

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

47 WRIT PETITION NO.5025 OF 2022

**Dr.Mohammad Moaviyah Moghal,
Age: 35 years, Occ.: Nil,
R/o.: H. No. 2-3-11, Near Lok Seva
Dudh Dairy, Shah Bazar,
Aurangabad.**

...Petitioner

Versus

**1. President / Chairman,
Maulana Azad Education Trust,
Dr. Rafiq Zakira Campus,
Zauza Baugh, Aurangabad.**

**2. The Incharge Principal,
Dr. Rafiq Zakaria Centre,
for Higher Learning And
Advance Rearch,
Rauza Bagu, Aurangabad.**

**3. The Registrar,
Dr. Babasaheb Ambedkar
Marathwada, University,
University Campus, Aurangabad.**

...Respondents

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Advocate for Petitioner : Mr.Kakade Amol N .
Advocate for Respondent Nos. 1 & 2 : Mr. Dighe Pravin S.
Advocate for Respondent No. 3 : Mr. S.S.Thombre

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CORAM : KISHORE C. SANT, J.

DATE : 21.07.2023.

PER COURT :

1. Heard finally by consent of the learned Advocates for

the parties.

2. The facts in short are that the present petitioner was appointed by respondents as a Lecturer. During the course of service it was found that the petitioner has not conducted lectures on five occasions. The respondents, therefore, decided to hold an inquiry and issued a show cause notice to the petitioner, by framing following points on 18.12.2020 :

“1) In spite of being an Assistant Professor, you did not conduct lectures on numerous occasions in the Academic Year 2019-20. Instead you were sending messages to the students of M.Sc. I year and Msc. II year Zoology through Whatsapp group of “M.Sc. FY Zoology 2910-20” and “M.Sc. Zoology” SY 2919 informing them that you will not be conducting lectures. Aggrieved by your negligence and refusal to conduct the lectures, several students have lodged strong complaints against you along with the screenshots of your Whatsapp messages with the undersigned. The messages dated 07th October, 2019, 01st January, 2020, 29th January, 2020, 11th March, 2020 and 12th March, 2020 are few of them. From the perusal of the said messages, it can be seen that between 9.00 a.m. and 10.30 a.m. on the said days, you sent messages as “Good Morning”. Please note that I will not take lecture”. Having verified the attendance records of the said days, it is found that you have signed the muster roll and have obtained salary as well for the said days. But, without prior intimation or permission of your superiors, you indulged in an act of a refusal to conduct lectures causing grave prejudice and academic loss to the students. Your said misconduct, if proved, amounts to

willful negligence of a duty. The copies of your Whatsapp messages are supplied to you with the above referred show cause notice.

2. The institution had advertised various posts of assistant professors to be filled in the academic year 2019-2020. You applied for the post of an Assistant Professor in the subject of Zoology. Your application in response to this advertisement revealed that you have obtained a Ph.D. degree as a full-time candidate while being employed, though without due selection process, as an Assistant Professor on a contract basis. You neither intimated nor obtained permission of your superiors before applying for Ph.D. which, if proved, amounts to a serious misconduct as the same is in violation of the University norms.

3. You have been instrumental in publishing a false and derogatory news item in Urdu newspaper "Aurangabad Times Daily" on 14-03-2020 and in daily Shabmat on 16-03-2020 that, one Mr. Waseem Shaikh, Vice President, Anti Corruption and Crime Control Committee has submitted memorandum to the Education Minister to enquire in your matter that despite you were working as full time Assistant Professor, since 2013, you have not been selected in the interview, instead some other near relation candidates have been selected. You are fully aware that selection procedure is done by University selection committee in which regional Joint Director, Higher Education, remains present personally even though you are blaming institution, this act is defamatory. Further in the same news item you blamed that institution is paying you meager payment of Rs. 6865/- p.m. which is utterly false as you are paid Rs.8,000/- p.m. as per rules for contractual teacher. By publishing such false news, you have maligned the institution which caused irreparable loss to

the institution. Your, this act leads to misconduct and indiscipline. The copy of news paper cutting of Aurangabad Times Daily and Daily Shabmat dated 14th & 16th March, 2020 respectively were supplied to you with the above referred show cause notice.

