

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

**WRIT PETITION NO.10472 OF 2022
WITH
INTERIM APPLICATION NO.4447 OF 2023**

Subrat Kumar Sahoo
Age 49 years, Occu. Service,
R/o. Flat No.002, Building No.17,
Panchratna CHS, Agarwal Green Village,
Kashimira, Dist. Thane-401 107 ...Petitioner.

Versus

1. The Ld. Presiding Officer
Mumbai University and College Tribunal
Mumbai-400 032
2. Thakur Educational Trust
Through its Secretary,
C/o. Shyamnarayan Thakur Marg,
Thakur Village, Kamdivali East,
Mumbai-400 101
3. Thakur College of Science and Commerce
(Through it's Principal)
Shyamnarayan Thakur Marg,
Thakur Village, Kandivali (East)
Mumbai-400 101 ...Respondents

...

Mr. Shashikant Damodar Lal Chandak, a/w. Ms. Kanchan Shashikant
Chandak for Petitioner.

Mr. Arun Panickar, a/w. Mr. Mangesh Sawant for Respondent Nos.2 & 3.

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CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 20 SEPTEMBER 2023.
PRONOUNCED ON : 27 SEPTEMBER 2023

JUDGMENT

Rule. Rule is made returnable forthwith. With the consent of learned counsels appearing for the parties, petition is heard finally.

2. This petition is filed by Petitioner challenging the judgment and order dated 10 December 2021 passed by the Presiding Officer, Mumbai University and College Tribunal (**Tribunal**) to the extent of grant of liberty to hold fresh enquiry and non-grant of backwages. The Tribunal has partly allowed Petitioner's Appeal challenging the termination. While granting reinstatement with continuity, the Tribunal has granted liberty to the Respondent-Management to hold fresh enquiry, with further direction to pay backwages only in the event of non-completion of the enquiry within 08 months.

3. Briefly stated, facts of the case are that Petitioner was appointed as Lecturer on 11 June 2007 in the Respondent No.3 college, run and managed by the Respondent No.2 Trust. The appointment was approved by the University by letter dated 20 December 2007. Petitioner was confirmed in service on 10 June 2009. A Notice was issued to him on 31 January 2018 by the Principal alleging that he had failed to improve his performance and teaching methods despite several written complaints from the students. It was stated that same would constitute

three months' notice of termination and that his services shall stand terminated from 30 April 2018. However instead of terminating his services, Petitioner was placed under suspension by order dated 23 April 2018 on the charges of '*(i) no class control; (ii) lectures not effected.*' On 25 May 2018, Petitioner's suspension was revoked. He submitted a complaint on 27 June 2018 to the University alleging harassment by the college. In his complaint, he alleged that though his suspension was revoked, the college was not allowing him to sign muster. Petitioner submitted letter dated 02 July 2018 to the Principal seeking allotment of timetable with full workload.

4. On 03 July 2018, the Principal issued a letter to Petitioner alleging failure to report to duty after reopening of college on 18 June 2018 and directed that the letter be treated as a Notice for termination of service. The letter however directed Petitioner to report for duties on time. On 29 August 2018, the Principal issued one more letter to Petitioner referring to various complaints received against him and conveying to him that decision of termination would stand valid. Petitioner submitted grievance before the Chairman, University of Mumbai Grievance Committee on 30 August 2018. He also wrote to the management on 25 December 2018. By letter received by him on 05 January 2019, the Principal communicated to him that he was terminated from service vide letter dated 03 July 2018 and asked him not to attend the college as no workload was assigned to him. By letter dated 14 January 2019, the Principal referred to supervision duty performed by

Petitioner at F. Y. B.Com. November / December examination and held that the Petitioner was unable to control the class and maintain the decorum of the examination during supervision duty assigned to him. Petitioner was directed to be more vigilant in future regarding duties assigned to him. On the same date i.e. on 14 January 2019, the Principal replied to Petitioner's letter dated 25 January 2018 which he had addressed to the Trust. In that letter, the Principal confirmed Petitioner's termination vide letter dated 03 July 2018.

