



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5832 OF 2024

Sanjay S/o Rameshwar Tawarawala,
Age – 55 years, Occu. - Service as Head Clerk
R/o. C/o. R.G. Tawarawala,
Dana Bazar, Jalna

.. Petitioner

Versus

1] Mahyco Research Foundation Trust's
Through its Authorised Signatory,
19, Raj Mahal, Veer Nariman Road,
Churchgate, Mumbai – 400 020

2] Badrinarayan Barwale Arts,
Commerce & Science College,
Through its Principal / Authorized Signatory,
P.B. No. 28, Aurangabad Road,
Jalna – 431 203

3] The Enquiry Officer,
Through its Presiding Enquiry Officer,
Mahyco Research Foundation Trust's
Badrinarayan Barwale Arts, Commerce
& Science College,
P.B. No. 28, Aurangabad Road,
Jalna – 431 203.

.. Respondents

...
Advocate for petitioner : Mr. S.D. Joshi h/f. Mr. Dilip S. Mutalik
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 19 JUNE 2024

ORDER (MANGESH S. PATIL, J.) :

Heard learned advocate Mr. Joshi h/f. Mr. Mutalik for the
petitioner.

2. The petitioner, who is a delinquent in a disciplinary enquiry initiated by the respondent – management, is seeking following prayers:-

- “C) This Hon’ble Court may be pleased to issue any appropriate Writ or orders, Direction to quash and set aside the suspension letter Dt. 21.10.2022 and Charge Sheet cum Show Cause Notices Dt. 30.11.2022 and Dt. 16.10.2023 issued by Respondent Nos. 1 & 2.
- D) This Hon’ble Court may be pleased to issue any appropriate Writ or Direction or Order to quash & Set aside the appointment of Enquiry committee vide order Dt.01.11.2023 for conducting enquiry against the Petitioner.
- F) This Hon’ble Court may be pleased to issue any appropriate Writ or appropriate Direction or Order to the Respondent Nos. 1 & 2 to forthwith Re-instate the Petitioner in services w.e.f. the date of suspension Dt. 21.10.2022 along with payment of back wages & other consequential benefits, privileges.

OR IN THE ALTERNATIVE

- G) This Hon’ble Court may be pleased to issue any appropriate Writ or any other appropriate Direction or Order thereby directing to Respondent Nos.1 & 2 to provide all demanded documents which are must for his defense during enquiry to prove the innocence of Petitioner.
- H) This Hon’ble Court may be pleased to issue any appropriate Writ or any other appropriate Direction or Order thereby directing to Respondent Nos. 1 & 2 to supply copies of all required Government approved permissions and its compliance documents required for the transfer and/or takeover of “Shri Saraswati Bhuvan Education Society, Aurangabad” to Respondent Nos. 1 & 2.”

3. Learned advocate Mr. Joshi would submit that enquiry is being proceeded with in utter disregard to the rules and even ignoring the principles of natural justice causing a serious prejudice to the petitioner's right to defend it. There is dispute about the right of the management to initiate the disciplinary enquiry inasmuch as the petitioner was appointed when some different entity was running respondent no. 2 college and he was never informed about transfer / taking over of the management by the respondent no. 1 – trust and respondent no. 1 not being the appointing authority could not have initiated the disciplinary proceedings.

4. Mr. Joshi would then submit that petitioner has been put under suspension without indicating the provisions of law being resorted to.

5. Mr. Joshi would then submit that preliminary enquiry into the allegations regarding sexual harassment of women at the workplace has not been conducted by the internal complaints committee. No opportunity of being heard was extended to him. Even the complaint was filed beyond the period stipulated under the rules framed under that act.

6. Mr. Joshi would then submit that in spite of specific request, documents are not being provided to him to make out his defence and the enquiry has been proceeded with, which is causing

serious prejudice to him. One witness has been examined in the first week of May 2024 and the petitioner apprehends that serious prejudice would be caused to him by the manner in which the enquiry is being conducted.

7. We have considered the submissions and perused the papers.

8. Admittedly, already the petitioner was before this Court in writ petition no. 301 of 2023 and had pointed out certain defects in initiating the process of disciplinary enquiry. By the order dated 13-01-2023, we had interfered in the light of the fact that the management was resorting to some Standard Code rules which were already rescinded by the state government by the order dated 20-05-2010. In view of such peculiar state-of-affairs, we had allowed the writ petition partly by making it clear that petitioner could not have been proceeded against under the provisions of the Standard Code rules but it was open for the respondent – management to take appropriate steps to set right the error. We had also expressly stated that the petitioner would be at liberty to raise all the issues which he was raising in that petition at an appropriate stage. We are pointing out such state-of-affairs to demonstrate that it is in the light of the aforementioned state-of-affairs that the fresh decision has been taken and the disciplinary proceeding has been initiated.

9. However, we cannot be oblivious of the inherent limitation on the powers of this Court to undertake any enquiry into the correctness or otherwise of the process of disciplinary enquiry being undertaken. This Court cannot at every stage of the enquiry monitor it. Needless to state that any defect in the enquiry would enure to the benefit of the petitioner if he is able to derive the benefit. Not every stage in the enquiry can be examined by this Court. Admittedly, the enquiry has proceeded and even testimony of one witness has already been recorded in the first week of May 2024. Whatever request that was made by the petitioner soliciting documents was considered and decided by the enquiry officer more than 8-10 months ago. Thereafter, even one witness has been examined.

10. If such is the state-of-affairs, in our considered view, it would be appropriate that the disciplinary enquiry is allowed to be proceeded with particularly when the allegations are quite serious. Entertaining the petition at this stage would create obstacles in completing the enquiry. We do not intend to protract it any further. All the issues being raised by the petitioner would be available for him to be agitated as we had already indicated in the earlier round of litigation.

11. The petition is dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/