

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9853 OF 2015.

Deelip Babu Pawar
Adult Occupation College Teacher,
Residing at Datta Nagar Road No.2,
in front of Akshay Flour Mill, Nav
Siddhivinayak Puram, Vishram Baug,
Sangli 416 415.

...Petitioner.

Versus

1. The Principal, Venkatesh Mahavidyalaya
Ichalkaranji (416 115), District Kolhapur.

2. The Hon. Secretary,
N. B. Education Society, Ichalkaranji 416 115
District Kolhapur

3. The Director, Board of College and
University Development, (BCUD), Shivaji
University, Vidyanagar, Kolhapur 411 004.

4. Hon'ble Presiding Officer,
Savitribai Phule Pune, Shivaji & Solapur
University & College Tribunal Pune,
University Campus, Pune-07

...Respondents.

*Mr. C. G. Gavnekar a/w. Mr. Rohit Parab a/w. Mr. Ashutosh Gavnekar for
the petitioner.
Mr. Meelan Topkar for the respondent Nos.1 and 2.*

Coram : Sharmila U. Deshmukh, J.

Reserved on : 18th July, 2024.

Pronounced on : 19th August, 2024.

JUDGMENT:

1. Rule. Rule made returnable forthwith and taken up for final hearing with the consent of the parties.

2. The challenge in the present Petition is to the Appellate Tribunal's order dated 2nd September, 2015 rejecting Appeal No 10 of 2013, the consequence being termination of services of the Petitioner.

FACTUAL MATRIX

3. Appeal No 10 of 2013 was filed challenging the order of termination dated 17th February 2012 passed by the Respondent No 1 College. The Petitioner came to be appointed as Full Time Assistant Professor in Respondent No 1 College with effect from 5th July 2010 vide appointment order dated 2nd July, 2010 on probationary period of two years. On 13th October 2011, the Petitioner came to be assaulted by some persons in the college premises claiming that the Petitioner has taken photographs of the female students without their permission. Information about said incident was relayed to the Principal by the Petitioner. The incident came to be reported in print

media leading to issuance of notice dated 4th October 2011 by the Principal calling upon the Petitioner to tender an explanation. Accordingly explanation was tendered vide reply dated 15th October 2011. Being dissatisfied with the Petitioner's explanation, the Respondent No 1 issued charge sheet to the Petitioner on 17th November 2011. On 14th January 2012 preliminary report was submitted by the inquiry committee concluding that the charges were duly proved and recommended action against the Petitioner as per the relevant Statutes. On 23rd January 2012, explanation was submitted by the Petitioner to the Inquiry Report. By order dated 17th February 2012 the services of the petitioner came to be terminated.

4. The termination was challenged by filing Appeal No 2 of 2012 before the Appellate Tribunal and vide order dated 9th October 2012 the order of termination dated 17th February 2012 was quashed and set aside directing the Respondent No 1 and 2 to hold regular inquiry in accordance with the Statute and to take decision afresh.

5. On 13th December 2012, fresh charge sheet was issued to the Petitioner alleging misconduct by committing an act prejudicial to the proper management of the College and breach of the terms and conditions of service prescribed by the statutes and agreement. Inquiry was conducted and by its report dated 30th July 2013, the Inquiry Committee held that the Petitioner had photographed female

students without permission causing outsiders to enter in the College resulting in adverse newspaper publicity thereby maligning the image of the College. By communication dated 22nd August 2014 the report of the Inquiry Committee was forwarded to the Petitioner calling upon him to show cause against the proposed termination as the misconduct took place during the probation period. On 29th August 2013, Petitioner submitted his reply to the proposed action of termination of service. On 6th September 2013, the Governing Body resolved to remove the Petitioner from service on the ground of unsatisfactory service during probationary period.

6. The termination order was challenged vide Appeal No.10 of 2013, which was allowed vide order dated 3rd March, 2014 and Petitioner was directed to be reinstated with continuity of service without back wages. The order of 3rd March, 2014 came to be challenged by the petitioner as well as respondent No.1 before this Court by Writ Petition No.7011 of 2014. Vide order dated 4th December 2014, this Court quashed the impugned order and remitted the matter to the Tribunal to be considered afresh. Upon remand, by the impugned order dated 2nd September 2015, the Tribunal dismissed the Appeal filed by the Petitioner.

SUBMISSIONS:

7. Mr. Gavnekar, learned counsel for the Petitioner submits that

the order of termination dated 6th September 2013 has been issued by considering the Petitioner's services to be on probation. He submits that as per Regulation dated 30th June 2010 issued by the University Grants Commission, the probationary period was reduced to one year and although relevant statute was not amended, the State of Maharashtra by Government decision dated 15th February 2011 applied the UGC Regulation from 10th June 2010. He would further submit that the Vice Chancellor has issued an order under Section 14 of the Universities Act on 28th March 2011 applying the Government Resolution. He submits that in view thereof, on 4th July 2011 upon the petitioner completing one year of probation and in the absence of the management extending the period of probation, the services of the petitioner had become permanent. He submits that the issue is no longer *res integra* and has been decided by learned Single Judge of this Court in the case of ***Madha Taluka Shikshan Prasarak Mandal Kurduwadi and Anr. vs. Prashant Kamlakar Narkhade and Ors., [2016 SCC Online Bom 5220]***. He submits that the order of the Tribunal proceeds on the basis that the petitioner was on probation and that the direction issued by the Vice Chancellor would not have the effect of amending the statute despite UGC Guidelines and the Government Resolution.

