaints lodged by the Petitioner-employee against Management with various authorities.

14] As far as printing of the Gradation Certificate on the last page of the magazine is concerned, as long as the same was published by the Petitioner-employee in magazine, which fact is not in dispute, it cannot be inferred that the Petitioner-employee had an intention to act in insubordination.

Testimony of the Principal who was a Chairman of the Magazine Publication Committee has supported the claim of the Petitioner-employee on the said issue.

15] As regards charge No.2 about incorrect reporting of the receipt of magazine copies is concerned, I have perused the findings of Inquiry Officer on the said issue. It cannot be said that the Petitioner had an intention to make any incorrect report about the same viz.

acknowledging 2000 copies of magazine, to the Managing Committee. Rather, it appears that Managing Committee has not disputed about receipt of 2000 copies of magazine in different installments and as such, act of the Petitioner-employee cannot be considered to be in any manner prejudicial to the academic interest.

16] As regards charge No.3 is concerned, same pertains to lodging of false complaints by the Petitioner.

As far as aforesaid allegations are concerned, a person who is aggrieved by any of the acts, either of the employer or otherwise always has a remedy available in law of moving before the authorities for redressal of his/her grievance. As far as redressal of grievance is concerned, it appears that various authorities have looked into the claim of the Petitioner-employee, if required by calling explanation from Respondent-Management. In such an eventuality, it cannot be said that by complaints made by the Petitioner good-will of the Institution was brought under cloud or Petitioner had intentions to defame image of the Respondent-Educational Institution.

17] As far as charge as regards failure of the Petitioner to submit Answer Sheets is concerned, Inquiry Officer in detail has dealt with the same. Inquiry Officer in his report has noticed that Code of Professional

Ethics of Teachers provides for obligation of teacher to conduct himself/herself in accordance with the ideals of profession. Relevant provision which is considered by the Inquiry Officer is very much reflected in the Inquiry Report. It is worth to reproduce the said extract, which reads thus:-

“(A) The Code of Professional Ethics of Teacher

I) Teachers and Their Responsibilities:

Whoever adopts teaching as a profession assumes the obligation to conduct himself in accordance with the ideals of the professions. A teacher is constantly under the scrutiny of his students and the society at large. Therefore, every teacher should see that there is no incompatibility between his precepts and practice. The national ideals of education which have already been set forth and which he/she should seek to inculcate among students must be his/her own ideals. The profession further requires that the teacher should be calm, patient and communicative by temperament and amiable in disposition.

Teacher Should :

- (i) adhere to a responsible pattern of conduct and demeanour expected of them by the community;
- (ii) manage their private affairs in a manner consistent with the dignity of the profession :
- (vii) cooperate and assist in carrying out functions

relating to the educational responsibilities of the college and the university such as; assisting in appraising applications for admission, advising and counselling students as well as assisting in the conduct of university and college examinations, including supervision, invigilation and evaluation.

II) Teachers and Students:

Teacher Should :

- (x) refrain from inciting students against other students, colleagues or administration.

(III) Teacher and Colleges:

Teacher Should :

- (I) treat other members of the profession in the same manner as they themselves wish to be treated,
- (ii) speak respect-fully of other teachers and tender assistance for professional betterment,
- (iii) refrain from lodging unsubstantiated allegations against colleagues to higher authorities.

(IV) Teachers and Authorities:

Teacher Should:

- (i) discharge their professional responsibilities according to the existing rules and adhere to procedures and methods consistent with their profession in initiating steps through their own institutional bodies and/or professional

organizations for change of such rules detrimental to the professional interest;

(iii) cooperate in the formulation of policies of the institutions by accepting various offices and discharge responsibilities which such offices may demand;

(vi) should adhere to the conditions of contract;

V) Teachers and Non-Teaching Staff:

(i) Teachers should treat the non-teaching staff as colleagues and equal partners in a co-operative undertaking, within every educational institution.

(B) Provisions made in Ordinances in respect of malpractices used or lapses committed connected with the conduct of examinations.”

18] Para 22 of the report of the Inquiry Officer in categorical terms deals with dereliction of duty in the matter of submission of Answer Sheets by the Petitioner-employee. It appears from the charge that of the examination which was conducted in October/November 2012, Petitioner has collected 272 Answer Sheets between the period 27/11/2012 to 8/12/2012. She was duty bound to examine and evaluate the Answer Sheets and submit her report latest by 31/12/2012 to the Head of the Department. Inquiry Officer has noted that on 19/12/2012, she proceeded on leave. Thereafter, on 21/02/2013, Principal issued her communication requesting her to submit Answer Sheets which she has

failed to. Hence, Principal was required to depute a person to her residence for collecting Answer Sheets. She has not cooperated in the said act. It appears that thereafter the Institution has approached Joint Director of Higher Education as the Petitioner by remaining absent for long period has not co-operated. As such college authorities were forced to open her cupboard/locker by drawing appropriate panchanama, from where Answer Sheets were traced. It appears that some of the Answer Sheets were even not evaluated by the Petitioner, which fact is very much established from the evidence of various witnesses who were examined by the Respondent-Management. Evidence of Principal Dr. Dinesh Naik, Vice -Principal Professor J.B. Shinde, member of Local Administration Committee of the College Mr. Sanjay Sanap, Head Clerk Mr. R.P. Sawant and Education Director Professor Dr. Narayan Madhav has rightly so established the serious default of non-submission of Answer Sheets by the Petitioner-employee. It is also established from the testimony of aforesaid witnesses that re-examination was required to be conducted by the Respondent-Institution on 21/06/2013 because of failure of the Petitioner-employee to submit evaluated Answer Sheets within time. There is enough evidence on record to demonstrate that the Petitioner-employee has acted in most irresponsible manner, thereby putting

educational career of students of Art Faculty at stake.

