

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8524 OF 2024

1. **The Secretary/Chief Executive Officer** }
Shri.Warana Vibhag Shikshan Mandal, }
Warananagar, Taluka-Panhala, District- }
Kolhapur-416113. }

2. **The Principal** }
Tatyasaheb Kore Institute of Engineering & }
Technology, Panhala, Taluka-Panhala, }
District-Kolhapur-416 113. }

....Petitioner

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Versus

1. **Shri.Ajit Bhagwan Bachche** }
At Post Savarde Tarf Satave, Taluka- }
Panhala, District-Kolhapur-416113 }

2. **The Registrar** }
Shivaji University, Kolhapur. }

3. **The Director of Technical Education** }
(Maharashtra State) }
3 Mahapalika Marg, Mumbai-400 001. }

....Respondents

Mr.Saurabh Pakale a/w Mr.Nilesh Desai i/b Padmaja Malgaonkar,
for the Petitioners.

Ms.Aloka A. Nadkarni, AGP, for Respondent No.3-State.

Mr.C.G. Gavnekar a/w Mr.Ashutosh Gavnekar and Mr.Rohit Parab, for Respondent No.1.

Ms.Sayali Gangal i/b Mr.Vikram N. Walawalkar, for Respondent No.2-Shivaji University

CORAM : R.M. JOSHI, J.

DATE : 02nd SEPTEMBER 2024

JUDGMENT :-

. This petition takes exception to the judgment and order dated 20th December 2023 passed by the College and University Tribunal, Pune in Appeal No.14 of 2019 whereby the Appeal was allowed holding that termination of Respondent to be illegal and directing his reinstatement with full back wages.

2. The facts which leads to the filing of this Petition can be narrated in brief as under:-

It is the case of the Petitioners that, on 1st October 2013 Respondent was appointed vide appointment order dated 1st October 2013. On 22nd May 2019 a girl student lodged complaint dated 22nd May 2019 with the Petitioner against the Respondent making serious allegation about he causing sexual harassment to her. On 21st June 2019, Respondent No.1 was

called upon to appear before the internal Committee on 25th June 2019. Considering the seriousness of the allegation, it was decided to investigate into correctness of the same. Respondent No.1 submitted his representation on 16th July 2019. A Committee was constituted for fact finding enquiry. This Committee submitted report observing that, there is *prima facie* substance in the allegations levelled against Respondent No.1. Pursuant to the said report the Petitioner decided to hold a Disciplinary/Departmental inquiry into the misconduct of Respondent No.1 and during pending the said enquiry he was placed under suspension by issuing order dated 19th July 2019. It is alleged that, after the order of the suspension Respondent No.1 approached the Complainant and pressurized her to withdraw the complaint, it was accordingly reported by her to the Petitioners.

It is further case of the Petitioners that, during the pendency of the said enquiry Respondent No.1 approached the Tribunal by filing Appeal alleging the order dated 19th July 2019 is otherwise termination, which was sought to be set aside dissatisfied with grant of full back wages. The Petitioners

appeared before the Tribunal and submitted written statement on 27th September 2019 with the contention that, the Appeal was not maintainable as service of Respondent No.1 is not terminated by the Petitioners. The Tribunal by passing impugned order allowed the Appeal, hence, this Petition.

3. The learned counsel for the Petitioners submits that, the Tribunal has committed an error in not taking into consideration facts and circumstances of the case and more particularly the allegations against the Respondent No.1 of sexual harassment caused to a girl student. It is his statement that in such circumstances there was no question of Respondent No.1 being allowed to remain on the premises of the Petitioners. It is submitted that, the enquiry was initiated against Respondent No.1. However, since University did not grant permission, the said enquiry could not be proceeded with. According to him, the Tribunal has erred in fact as well as law while granting reinstatement by upholding the order dated 19th July 2019, amounts to otherwise termination of Respondent No.1.

