

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12597 OF 2018**

Jayprakash Education Society and Anr. ... Petitioners
versus
Pradip Nilkanth Todkar and Ors. Respondents

Mr. Narendra V. Bandiwadekar, Senior Advocate i/b. Mr. Sagar A. Mone ,
Advocate for the Petitioners.
Mr. Yuvraj Narvankar along with Ms. Rafia Shaikh, Advocate for
Respondent No.1.
Ms. Vrushali R. Raje, AGP for Respondent No.3-State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd OCTOBER, 2024.

P.C. :

1. By this writ petition, the petitioners have challenged the judgment and order dated 22nd June 2018 passed by Savitribai Phule Pune, Shivaji and Solapur University and College Tribunal, Pune (for short "the Tribunal") whereby the order of termination dated 30th May 2017 passed by the petitioners was quashed and set-aside by the Tribunal in Appeal No.7 of 2017 and directed to reinstate the respondent No.1 in service. Petitioner No.1 is Educational Society which runs Petitioner No.2-College. Petitioner No.2-College is affiliated to respondent No.2-University.

2. It is contention of learned counsel for petitioners that respondent No1 was permanent lecturer in Petitioner No.2-college. There

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were serious allegations against respondent No.1 about misconduct. Those were proved before the Inquiry Committee, the inquiry was done by following the principle of natural justice. Respondent No.1 was terminated from the service, but the Tribunal has not considered the evidence produced on record and has passed the impugned order, which is erroneous. Learned counsel further submitted that on 2nd February 2016, respondent No.1 had filed police complaint against the chairman of petitioner No.1. Thereafter, the chairman of petitioner filed a complaint against respondent No.1 under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Atrocities Act"). An offence was registered against respondent No.1 under Atrocities Act. As offence was registered against respondent No.1, he was terminated from the service on 26th February 2016. Respondent No.1 challenged the order of termination by filing Appeal No.4 of 2016. By order dated 15th December 2016, the said termination order was quashed and set-aside by Tribunal and the petitioners were directed to reinstate respondent No.1 on his original post. The Tribunal had given liberty to the petitioners to hold departmental inquiry against respondent No.1. Accordingly, the petitioners served charge-sheet on respondent No.1 on 14th April 2017 and after serving the charge-sheet, an departmental inquiry was conducted against respondent No.1 and in the said inquiry, an opportunity was given to respondent No.1 to put his case and, after hearing both sides, the Inquiry Officer submitted his report to the petitioners and in the said Inquiry Report, respondent No.1 was held guilty. On the basis of said report, respondent No.1 was terminated from his services by the

petitioners. The said order was challenged by respondent No.1 before the Tribunal by preferring appeal.

2.1. Learned counsel further submitted that the allegations against respondent No.1 were that he abused the chairman of petitioner No.1 on his caste, who belongs to schedule caste, respondent No.1 participated in the grampanchayat elections without taking permission of the petitioner-society, he joined duty after setting-aside of termination order by the Tribunal without the permission of the petitioner-society. Learned counsel further submitted that the Tribunal should not have re-appreciated the evidence when detailed inquiry was conducted by the Inquiry Officer and the Tribunal has observed that the inquiry conducted against respondent No.1, was as per the principle of natural justice. The said inquiry was proper, once this finding is recorded, the Tribunal should not have set-aside the termination order of respondent No.1 passed by the petitioners. Learned counsel further submitted that the judgment and order passed by the Tribunal is not in accordance with law, hence, requested to quash and set-aside the order passed by the Tribunal and allow the petition.

3. It is contention of learned counsel for respondent No.1 that earlier respondent No.1 was terminated from service by the petitioner-society without holding any inquiry. The said order was set-aside by the Tribunal. The chairman of the petitioner-society had grudge against respondent No.1 as respondent No.1 had filed criminal complaint against the chairman of the petitioner No.1-society. On that ground, false and fake charges were levelled against respondent No.1 and inquiry was conducted. A charge was levelled against respondent No.1 was that he had abused the chairman of the