19] Even if the Petitioner was not keeping well or indisposed, least that was expected of her was to cooperate with the Management, either by making alternative arrangement of surrendering Answer Sheets or making alternative arrangement for evaluation of the Answer Sheets. Testimony of all these witnesses viz. Principal, Vice-Principal, Education Director and the concerned Head Clerk went unchallenged as the Petitioner has failed to cross-examine the said witnesses. In the aforesaid backdrop, said charge was rightly said to be proved against the Petitioner. In this backdrop, if we appreciate the claim of the Petitioner that she was stopped by members of management from attending college by creating adverse situation, nothing is placed on record to establish such claim by the Petitioner. Rather, from her own conduct, it has to be inferred that Petitioner has acted in most irresponsible, reckless manner.

20] In a domestic enquiry as observed herein before the strict and codified rules of Evidence Act are not applicable. Such material which is logically appealing to a prudent man is permissible to be considered. However, the authority must be careful in evaluating the same. One has to have judicial approach in evaluating the evidence by keeping objectivity at the back of mind. Rule of fair play is the basis, failing which

the decision or conclusion vitiates. The Apex Court in the matter of State of Haryana & Anr. Vs. Ratan Singh reported in (1977) 2 SCC 491 in paragraph 4 as observed thus-

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passengers from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it

amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

21] In the aforesaid backdrop, it cannot be said that the inquiry conducted against the Petitioner was biased or she was not given appropriate opportunity to defend herself. Stubborn approach of the Petitioner in not participating in inquiry proceedings and her failure on earlier occasion i.e. non-submission of Answer Sheets of the students of October/November 2012 Examination categorically speaks of her irresponsible behavior. Rather, her conduct, as observed hereinabove speaks of her being not concerned or interested in safeguarding academic career and observing discipline. As such, said charge which is serious in nature is rightly observed to have been proved against the Petitioner.

22] This takes me to the next submission of Mr. Tope that Mr. Holkar, Secretary of the Society who stood as a witness against the Petitioner cannot involve himself in decision making process and that being so, not only inquiry proceedings but also termination order is vitiated. Mr. Tope has relied on judgment in the matter of *Mohd. Yunus Khan vs. State of UP & Ors.* arising out of SLP No.19318/2007 dated 28/9/2010.

23] As far as aforesaid claim is concerned, even if Mr. Holkar was a

Secretary of Respondent-Society and he has been cited as witness, it cannot be said that he was the same person who was responsible for issuing order of termination of the Petitioner. Rather, it can be inferred from the record that Managing Committee of the Respondent-Society after due deliberation has decided to terminate services of the Petitioner. Such termination is based on finding of Inquiry Officer.

24] Though the word 'misconduct' is not in specified or clear terms capable of defining the same with utmost precision, however, the dereliction of duty willful in character can said to be the misconduct. A negligence or the carelessness cannot be said to be considered as misconduct unless such negligence or carelessness was intentional with an intention to harm the good will, prestige of the educational institution or such conduct is causing the academic or otherwise loss to the student.

25] In this backdrop, it cannot be said that order of termination issued to the Petitioner by the Managing Committee, thereby inflicting punishment of termination from service suffers from violation of principles of natural justice and the Secretary who was witness was party to the decision of imposing such punishment. Rather, Petitioner's answer to the show cause notice was duly taken into account by the Management/Society.

26] In the aforesaid backdrop, since legal provisions which are in the form of Ordinance No.164 of University of Pune, provide for punishment in case of malpractice in the examination i.e. for violation of Statute No.433-A, it cannot be said that Petitioner-employee was ordered to be terminated in contravention of the said provisions. Statute No.431 of the University of Pune provides for grounds for taking disciplinary action against the teacher/employee and clause (iv) thereof provides for the ground of incompetence. Statute No.432 provides for major penalties and amongst other, penalty contemplated is termination of service. 'Misconduct' as defined in Statute No.431 includes violation of Code of Conduct, violation of Regulations and Rules relating to duties and responsibilities of the Teacher. The willful negligence of duty includes dereliction in duty which invites major penalty. After having recorded findings against the Petitioner that failure on her part to submit Answer Sheets, which has resulted into making students and Management suffer and requiring the Management to re-conduct the examination of the students, in my opinion, amounts to willful negligence of in performing duty and also failure on the part of the Petitioner to discharge responsibilities as a Teacher, which attracts major penalty.

27] In this backdrop, award of punishment of termination of service of

the Petitioner-employee, in my opinion, is quite justified. As such, order impugned passed by the Tribunal is set aside. Writ Petition No.5419 of 2018 preferred by the Management is allowed, whereas Writ Petition No. 7226 of 2018 preferred by the Petitioner-employee stands rejected.

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(NITIN W. SAMBRE, J.)