4. Marathi daily newspaper 'Divya Marathi' had published a press release item issued by you on 15-03-2020. Vide the said press release, you have levelled baseless and false allegations that in spite of having the experience of 7 years, Principal Dr. Mazahar Farooqui's daughter, Dr. Samreen Fatema, has been selected in the interview as an Assistant Professor over you. You are aware that there is no work load for new post of assistant professor in your subject of Zoology available in the college, and no one is appointed in that subject. Therefore, no question arises that by avoiding you some other candidate is selected. Further you are fully aware that your subject is Zoology and that of Dr. Samreen Fatema's subject is Chemistry. By your said act, you have maligned the institution and defamed Principal Mr. Mazahar Farooqui. Therefore, you have committed an act of anti-institutional activity and misconduct. The copy of news item published in Divya Marathi, on 15-03-2020 was supplied to you with the above referred show cause notice.

5. The Principal of Maulana Azad College, Aurangabad vide letter No. 2244 dated 25.02.2020 had lodged a complaint with the undersigned that you are unauthorisedly going to the department of Chemistry, PG section of Maulana Azad College, thereby inciting and instigating the other employees against the institution and when the Principal Dr. Mazahar Ahemed Farooqui tried to stop and question you then you abused him with a foul language.

Therefore, by your above act, it is alleged that you have committed an act of indiscipline, insubordination and misconduct. Copy of letter dated 25.02.2020 was supplied to you with the above referred show cause notice.”

3. After holding an inquiry the inquiry officer framed five points as below :

1. Whether the Management proves that delinquent during the academic year 2019-20 on 7.10.2019, 01.01.2020, 29.01.2020, 11.03.2020 and 12.03.2020 has not delivered the lectures to the students and committed misconduct amounting to willful negligence ?

2. Whether the Management proves that the delinquent has obtained Ph.D. degree as full time candidate, without due permission from his Superiors ?

3. Whether the Management proves that on 14.03.2020 the Delinquent has published false news in Urdu daily news paper “Aurangabad Times

4. Whether the Management proves that on 15.03.2020 in Marathi Daily News Paper “Divya Marathi” the Delinquent has published a press release item in respect of selection of Dr. Samreen Fatema d/o Dr. Mazahar Ahemad Farooqui and thereby maligned the institution and defamed Principal Dr. Mazahar Ahemad Farooqui ?

5. Whether the Management proves that the Delinquent was unauthorisedly going Chemistry Department PG Section of Maulana Azad College, Aurangabad and was instigating other

employees against the institution then Principal Dr. Mazahar Ahemad Farooqui tried to stop the Delinquent and the Delinquent act of indiscipline of insubordination. ?”

4. An inquiry officer held that point Nos. 1, 2 and 3 of the points are held to be proved and the report dated 25.01.2021 came to be submitted to the management. After considering material on record the Inquiry Committee/ Management passed an order holding the petitioner guilty of serious misconduct and directed major punishment of dismissal of the petitioner by passing a resolution. This order came to be passed and the petitioner came to be dismissed from the service.

5. Being aggrieved by the order of dismissal, the petitioner filed an appeal in the University and College Tribunal, Aurangabad bearing Appeal No. MAMU 6 of 2021. The Tribunal framed following points :

“1. Whether the Respondent Nos. 1 & 2 followed principle of natural justice ?

2. Do the Respondent Nos. 1 & 2 prove that the appellant committed dereliction of duty, by not taking lectures on 07.10.2019, 01.01.2020, 29.01.2020, 11.03.2020 and 12.03.2020 ?

3. *Do the Respondents Nos.1 & 2 prove that the appellant was the instrumental in publishing false and derogatory news item in Urdu news paper "Aurangabad Times Daily", edition dated 14.03.2020 and in daily "Shabdamat" edition dated 16.03.2020 and thereby committed misconduct and indiscipline ?*

4. *Do the Respondent Nos. 1 & 2 prove that the appellant had published press release item in "Divya Marathi" news paper edition dated 15.03.2020 and levelled baseless and false allegations and defamed principal Dr. Majahar Farooqui and thereby committed act of anti institutional activity ?*

5. *Do the Respondent Nos. 1 and 2 prove that the appellant had unauthorizedly, paid visit to the department Chemistry, P.G. Section of Maulana Azad College and instigated the other employees of that college, against the institution and abused in foul language to Dr. Majahar Ahmed Farooqui and thereby committed misconduct ?"*

6. The learned presiding officer of the Tribunal held the petitioner guilty of point No. 2 and held that it is proved that the petitioner has committed dereliction of duties by not conducting lectures on 07.10.2019, 10.01.2020, 29.01.2020, 11.03.2020 and 12.03.2020. The College Tribunal set aside the order of termination dated 28.05.2021. The Tribunal recorded that the petitioner was working on Clock Hour Basis as lecturer and

therefore, no reinstatement was granted. However, the Management was directed to pay six months salary @ of 8,000/- p.m. i.e. Rs. 48,000/- towards compensation by its judgment and order on 21.02.2022. The petitioner has, therefore, filed this Writ Petition.