8. He submits that there are two allegations firstly that the

photographs were taken of the female students without their knowledge, without any reason and second is about the incident of 13th October 2011. He points out the photographs annexed at page 80 onwards and would submit that the photographs taken of the students as well as the other faculty were taken for the purpose of publishing them in college magazine and photographs at page 88 were published in the college magazine. He submits that photographs would indicate that the photographs are of various functions held in the college. He submits that the photographs annexed at page 80 onwards would indicate that there are no objectionable photographs and the photographs are of the students attending the classroom. Drawing attention of this Court to the impugned order, he submits that the allegation is of misconduct and that the act amounts to loss of confidence reposed in the petitioner by the college. He submits that the said findings amounts to a charge which would be levied during the period of probation and in the present case, the petitioner's services had become permanent after expiry of period of one year. He submits that the second allegation was that due to misconduct the incident of assault had taken place which was reported in the media. He submits that it is admitted that the photographs were taken. However there was no objectionable photographs and also that the assault which had taken place was not

at the instance of the petitioner. He submits that the findings of unsatisfactory performance based on the misconduct has been arrived at by the Tribunal by considering the Petitioner as probationer. He submits that upon the petitioner having become permanent, the Tribunal was expected to consider whether the findings of the Inquiry Officer are perverse and whether the punishment is disproportionate which was not considered by the Tribunal. He submits that only allegation is that permission was not taken before clicking the photographs and the punishment of termination of service is disproportionate.

9. *Per contra*, Mr Topkar would point out the admission given by the petitioner in the cross examination admitting that the photographs were taken. He submits that different stand is taken that the photographs were taken for the purpose of recording attendance and for the purpose of filling up API forms. He points out that the evidence proves that photographs were not required for recording attendance or for API forms. He would further point out the admission that by reason of Petitioner's conduct the image of college as well as the Society has been tarnished. He submits that Inquiry Officer has rightly considered the evidence which established that the petitioner had taken photographs. He points out the findings of the Inquiry Officer that in some of the photographs the college staff had

posed for the photographs however the students are photographed while doing some activities and that no permission was sought from the college and the stand taken by the petitioner that the photographs were taken to have verifiable proof as per annual performance indicator for Annual Year-2012 cannot be accepted as the Principal has not directed him to do so. He submits that the inquiry was legal and proper and there is no perversity in the findings. He submits that the services of the petitioner came to be terminated by the College in the year 2012 based on the inquiry report. He submits that the petitioner has not proved that he was unemployed from the year 2012.

REASONS AND ANALYSIS:

10. Before proceeding to analyse the merits of the matter, it would be prudent to bear in mind the limitations on the power of the High Court while exercising powers under Article 226/227 of Constitution of India in disciplinary proceedings. In ***Union of India & Ors vs P.Gunasekaran [(2015) 2 SCC 610]***, the Apex Court summarised the scope of interference as under:

“The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. the finding of fact is based on no evidence.*

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*

(v) interfere, if there be some legal evidence on which findings can be based;

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

11. The position with respect to the period of probation was fairly conceded by Mr. Topkar that in accordance with the regulations issued by the UGC the probation has been reduced to one year from the period of two years. The issue stands concluded by the decision of ***Madha Taluka Shikshan Prasarak Mandal Kurduwadi and Anr.*** (supra) in paragraph 46 as under:

“46. In my view, the said tribunal had committed an error in the impugned judgment by holding that without amendment in the statute, probation period could not be reduced from two years to one year of that the Vice Chancellor of the Solapur University could not have issued any order under Section 14(8) of the Maharashtra Universities Act, 1994 without amendment in the Statute framed by the Shivaji University. In my view, the said tribunal thus could not have held that the period of probation was not reduced from two years to one year as per the regulation issued by the University Grants Commission and thus the petitioner had not attained status of a permanent Assistant professor on completion of a period of one year from the date of his appointment”.

12. The Tribunal was thus clearly in error in holding that the issuance of directions by the Vice Chancellor pursuant to the UGC guidelines would not amend Statute 198 providing for probation of two years applicable to Shivaji University. The Petitioner had attained the status of permanent Assistant Professor on expiry of period of one year and his services could not be terminated by treating his services as probationary services. However, in the instant case pursuant to the order dated 9th October, 2012 passed by the Tribunal there was a proper inquiry held into the allegations against the Petitioner.

13. The Petitioner has been charged with Breach of Statute 211 (3) (ii)(1) which governs the suspension, dismissal and termination of service for Misconduct and Explanation (b) and (c) provides that misconduct shall include an act prejudicial to the proper management of the College/Recognised Institution and breach of the terms and conditions of service prescribed by the Statutes and agreement.

