

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

WRIT PETITION NO.1272 OF 2020

VSPM Academy of Higher Education, Nagpur through its President/Secretary and
another

Vs.

Vasant s/o Ganpatrao Lad and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. V. P. Marpakwar, Advocate for petitioners.

Mr. B. A. Bhendarkar, Advocate for respondent no.1.

CORAM : AVINASH G. GHAROTE, J.

DATE : 10/08/2022

1. Heard Mr. Marpakwar, learned counsel for the petitioners and Mr. Bhendarkar, learned counsel for the respondent no.1.

2. The petition challenges the judgment dated 27.9.2019 passed by the Presiding Officer, University and College Tribunal, Nagpur, whereby the order of dismissal dated 24.11.2016 of the respondent, is set aside, and the respondent has been directed to be reinstated for the limited purpose of completing the departmental enquiry from the stage of appearance of appellant before the Enquiry Officer allowing him to raise all the defenses to contest the charges. It is further directed that the period from dismissal and reinstatement of the appellant till conclusion of the departmental enquiry, be treated as

period under suspension and the enquiry was directed to be concluded within six months preferably.

3. Mr. Marpakwar, learned counsel for the petitioners submits that the impugned order has been passed only on two grounds, the first being that the handwriting experts opinion in respect of the communication dated 13.1.2016, under which the respondent claims to have admitted the charges, has not been proved and not put to the test of cross-examination as it is a document, which cannot be accepted on its face value. The second ground was that no proper opportunity was given to the appellant to represent himself in the departmental enquiry. Mr. Marpakwar, learned counsel for the petitioners submits, that the findings are incorrect as the respondent would have an opportunity to cross-examine the handwriting expert before the learned Tribunal.

4. I am afraid, I am not able to agree with this contention for the reason that under Section 82 of the Maharashtra Public Universities Act, 2016 (hereinafter referred as 'the Act of 2016) the powers which are vested in the tribunal for hearing and deciding of appeals are that of an Appellate Court under the Code of Civil Procedure. No doubt, that under Section 82(2) of the Act of 2016, the Presiding Officer of the Tribunal, is empowered to decide the procedure to be followed for

deciding the proceeding before it, the same would be subject to the provisions of Section 82(1) of the Act of 2016. In the instant matter, what has been done is the remand of the matter before the Enquiry Officer, before whom it would be permissible for the petitioner to place the report of the handwriting expert and so also for the respondent to cross-examine him *vis-a-vis* the signature claimed to have been made upon the communication dated 13.1.2016 (page 22) as well as in the proceedings as recorded on 24.8.2016 (page 32).

5. That being the position, I do not feel it appropriate to interfere with the impugned order to the extent it set asides the order of dismissal and remit the matter to the Enquiry Officer. However, the period in which the departmental enquiry, shall be decided is restricted to three months from 1.9.2022.

6. The Writ Petition is accordingly dismissed.
No costs.

JUDGE