

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 301 OF 2023

Sanjay Rameshwar Tawarawala
Age : 54 years, Occu: Service as Head
Clerk R/o. C/o. R.G. Tawarawala,
Dana Bazar, Jalna.

... **PETITIONER**

VERSUS

1. The Principal,
Mahyco Research Foundation Trust's,
Badrinarayan Barwale Arts, Commerce
& Science College, P.B. No.28,
Aurangabad Road, Jalna – 431203.
2. Mr. Rajendra Barwale,
Trustee – Mahyco Research Foundation
Trust's, Badrinarayan Barwale Arts,
Commerce & Science College, P.B. No.28,
Aurangabad Road, Jalna – 431203.
3. Smt. Usha Zehr,
Authorised Signatory, Mahyco Research
Foundation Trust's, Badrinarayan Barwale
Arts, Commerce & Science College, P.B. No.28,
Aurangabad Road, Jalna – 431203.
4. The Enquiry Officers,
Mahyco Research Foundation Trust's,
Badrinarayan Barwale Arts, Commerce
& Science College, P.B. No.28,
Aurangabad Road, Jalna – 431203.

... **RESPONDENTS**

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Mr. U.S. Malte h/f. D.S. Mutalik, advocate for Petitioner
Mr. T.K. Prabhakaran advocate for Respondents Nos.1 to 4

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**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 13.01.2023

ORDER :

Heard the learned advocate Mr. Malte for the petitioner and the learned advocate Mr. Prabhakaran who appears for all the respondents.

2. By invoking the powers of this Court under Article 226, the petitioner is seeking following reliefs :

- “C. This Hon’ble Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ or orders, Direction to quash and set aside the suspension letter Dt.21.10.2022 and Charge Sheet cum Show Cause Notice, Dt.30.11.2022 issued by Respondent Nos.1 to 3.
- D. This Hon’ble Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ or Direction or Order to quash and set aside the appointment of two Enquiry Officers for conducting departmental enquiry against the petitioner.
- E. This Hon’ble Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ or orders, Direction to quash and set aside the appointment letter Dt.09.12.2022 issued by Respondent Nos.1 to 3, appointing Mr. Milind Kulkarni as presenting officer of Management of Respondent Nos.1 to 3.
- F. This Hon’ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or appropriate Direction or Order to the respondent Nos.1 to 3 to forthwith Re-instate the Petitioner in services from the date of suspension Dt. 21.10.2022 along with payment of back wages and other consequential benefits, privileges.
- G. This Hon’ble Court may be pleased to issue a Writ of Certiorari or any other appropriate Writ in the nature of Certiorari or any other appropriate Direction or Order thereby quashing and/or setting aside the rejecting request of Petitioner to engage Legal Practitioner may kindly be quashed and set aside and Respondent No.4 may kindly be directed to permit Petitioner to engage Legal Practitioner to represent the petitioner during entire Enquiry proceedings. ”

3. The petitioner who has been in the employment of the respondent No.1’s College in non-teaching category post is being proceeded

with a disciplinary inquiry by resorting to the provisions of the Maharashtra Non Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Services of Non-teaching Employees) Rules, 1984 (herein after referred to as the Standard Code Rules). He is raising objections on following grounds :

- i. The Standard Code Rules on the basis of which the charges have been levelled and the inquiry is being proceeded with is in fact rescinded by Government decision dated 20.05.2010 the inquiry stands vitiated.
- ii. Two inquiry officers are appointed which is illegal.
- iii. The presenting officer is personally interested and would influence the witnesses to depose against the petitioner.
- iv. Considering the serious allegations being levelled the petitioner is entitled to take assistance of a legal practitioner but the request has been illegally turned down.

4. Learned advocate Mr. Malte would submit that continuation of the inquiry when the charges have been levelled by resorting to the Standard Code Rules which stand rescinded long back vitiates the inquiry. He would submit that considering the serious nature of the allegations the petitioner being a non-teaching staff it is highly imperative for the inquiry to be fair that his request for engaging a legal practitioner should have been favorably considered. Its rejection would lead to serious prejudice and the petitioner is entitled to the reliefs.

5. Learned advocate Mr. Prabhakaran who appears for the respondents raises a preliminary objection on the basis of the affidavit-in-reply. He would submit that the trust which runs the respondent No.1's College has not been made a party. Even the inquiry officers have not been named and for these reasons alone the writ petition is not maintainable.

6. He would further submit that there is no prohibition for appointing two inquiry officers. The decision has been taken taking into account that there are several allegations of misdemeanor by the petitioner of sexual harassment and in the circumstances appointment of two lady inquiry officers is beyond the purview of any objection. He would further submit that there are circumstances indicating that the petitioner has not come to the court with clean hands. He has been not taking part in the inquiry on flimsy and unsustainable ground of being injured but at the same time has even attempted to serve the respondents with his correspondence dated 05.01.2023 physically. He would further submit that the petitioner has already participated in the inquiry on couple of dates and is not entitled to rake up all the issues which he is entitled to at an appropriate stage either before the disciplinary committee or a challenge to be put up by him if he results in imposing some punishment.

7. Mr. Prabhakaran, however, admits that the Standard Code Rules have been rescinded and it has been decided that for the time being Maharashtra Civil Service (Discipline and Appeal) Rules would be applicable to the non-teaching staff of Universities and Colleges other than the

agricultural universities. He would submit that the respondents would take appropriate steps to rectify the error but submits that in what manner such rectification would take place is a matter which is under consideration. He would submit that as of now when the respondents intend to even proceed against the petitioner in tune with the provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules no relief should be granted to the petitioner.

8. At the outset, it is necessary to note that an extraordinary jurisdiction of this Court under Article 226 of the Constitution is being invoked in respect of a disciplinary inquiry that is going on against the petitioner. In the normal course this Court would not entertain any such petition but we are inclined to entertain it only to the limited extent since it is now admitted by both the sides that the disciplinary proceeding was initiated under the Standard Code Rules which have been rescinded by the State Government by the order dated 20.05.2010.

9. In view of such peculiar facts and circumstances, in our considered view when the charge sheet cum show cause notice was issued invoking the provisions of the Standard Code Rules which were no longer in operation, we merely hold that the inquiry cannot be proceeded with without there being appropriate steps taken by the respondents to rectify the error.

10. Both the sides were under erroneous belief regarding applicability of the Standard Code Rules. No objection was raised by the

petitioner even till the date the writ petition was filed. Even the objection on this count was incorporated subsequent to the filing of the petition by way of amendment. It is in view of such circumstances, we do not intend to go into the other aspects and objections being raised by the petitioner and do not intend to consider the reliefs being claimed.

11. The writ petition is allowed partly. It is declared that the petitioner cannot be proceeded against by resorting to the provisions of the Standard Code Rules. It would always be open for the respondents to take appropriate steps to set right the error. Even the petitioner would be at liberty to raise all the issues which he is now seeking to rake up in the present petition at an appropriate stage.

(S.G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)