

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 2535 OF 2012

PETITIONER : Dr. Shri Pradeep S/o Anandrao Pawar,
Aged about – 49 years, Occu. -
Service, R/o. A-202, Dewarshi
Apartment, Mangilal Plot, Camp,
Amravati – 444602.

//VERSUS//

RESPONDENTS : 1. Sant Gadge Baba, Amravati
University, Amravati, through its
Registrar, having its office at Sant
Gadge Baba Amravati University
Campus, Amravati.

2. Registrar Sant Gadge Baba, Amravati
University, Amravati.

3. Joint Director, Higher Education,
Amravati Division, Amravati.

Mrs. R.D. Raskar, Advocate for the Petitioner.
Mr. R.N. Badhe, Advocate for Respondent Nos. 1 & 2.
Mr. N.S. Rao, AGP for Respondent No.3.

CORAM : **SUNIL B. SHUKRE AND**
G.A. SANAP, JJ.

DATE : **7th OCTOBER, 2022.**

ORAL JUDGMENT (Per: Sunil B. Shukre, J.)

Heard learned counsel for the parties.

02] The petitioner has challenged the legality and correctness of the suspension order dated 20th March, 2006 and also the order of punishment dated 20th September, 2010.

03] The petitioner was appointed as a Reader on 04.04.1998 in respondent No.1 University. The petitioner also served as Guide for students. In February 2006, the Vice-Chancellor of the respondent No.1 University received two complaints from parents of two girl students. These complaints revolved around the allegation of misbehaviour and indecent behaviour of the petitioner with these two girls. The complainants had also alleged that they suspected that the petitioner was intending to outrage modesty of their respective daughters. Taking cognizance of these complaints and after making diligent enquiry into the allegations, the suspension order was issued to the petitioner on 20th March, 2006. Before that, a show cause notice was also issued to the petitioner, which was duly replied by him. After issuance of the suspension order, departmental enquiry

was initiated. In all, eight charges were levelled against the petitioner. These charges were as given below:

*“(i) **Charge no.1** - misbehavior with girl students;*

*(ii) **Charge no.2**- insulting behavior with girl students;*

*(iii) **Charge no.3**: making the girl students seat unnecessarily for a long time in his office.*

*(iv) **Charge no.4**: calling the girl students at home and asking his son to teach the girl students;*

*(v) **Charge no.5**: Offering gifts to the girl students;*

*(vi) **Charge no.6**- forcing the girl students to come along with him in his car for freaking out.*

*(vii) **Charge no.7**: Sitting idly in girl students’ room and calling on the mobiles of the girl students and making personal talks with respect to the crisis in personal life;*

*(viii) **Charge no.8**: calling the girl students at home under the pretext of preparation of papers for presenting Seminar and taking them forcibly in internet cafe in his car;*

*(ix) **Charge no.9**: forcibly asking for fee of Rs. 200/- to start library;*

*(x) **Charge no.10**: that, the students are reluctant to attend his class.”*

found that only Charge Nos.7, 9 and 10 were fully proved and Charge No.8 was partly proved and it was to the extent of calling the girl students to the house of the petitioner under the pretext of preparation of papers for presentation at the seminar and the remaining part of the charge relating to forcing the girl students to accompany the petitioner in his car to internet cafe, was held to be not proved. Upon its due consideration, the report was accepted by the Disciplinary Authority i.e. the Vice-Chancellor of respondent No.1 University and by the other impugned order dated 17th February, 2007, the punishment of permanent stoppage of two annual increments payable to the petitioner and treating the suspension period as period of absence and leave without pay was inflicted upon the petitioner.

05] According to Mrs. Raskar, learned counsel for the petitioner, the procedure adopted for holding of departmental enquiry against the petitioner since its inception, was full of procedural flaws and irregularities which vitiated the entire enquiry. She submits that even the show cause notice dated 28th February, 2006, which was required to be issued by the

Competent Authority i.e. the Vice-Chancellor of the University, was issued by Registrar of the University. She also submits that since the main charge of indecent behaviour with girl students was not proved, there was no justification for inflicting of major punishment, like permanent stoppage of two increments upon the petitioner. She also submits that there was no reason for the Disciplinary Authority to impose another punishment for treating the suspension order as period of unauthorised absence of the petitioner. She also submits that the petitioner has now retired on 30th September, 2022.