5. Petitioner thereafter sent several letters to the University, Police authorities, etc. He later approached the Tribunal by filing Appeal No. 02 of 2019 challenging letters dated 03 July 2018 and 14 January 2019 terminating his services. Appeal was resisted by the Respondent-Management and College by filing written statement. By its judgment and order dated 13 January 2019, Presiding Officer of the Tribunal has proceeded to partly allow the Appeal holding that the Respondent College did not conduct any enquiry before terminating Petitioner's services. Petitioner has accordingly been directed to be reinstated in services with continuity on the same post for want of statutory enquiry. The Respondents have been granted liberty to hold a fresh enquiry as per procedure prescribed under the Statute 444 read with Statute 439 to complete enquiry within 08 months. It is directed that issue of backwages would depend on outcome of the enquiry. It is further directed in the event of failure to complete enquiry within 08 months, the Respondents shall be liable to pay backwages, for which liberty has been granted to

move the Tribunal to determine the quantum. Costs of Rs.5000/- has been awarded in Petitioner's favour.

6. Before I proceed to record submissions canvassed by the learned counsels appearing for parties, it is necessary to refer to few developments that have occurred during pendency of the present petition. It appears that the Management or the College did not issue any formal order of reinstatement of Petitioner in pursuance of the order passed by the Tribunal. They instead expected Petitioner to join duty on his own and upon his failure to do so, issued him a letter dated 16 April 2022 stating that he failed to report for duties. Another communication dated 23 June 2022 was addressed accusing Petitioner of remaining absent and calling him upon him to show cause as to why disciplinary action should not be initiated against him for his unauthorized absence. Petitioner claims to have not received the said letters. It also appears that Respondents have conducted disciplinary enquiry against Petitioner by appointing an Enquiry Officer, who submitted his report holding Petitioner guilty of charge Nos. 1 and 2. The report was sought to be served on Petitioner at his address at Orissa. The learned counsel for Management and the college has made a statement that in pursuance of the enquiry so conducted, services of Petitioner are again terminated.

7. It thus appears that in pursuance of the order passed by the Tribunal, the Management and college have conducted disciplinary enquiry and again have terminated services of the Petitioner. However, validity of such enquiry or the termination order is not the subject matter

of the present petition. Petitioner will have to institute independent challenge against manner of conduct of enquiry and termination order. In the present petition, I am concerned with limited issue of challenge to the Tribunal's order dated 10 December 2021.

8. I have heard Mr. Chandak, the learned counsel appearing for Petitioner who is appointed by the legal aid. He would submit after setting aside the termination order, the Tribunal ought not to have granted opportunity to the Respondents to conduct enquiry against Petitioner. That the Respondents are bent upon terminating the services of Petitioner anyhow. That Petitioner has not committed any misconduct and that therefore no inquiry is warranted. He would further submit that the Tribunal has erred in not granting backwages even after finding the termination to be invalid. He also made submissions with regard to validity of enquiry conducted without reinstatement and the act of management in terminating Petitioner once again.

9. *Per contra* Mr. Panicker the learned counsel appearing for Respondent-Management college would oppose the petition and support the order passed by the Tribunal. That the Respondent-Management has rightly been granted opportunity to hold enquiry to prove Petitioner's misconduct. That since Petitioner has not worked during the intervening period, the Tribunal has rightly denied him backwages. He would further contend that despite granting relief of reinstatement by Tribunal, Petitioner failed to report for duty. That he did not participate in the enquiry proceedings and his services have again been terminated. He

would pray for dismissal of the Petition.

10. Rival contentions of the parties now fall for my consideration.

11. As observed above, limited issue involved in the present petition is about correctness of Tribunal's decision in granting liberty to Respondents to hold enquiry under provisions of Statute Nos. 444 read with 439 and non-grant of backwages up to the period of 08 months, during which enquiry was expected to be completed.

12. So far as the first aspect of granting opportunity to hold enquiry is concerned, I do not find any error in the Tribunal's order in granting such opportunity. The termination of Petitioner has been set aside on the ground of failure to observe principles of natural justice by not holding any disciplinary enquiry. Setting aside termination for failure to conduct inquiry would not mean that Petitioner has been given a clean chit. In such circumstances, the Tribunal is justified in granting opportunity to the Respondents to hold disciplinary enquiry by affording opportunity of hearing to Petitioner. Therefore the direction of the Tribunal in granting opportunity to Respondents to hold enquiry cannot be faulted.

13. So far as the aspect of backwages is concerned, the Tribunal has set aside Petitioner's termination from service. From the facts narrated above, it is difficult to locate the exact order of termination. However, it appears that termination is effected by letter dated 03 July

2018. Though some of the correspondence issued subsequently, especially the Principal's letter dated 14 January 2019, tend to create an impression that Petitioner was in service as on 14 January 2019, Respondents have repeatedly taken a stand that termination was effected vide letter dated 3 July 2018. Letter dated 14 January 2019 confirms that Petitioner's services were terminated by letter dated 03 July 2018.

