

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**REVIEW PETITION NO.94 OF 2022
IN
WRIT PETITION NO.7885 OF 2016**

Prof. Dr. Dilip Devidas Medhe ...Petitioner
V/s.
DSPMS K.V. Pendharkar College of Arts
Science & Commerce, Dombivali & Ors. ...Respondents

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**WITH
REVIEW PETITION NO.95 OF 2022
IN
WRIT PETITION NO.7884 OF 2016**

Smt.Suvarna Jagdish Dadhakar ...Petitioner
V/s.
DSPMS K.V. Pendharkar College of Arts
Science & Commerce, Dombivali & Ors. ...Respondents

Mr.Rajeshwar G. Panchal a/w Mr.Mohan Rawat, Mr.Sarang
Gundajwar for the Petitioners.
Ms.V.S. Nimbalkar, AGP for Respondent No.4-State.
Ms.Anjali P. Yajurvedi a/w Ms.Swati Sharma for Respondent
Nos.1 and 2.

CORAM : C.V. BHADANG, J.

DATE : 13 OCTOBER 2022

P.C.

. Both these Review Petitions arise out of the common
judgment and order dated 19 May 2020 passed by this Court in

Writ Petition Nos.7884 of 2016 and 7885 of 2016. As such these Petitions are being disposed of by this common order.

2. The Petitioner Dr.Medhe was a member of the teaching staff, while the Petitioner Mr.Dadhakar was the member of the non teaching staff of the Respondent No.1-College. They were proceeded against departmentally for the alleged misconduct as set out in the charge-sheets against them and after completion of the departmental proceedings they have been dismissed. That order was challenged by the Petitioners before the University Tribunal ('Tribunal' for short). The Tribunal by a judgment and order dated 27 January 2016 passed in Appeal No.23 and 24 of 2013 has dismissed the Appeals which judgment was subject matter of challenge before this Court in WP No.7884 and 7885 of 2016.

3. This Court after hearing the parties by the judgment under Review, has dismissed both the Petitions.

4. I have heard Mr.Panchal, the learned counsel for the Petitioners and Ms.Anjali Purav, the learned counsel appearing for Respondent Nos.1 and 2. With the assistance of the learned counsel for the parties, I have perused the record.

5. The learned counsel for the Petitioners submitted that insofar as Review Petition No.94 of 2022 is concerned the only ground raised is about authority of Mr.Desai in his purported capacity as a Chairman of the Trust to issue the charge-sheet. Insofar as Review Petition No.95 of 2022, it is submitted that apart from the ground of authority of Mr.Desai there is one more ground about the departmental action being taken under the Standard Code which stood repealed and not under the Maharashtra Civil Services Rules (for short the “MCS Rules”). Except these there are no other grounds raised.

6. Insofar as the first ground is concerned, this Court has considered the same from paragraph No.17 onwards. This Court has noticed that Mr.Desai became the Chairman of the Trust from 1 November 2012, when the change report No.274 of 2013 was accepted by the authority.

7. Mr.Desai, claims to be a founder Trustee of the Trust and became Chairman of the Trust as per Resolution dated 16 April 2012 and prior to that he was the Treasurer of the Trust. This Court has also noted that the Resolution dated 16 April 2011 which is signed by the earlier Chairman Dr.Prabhakar Rao was produced before the Enquiry Officer. On behalf of the Petitioners, reliance was placed during the course of the hearing of the Original Petitions on an extract of the PTR register issued

on 7 December 2011. This Court has observed thus in respect of the said extract .

“The reliance placed by the Petitioners on the PTR extract dt. 7.12.2011 to my mind is misplaced. It is ture that the said extract shows Mr.Prabhakar Rao as the chairman and Mr.Prabhakar Desai as the Jt. Secretary. However it is significant to note that the said entry is the original entry taken as per the enquiry of the year 1972. Merely because the certified copy is issued in the year 2011 does not show that the same position continued or was in existence in the year 2011. To put it otherwise the entries in the PTR register are recorded chronologically as and when the changes which are reported as per the provisions of the Trust Act occur in the trust. A party can obtain a certified copy of any such entry. The date of issuance of such certified copy, which for instance is in respect of an old entry, may not necessarily depict the position of the trustees as on the date of the obtaining of the said certified copy as the said copy may be of an old entry. It is significant to note that the change report of the year 2013 on which heavy reliance is placed on behalf of the Petitioners is filed by Mr.Desai in his capacity as the chairman of the trust.”

8. In these Review Petitions, reliance is placed on a communication dated 21 July 2020 from the Public Information Officer (PIO) of the Public Trust Office at Thane. This document was neither before the Enquiry Officer nor before the Tribunal or before this Court when the Petitions were heard and decided. Thus in the Review Petitions with the limited scope available it is not possible to place reliance on the said communication.

9. Coming to the ground based on the repeal of the Standard Code, this Court has noted that the said ground was also not raised either before the Enquiry Officer/Disciplinary Authority or before the Tribunal. Quite to the contrary a stand was taken before the Disciplinary Authority that the charge-sheet does not confirm to the Standard Code. It was noted that normally this Court would be slow to entertain a plea/ground which is not raised before the Tribunal or the Lower Authority. However, as the parties had addressed their arguments on the said ground the matter was considered at some length in paragraph No.16. This Court has also noted that there was no distinction pointed out in the procedure to be followed under the MCS rules as against the Standard Code as the MCS Rules only contemplate such misconduct at designated places and not outside. However, in the present case on facts it was found that the misconduct as alleged was on the College premises also apart from being outside of the college premises. In that view of the matter, the ground based on repeal of the Standard Code was negated.

10. Reliance placed on behalf of the Petitioner on the Division Bench decision of this Court at Nagpur in WP No.6642 of 2020 dated 29 November 2021 (Nava Yuwak Education Society and Another V/s. The Education Officer (Secondary), Zilla Parishad and Others is misplaced as the said case turned on its own facts.

11. In my considered view the judgment under the review does not exhibit any error apparent on the face of the record. The Review Petitions are without any merit and are accordingly dismissed.

There shall be no order as to costs.

C.V. BHADANG, J.