06] Mr. Badhe, learned counsel appearing for respondent Nos.1 and 2, supporting the order of suspension and also the final order inflicting punishment upon the petitioner, submits that there is ample material available on record, which would support the conclusions drawn by the Enquiry Officer and which have been accepted rightly by the Disciplinary Authority. In support, he has taken us to the enquiry report and also the statements of the witnesses. He further submits that before issuing suspension order, the preliminary enquiry was conducted by the Vice-

Chancellor and it was found by the Vice-Chancellor that the complaints made against the petitioner were of very serious nature damaging the image of the University and the petitioner had *prima faice* committed breach of provisions of Chapter VII of the University Ordinance No.122 requiring a detailed enquiry by suspending the petitioner and by appointing Enquiry Officer for making an enquiry into the allegations. He, therefore, submits that the suspension order served upon the petitioner was not without any reason and therefore, the punishment awarded by the Disciplinary Authority regarding the suspension period be treated as the period of unauthorized absence, is correct. He also points out from Section 49 of the University Ordinance No.122 that the punishment of withholding of increments permanently awarded to the petitioner is only at Serial No.2, placed just below the first punishment of censure, which sufficiently indicates that the punishment is a minor punishment. He submits that in Section 49, there are in all eight kinds of punishments described and these punishments increase in their gravity as one goes down the order of the punishments. It is, therefore, submitted that there is no need to make any interference with the impugned order.

07] Upon oral consideration of the material available on record and also the reasons given by the Enquiry Officer as well as the Disciplinary Authority, we do not find that there is any grave illegality having been committed by the Enquiry Officer or the Disciplinary Authority in appreciating the evidence available on record. In fact, the evidence, which has been brought on record by the Presenting Officer is suggestive of serious misconduct on the part of the petitioner. We further find that the Enquiry Officer has adopted a view, which is completely based upon the evidence available on record and therefore, his finding that only Charge Nos.7, 9 and 10 are fully proved and Charge No.8 has been partly proved, cannot be said to be perverse or an impossible view. It is well-settled law that while exercising the power of judicial review in such cases, it is not permissible for this Court to take a view different from the view taken by the Disciplinary Authority, when two views are possible. In this case, the Disciplinary Authority has also accepted the view taken by the Enquiry Officer regarding not proving and proving of some of the charges and this view having already been noted by us to be not perverse, we would not like to strike a different note in respect of the same.

08] As regards the objection taken by learned counsel for the petitioner that there have been several procedural irregularities and even the show cause notice has not been issued by the Competent Authority, we find that there are no such major irregularities as would have caused serious prejudice to the petitioner in defending himself in the enquiry. Even the show cause notice cannot be said to be issued in violation of any provision of law, for the reason that even though it is signed by the Registrar of the University, the same was issued under the directions of the Disciplinary Authority. This fact is specifically stated in the show cause notice. Ultimately, the underlying principle of the proposition that show cause notice must be issued by the Competent Authority is that the Competent Authority must know that there is some case *prima facie* made out against the delinquent employee and also his application of mind to the allegations made against the delinquent employee and the need for holding of the departmental enquiry against him. These requirements of law are seemed to be fulfilled in the present case, when we consider the fact that the show cause notice has been issued under the order of the Vice-Chancellor. Thus, we find no

substance in the objection taken on behalf of the petitioner in this regard.

09] About the submission that the penalty of stoppage of two increments permanently is a major penalty, which is shockingly disproportionate to the charges proved against the petitioner, again we find ourselves in respectful disagreement with the learned counsel for the petitioner. In fact, as we see from the provisions under Section 49 of the University Ordinance No.122, the punishment awarded to the petitioner with its low ranking in the order of gravity as prescribed therein cannot be said to be a major penalty by any stretch of imagination. This can be seen from the arrangement of the punishments made in Section 49 in terms of their gravity. For the sake of convenience, Section 49 of the University Ordinance No.122 is reproduced as below:

“49. Punishment to be given by the competent authority shall be as under: -

(i) Censure;

(ii) Withholding of increments or promotion, including stoppage at an efficiency bar,

(iii) Reduction to a lower post or time-scale or to a

lower stage in a time-scale;

(iv) Recovery from pay of the whole or part of any pecuniary loss caused to the University by negligence or by breach of orders;

(v) Suspension;

(vi) Removal from service of the University, which does not disqualify from future employment;

(vii) Dismissal from service of the University, which ordinarily disqualifies from future employment;

(viii) Fine to be deducted from salary.