4. The counsel for Respondent No.1 opposed the said

submission with the contention that, even if there are serious allegations made against the Respondent No.1, he could not have been terminated from service without conducting an enquiry, and giving an opportunity to defend himself. He submitted that, admittedly, no enquiry has not been conducted by the Petitioner against these Respondents till date. It is his submission that, standard conduct rules applicable to the Petitioners do not permit any employee to be prevented from attending the office save and except for his suspension. Attention of this Court is drawn to letter dated 19th July 2019 issued by Principal to Respondent No.1 to submit that, this letter does not amount to suspension as contemplated by the relevant rules and as there is no perversity in the order passed by the learned Tribunal holding it to be otherwise termination of the Respondent.

5. There is no dispute about the fact that, the Respondent No.1 is a permanent employee of Tatyasaheb Kore Institute of Engineering & Technology at Warananagar, Taluka-Panhala, District-Kolhapur. Though there is allegation against him which undoubtedly is serious in nature, but admittedly, there

is no enquiry conducted by the Petitioners against him till date. The contention sought to be raised in this behalf that the University has not permitted the enquiry to be proceeded. This reason for not proceeding with enquiry, can never be attributed to the Respondent. It is responsibility of the Petitioners to seek appropriate permission from the University to conduct enquiry and if such permission is refused without justification or in contradiction of Rules, it is for them to take appropriate steps in this regard. However, in no circumstances unless the employee is suspended in accordance with conduct rules/service conditions, he can be kept away from the establishment of employer, that too, without salary.

6. Though now it is sought to be contended on behalf of the Petitioners that, letter dated 19th July 2019 is not a termination but is a suspension, the written statement filed before the Tribunal does not indicate so. It would be relevant to take note of paragraph 9(g) of the written statement which reads thus :-

9(g) The Respondents say and humbly submit that the appellant was temporarily prohibited to not to attend the

college in the interest of smooth working of college administration.”

7. This written statement therefore clearly indicates at no point of time it was claimed by the Petitioners that the Respondent is kept under suspension as provided by the relevant rules. All what was sought to be stated before the Tribunal is that the Respondent was temporarily prohibited from attending the college in the interest of the college administration. Even perusal of letter dated 19th July 2019, does not indicate that it is an order of suspension.

8. Once there is no suspension of the Respondent, and admittedly, he is prevented from attending the college, this certainly amounts to “otherwise termination” of the Respondent. This Court is conscious of the fact that in certain circumstances it may not be possible for the employer to permit presence of the employee on the premises. However, in such circumstances the only remedy available for the employer is either to suspend the service of such employee or if no such suspension can be affected, he can be prevented from entering the premises of the employer but paying full wages for the said period. Admittedly, in this case

there is no payment of wages to the Respondent from 19th July 2019. In absence in order of suspension he being prohibited without any payment of wages/salary it has to be held there is termination of the service otherwise and illegal.

9. If such interpretation to the term otherwise termination is not given, it will give a license to the employer to keep the employee away from the employment without following relevant rules and procedure of law, which is wholly impermissible in law.

10. Having regard to the facts of the case, more particularly the letter dated 19th July 2019 which is not a suspension order followed by substance allowance, no perversity is found in the finding recorded by the learned Tribunal about this being otherwise termination of the Petitioner. This Court therefore finds no reason or decision to cause any interference in the impugned order in the exercise in jurisdiction under Article 227 of the Constitution.

11. Though Petition is dismissed, having regard to the peculiar facts of the case and the allegations made against the

Respondent of causing sexual harassment to a girl student, it is open for the Petitioner not to physically allow him on the premises till the enquiry is concluded against him and he is cleared of charges. It will be however obligatory for the Petitioners to pay wages to the Respondent No.1 for the period from 19th July 2019 till his service is terminated by following due process of law. The Petitioners have illegally kept Respondent employee away from service without wages/salary for a period of 5 years and hence it is a fit case to dismiss Petition with cost. Petition stands dismissed with cost.

12. The learned counsel for the Petitioner prays for waiver of cost. In the facts of the case order of cost stands waived.

13. All pending Civil and Interim Applications are disposed of.

(R.M. JOSHI, J.)