7. The main contention of the petitioner is that once the termination order was set aside, natural consequence that has to follow is the order of reinstatement. However, the college Tribunal has not granted reinstatement. He submits that the findings recorded by the College Tribunal that the petitioner was working on Clock Hour Basis and cannot be reinstated is without jurisdiction. Thus, this finding is seriously criticized. Since there was no point framed as regards the status of the employee, no opportunity was given to the petitioner to make submissions on this point. Deciding the status of the employee was not the point before the University College Tribunal. By relying on Section 83 of the Maharashtra Public Universities Act, 2016, it is submitted that giving finding on such point was beyond the powers of the Tribunal.

8. In the judgment the College Tribunal itself has recorded that the Tribunal has purportedly exercised the jurisdiction under Section 83 of Sub Section 2 (1) (3) of the Maharashtra Public Universitys Act, 2016 (Wrongly typed as Uniform Act, 2016) and instead of reinstatement, the Management was directed to pay the compensation not exceeding emolument for six months to the petitioner.

9. The submission, therefore, is made that the College Tribunal could have altered the punishment without considering the status of the employee as permanent or temporary.

10. The learned Advocate for the respondents vehemently opposes the petition. He submits that on plain reading of Section 83 (2) (d) of the Act, it is clear that the Tribunal has authority and power to reduce the punishment and in a fit case the Tribunal can even direct the employee to be compensated not exceeding the emolument for six months by way of compensation and the Tribunal has rightly done so. He relied upon the judgment reported in (2011) 4 (SC) 584 in State

Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya to submit that this Court need not interfere with the findings of the Departmental Inquiry Committee. It is not the case of the petitioner that the findings of the Departmental Inquiry Committee are erroneous. He submits that when sufficient material is available to justify the punishment, this Court need not interfere with the judgment and order.

11. Another Judgment he relied upon is in the case reported in 2006 4 ALL MR 531 Vishwanath s/o Parshuram Kuduchkar v. The State of Maharashtra and Ors. He submits that in this case the punishment of dismissal from service was awarded on finding the petitioner guilty of dereliction of duty resulting in loss of students.

12. Considering the rival contentions, this Court finds that there was no issue/point framed by the learned University College Tribunal about the status of the petitioner. The petitioner has no occasion to go into that aspect to prove his status. Though, it is argued by the learned Advocate for the respondent that in the say of the Management it was specifically

pleaded that the petitioner was appointed on Clock Hour Basis, in that case it was necessary for the petitioner to meet the said pleadings, however, he has not produced any material to show his status and thus, the College Tribunal is justified in holding that the petitioner was not the regular employee. This Court finds that though there was averment that the petitioner was appointed on Clock Hour Basis, the College Tribunal has not called upon the petitioner to answer the pleadings, nor any point is framed on that point. This Court, therefore, finds that under such circumstances, it was not necessary for the petitioner to produce any material at this stage to show his status as permanent employee. As it is looking at the powers of University and College Tribunal, it does not have a jurisdiction to decide status of an employee.

13. In the case of State Bank of Bikaner and Jaipur (supra) the Hon'ble Apex Court has held that the interference by the High Court in the findings of the Departmental Inquiry Committee is erroneous and was not called for. This Court finds that there is no dispute about the ratio of the judgment. Looking to the other judgment in the case of Vishwanath (supra)

also there is no dispute about the proposition of law.

14 In this case however, the question is not about the findings of the Disciplinary Committee at all. Even the petitioner has not addressed this Court on the findings as perverse or erroneous etc. His case is only that by deciding the status of the petitioner holding it to be temporary, serious prejudice is caused to him. Considering all the material, this Court finds that the order passed by the University and College Tribunal, termination order of the appellant dated 28.05.2021 is set aside and Respondent No. 1 is directed to impose minor penalty of censure against the appellant is justified to the extent of setting aside termination order. Since it is based upon the findings regarding paragraph No. 34 of the Judgment. This Court finds that it was not proper on the part of the Tribunal to go further and decide the status of the employee.

15. In view of the above discussion, the matter is remanded to the University College Tribunal by keeping other Clauses intact only to the extent of considering the punishment afresh. The parties to appear before the College Tribunal and

address on the same. It is to be noted that the University College Tribunal, Aurangabad has directed the Management to impose minor penalty of censure on the petitioner, this Court finds that even the College Tribunal could not have directed as to what punishment should be awarded.

16. In view of this the matter is sent back to the management for taking fresh decision on punishment and to award minor punishment by giving hearing to the petitioner. In view of this, the termination order dated 28.05.2021 is set aside.

(KISHORE C. SANT)
JUDGE