10] It would be clear from the arrangement of the punishments made in Section 49 that the seriousness and gravity of each punishment increase as one goes down the order of these punishments. First ranking is given to such punishment as censure and second ranking is given to the punishment of withholding of the increments or promotion, including stoppage at an efficiency bar. Third ranking has been given to reduction to a lower post or time-scale or to a lower stage in a time-scale. Thus, the seventh and eighth ranking, which are at the bottom of these punishments, have been given to the punishments of dismissal from service and fine to be deducted from salary. This arrangement of punishments in Section 49 is indicative of the

principle that earlier the punishment in the order of punishments, less serious and less grave is the punishment. Therefore, at the cost of repetition, we would say that the punishment of withholding of increments or promotion, including stoppage at an efficiency bar is a punishment which cannot, by any stretch of imagination, be termed to be a major penalty.

11] So, we find that the punishment of stoppage of increments awarded to the petitioner is a minor penalty and whenever a minor penalty has been imposed upon an employee for his proved misconduct, it cannot be said to be “shockingly” disproportionate to the misconduct of the employee. The shocking nature of disproportionality would be something when for a minor misconduct, major penalties have been imposed. This is not so in the present case and therefore, to the extent of infliction of penalty or stoppage of two increments permanently upon the petitioner, we are not inclined to interfere with the final order.

12] About the objection taken to the suspension order also, we find from the order passed by the Vice-Chancellor that

before the suspension order was actually issued to the petitioner, the Vice-Chancellor recorded that it was based upon the material then available before him and his recording of *prima facie* satisfaction about the gravity of allegations made against the petitioner and the need for putting the petitioner under suspension. The allegations, when we consider the complaints of two parents, which are available on record, were indeed serious in nature and therefore, there was nothing wrong on the part of the Vice-Chancellor to issue an order of suspension of the petitioner to meet the situation which existed at that point of time. Therefore, we are not inclined to make any interference with the suspension order at this stage of the proceedings.

13] However, the question would remain as to whether or not the Vice-Chancellor was justified in treating the period of suspension as period of unauthorised absence. We are of the view that there was no justification whatsoever that was available with the Vice-Chancellor to treat the period of suspension as period of unauthorised absence - the reason being that the suspension order was issued mainly on the ground of alleged indecent behaviour of

the petitioner with girl students and the charges that were framed against the petitioner about these allegations have not been found to be proved by the Enquiry Officer and such a finding recorded by the Enquiry Officer has also been accepted by the Vice-Chancellor, the Disciplinary Authority. Once the Disciplinary Authority is satisfied that the charge of indecent behaviour with girl students which is the ground on which the suspension order is based, has not been proved against the petitioner, there is no justification for the Disciplinary Authority to treat the period of suspension as period of unauthorized absence from duty of the petitioner. To that extent, therefore, we find that the impugned order of punishment is illegal and requires interference for this purpose only.

14] In the result, we **partly allow** the writ petition. We hold that no interference with the punishment of stoppage of two increments permanently awarded to the petitioner is warranted. However, we hold that the other part of the final order of punishment dated 17th February, 2007 treating the period of suspension of the petitioner as his period of unauthorised absence

from duty is unwarranted and illegal and therefore, to that extent, the impugned order dated 17th February, 2007 is hereby quashed and set aside. We direct the respondent No.1 – University to regularize the period spent by the petitioner during his suspension by granting him special leave for that period. Needless to say, the petitioner would be entitled to receive all benefits consequent to regularisation of his period of suspension as above.

15] The rule is made absolute in the above terms. No costs.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

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