petitioner-society on his caste but respondent No.1 has been acquitted by the Special Court from the said charge. Learned counsel further submitted that charge was levelled against respondent No.1 that after reinstatement by the Tribunal, respondent No.1 attended the petitioners' office without giving letter of joining. It cannot be said that this was misconduct on the part of respondent No.1. Learned counsel further submitted that charge was levelled against respondent No.1 that he participated in grampanchayat elections without permission of the petitioner-society but it cannot be considered as misconduct as there was **no** prohibition to respondent No.1 to participate in the said elections. Learned counsel further submitted that the judgment and order passed by the Tribunal is legal and valid, no interference is required in it.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. While passing the judgment and order, the learned Tribunal has observed that considering material produced on record, the findings of the Inquiry Officer holding respondent No.1 guilty of misconduct, is not accepted. So also, the action of dismissal on the basis of such finding is not legal and proper, hence, the order of termination is liable to be set-aside and the appellant/respondent No.1 is entitled to reinstatement in service with continuity in service and other consequential benefits. I do not find infirmity in it. In my view, the Tribunal has passed well reasoned order.

5.1. It is contention of learned counsel for petitioners that all charges levelled against respondent No.1 are proved. It appears from record that four charges were levelled against respondent No.1. The first charge was that

respondent No.1 abused on the caste of chairman of the petitioner No.1-society. While in service, he abused the colleagues on their caste, belonging to schedule caste. While dealing with this issue, the Tribunal has observed that the chairman of the petitioner No.1-society was not examined before the Inquiry Officer. The Tribunal further observed that the Special Sessions Court has acquitted respondent No.1 from the charge under Atrocities Act. The Tribunal further observed that no doubt only because a person is acquitted in criminal case, that itself will not disprove the misconduct and such acquittal has no bearing on the departmental action. In my view, since there were specific allegations against the respondent No.1 that he abused the chairman of petitioner No.1-society on his caste, so the chairman should have examined himself to prove the said charge. Mere allegations of such serious nature offence, cannot suffice to prove it.

5.2. The second charge levelled against the respondent No.1 is that after reinstatement in service, he marked his attendance on biometric machine and he signed on muster roll without prior permission of the principal of college and thereby committed breach of rules and caused obstruction in the administrative work. In respect of this charge, the Tribunal has observed that there is no dispute that respondent No.1 had attended the college on 16th December 2016 to join and Inquiry Officer has not considered the joining report given by respondent No.1 to principal and the said report was not placed on record by the principal. It appears from the record that respondent No.1 attended the college after reinstatement in service. After reinstatement in service, respondent No.1 has right to attend college. It cannot be said as

misconduct. I do not find infirmity in these observations. In my view, joining the duty after reinstatement cannot be considered as misconduct. Moreover, it appears that respondent No.1 had given letter to principal of college about joining but it was not placed on record.

5.3. The third charge was levelled against respondent No.1 is that he participated in grampanchayat elections during the period 1997 to 2002 and 2002 to 2007. He participated in election of Warna Sugar Factory and he did not take permission of petitioner No.1 before contesting elections. While dealing with this issue, the Tribunal has observed that no provisions were pointed to show that there was bar to contest election and management has not taken action against respondent No.1 at that time. It appears from record that respondent No.1 was elected in the election during the period 1992 to 1997 but action was taken against him in the year 2017. It shows that it cannot be considered as a misconduct. I do not find infirmity in it. In my view, after 10 to 15 years of election, exception was taken against respondent No.1. It shows that to accentuate the allegations against respondent No.1, the said charge was levelled against him.

5.4. The fourth charge was levelled against respondent No.1 that he humiliated his colleagues on the basis of caste. It appears from record that to substantiate this allegation, no evidence was produced on record. To prove the charges against respondent No.1, the petitioners have examined single witness who was retired from service. The inquiry report was submitted before the petitioners on 25th May 2017 and show cause notice was issued to respondent No.1 on 29th May 2017. It was replied by respondent No.1 on 30th May 2017 at

10.30 am. On the same day, he was terminated in afternoon session. The termination order was issued to respondent No.1 by registered A.D. Respondent No.1 was due to retire on 31st May 2017. It appears that the petitioners had predetermined to terminate respondent No.1. Earlier also, he was terminated without holding enquiry. The charges levelled against him were not sufficient to impose major penalty. It is contention of learned counsel for the petitioners that the Tribunal should not have re-appreciated the evidence of the inquiry officer. In my view, being appellate authority, the Tribunal has power to re-appreciate the evidence produced before the inquiry officer. The Tribunal has power to decide the legality and validity of the impugned order, if it is not allowed, there may be miscarriage of justice.

6. As observed earlier, the Tribunal has passed well reasoned order, no interference is required in it and I pass following order :

“Writ Petition is dismissed”.

(SHIVKUMAR DIGE, J.)