14. It must be observed here that the Principal of Respondent college has been extremely casual in addressing several letters to Petitioner.

15. The Principal earlier issued letter dated 31 January 2018 treating the same as three months' notice for termination w.e.f. 30 April 2018. However instead of terminating his services, Petitioner was placed under suspension by order dated 23 April 2018 on framing two 'charges'. No inquiry was initiated into the charges so framed. His suspension was revoked on 25 May 2018. Shortly thereafter, the Principal issued one more Notice for termination on 03 July 2018 without specifying any specific notice period or the exact date of termination. It was vaguely stated that the notice period would be 'till end of academic year 2018-19'. Subsequently by letter dated 29 August 2018, Principal communicated to Petitioner that decision terminating his services stood valid. However again, no specific order terminating Petitioner's services from the particular date was issued. When Petitioner continued attending the college, the Principal issued undated letter (received by Petitioner on 05 January 2019) emphatically stating that he was terminated from service

vide letter dated 03 July 2018 and that therefore he was not allotted any classroom teaching or any other work in the college. This letter would create a picture that Petitioner was terminated from service on 03 July 2018 itself. However, on 14 January 2019, the Principal accused Petitioner of not properly performing supervision duties assigned to him in November / December 2018 examination. If Petitioner was indeed terminated from service on 03 July 2018, the question as to how he was assigned supervision duty in November / December 2018 begs an answer. However, in another letter issued on the same day on 14 January 2019, the Principal once again reiterated her decision of termination of Petitioner's services vide letter dated 03 July 2018. These communications would indicate casual approach on the part of the Principal in treating the status of Petitioner's service.

16. Be that as it may, in absence of any specific order terminating Petitioner's service and in view of repeated stand taken by the Principal that his services were terminated by letter dated 03 July 2018, it will have to be assumed that the date of termination was 03 July 2018.

17. The Tribunal has set aside the termination on account of failure to conduct enquiry. Petitioner has been directed to be reinstated in service with continuity. This would mean Petitioner has been reinstated in service with effect from 03 July 2018 and continued to remain in service till passing order by Tribunal on 10 December 2021. This would mean that Petitioner remained in service from 03 July 2018 to 10 December 2021. Since opportunity has been granted to the college to

conduct disciplinary enquiry, such enquiry cannot be conducted without restoring employer-employee relationship. As such restoration is done by the Tribunal by granting relief of reinstatement, in such circumstances, the course of action to be adopted is to keep the employee under deemed suspension till finalization of the enquiry. It cannot be that upon reinstatement for purpose of conduct of enquiry, the employee is denied any payment during intervening period. In such circumstances, the services regulations formulated both by the Central Government and State Government provide for keeping government servant under deemed suspension during conduct of *de novo* enquiry. In the present case, there was no inquiry at all and therefore there is no question of a *de novo* inquiry. Petitioner has been wrongfully terminated without any inquiry. In such circumstances, though ordinarily reinstatement with full backwages could be granted in such circumstances, since opportunity to conduct enquiry is granted by the Tribunal, atleast subsistence allowance must be paid to him for the intervening period. Petitioner is therefore required to be treated under deemed suspension from 03 July 2018 till finalization of the enquiry and he would be entitled to payment of subsistence allowance as per Rules during the period of his suspension. To this extent, order passed by the Tribunal warrants interference.

18. I accordingly proceed to pass the following Order:

- i) The Tribunal's Order setting aside termination and granting liberty for conduct of enquiry is upheld.

- ii) Tribunal's direction for payment of back wages only in the event of failure to conclude inquiry within 8 months is set aside.
- iii) Respondent-Management shall treat Petitioner as under deemed suspension from 03 July 2018 till finalization of enquiry and passing of final order. He shall be paid subsistence allowance as per Rules/Regulations during the suspension period from 03 July 2018 till the date of passing of final order in the inquiry. The payment of subsistence allowance shall be made by the Respondent-management within a period of four weeks from today.
- iv) Petitioner shall be entitled to challenge the fresh enquiry as well as the fresh order of punishment by filing appropriate proceedings before the Tribunal. All contentions in that regard are left open.

19. With the above directions, writ petition is partly allowed. Rule is made partly absolute. There shall be no order as to costs.

20. Since the petition is disposed of Interim Application does not survive and is disposed of.

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SANDEEP V. MARNE, J.