14. The Appellate Tribunal having discarded the contention of the Petitioner that the probationary period was for one year proceeded to hold that the act of Petitioner amounts to loss of confidence reposed in him by the College and results in serious breach of conduct. By treating the services as probationary, the Appellate Tribunal has upheld the termination by the following findings:

“(a) The act of termination is not illegal or improper as the management has lost confidence in him as Professor and as the misconduct was committed during period of probation his services were terminated.

(b) The act of management is not illegal or improper as the employee committed misconduct during probation and his services are terminated on ground of unsatisfactory performance.

(c) Probationary employee has no right to the post and if on being found suitable he is regularised only then he acquires right to continue in the post.

(d) If the appointing authority finds the candidate unsuitable, it has power to terminate the services of the employee.

(e) The termination is on ground of unsatisfactory performance and no stigma is attached so action of the management cannot be termed as vindictive.”

15. It is evident that the Tribunal has tested the validity of the termination order on the touchstone of termination of a probationary employee and has held that the misconduct has resulted in unsatisfactory performance which entitles the management to terminate the services. As the Tribunal has faulted on the primary consideration of the period of probation, the subsequent findings

based on the said fallacious consideration of the probationary period cannot be sustained. The Tribunal has not appreciated the evidence on record to examine whether the conduct even if held established constitute a misconduct of such gravity to be visited with the major penalty of termination of services under Statute No 211 .

16. Although, the Petitioner's services were considered as probationary, there was a proper inquiry conducted in the misconduct alleged. As far as the evidence is concerned, in the cross examination the Petitioner has accepted that the Petitioner had photographed the students during the seminar without permission of the students or management. His case in cross examination is that the photographs were taken for attendance purpose and for Annual Performance Indicator (API) purpose. He has admitted that in the API form there is no instruction to record the photographs of attendees. He has also expressed his regret for the adverse publicity the College had to suffer because of the incident.

17. It is clear from the evidence on record that the charge of photographing students including female students without seeking permission from the students or the management and without intimating the management stood established by the Petitioner's own admissions. Mr. Gavnekar has rightly not advanced any submission to deny that the Petitioner had not taken the photographs and he has

justified the act as committed for purpose of publication in magazine. The submission canvassed by Mr. Gavnekar is contrary to the admissions in the cross examination that the photographs were taken for attendance verification and for API forms.

18. Secondly it is also not in dispute that the incident of assault of Petitioner had taken place on 13th October, 2011 which was reported in print media. The evidence on record establishes the charge framed against the Petitioner.

19. The question now arises is whether the punishment of termination awarded by the Disciplinary Authority is proportionate to the misconduct. The photographs on record are of students including girl students while they were engaged in certain activities and also of the faculty and the staff members and without permission. From the photographs which are produced at page 80 of the petition, it can be found that there are no isolated photographs of female students being taken and photographs of the students both male and female have been taken while they are in the classroom or were doing certain activities. There is no material which is produced on record by the respondent-management to demonstrate that apart from the said photographs annexed to the Petition, there were other photographs taken by the Petitioner.

20. The allegation in support of the charge of misconduct is that on

13th October 2011 outsiders entered the college and manhandled the Petitioner by reason of the female students being photographed by the Petitioner on his mobile phone, which act of misconduct amounts to loss of confidence reposed upon the petitioner by the College with the incident being reported in media causing damage to the College reputation. The fact remains that it is the petitioner who has been manhandled by outsiders and and it is not demonstrated that there was any complaint filed by any female student objecting to the photographs. The allegation is not that the photographs are objectionable but that the misconduct has resulted in commission of an act prejudicial to the proper management of the college and breach of terms and conditions of service.

21. In the explanation tendered by the Petitioner, it is stated that the Petitioner used to click photographs of the various functions and activities taking place in the College and of the students and faculty members participating in such functions and activities and some of his photographs were published in the college magazine. The Inquiry Officer has held that the photographs taken by the Petitioner shows that the college staff is in the photographs and they have posed for the photographs and the students are photographed while doing some activities. It held that the Petitioner had not taken permission from the college and that the girl students were not aware of the

photographs being taken. The Inquiry Officer has held that the Petitioner has taken photographs of the girl students without permission and that some of the photographs were published in the college magazine.

22. The Inquiry Officer held that the photographs on record does not show the girl students in any objectionable pose and they are seen doing their college activities and normal activities. It held that none of the college witnesses has deposed that objectional pose of girl students were taken and it cannot be said that there are objectional photographs of girl students. It further held that there was media reporting of the incident of 13th October, 2011 which occurred in the college and caused bad publicity and tarnished the image of the College. There is no perversity in the findings of Inquiry Officer particularly considering the admissions of the Petitioner.

23. Statutes framed under Section 42(1) of the Shivaji University Act, 1974 govern the terms and condition of service of Teachers in affiliated College. In case of misconduct, the Statute provides for imposition of minor and major penalties depending on gravity of the offence. The Petitioner has been visited with the major penalty of termination of service. The findings of the Inquiry Officer would indicate that the Petitioner used to regularly take photographs of the various functions and activities taking place in the College campus.

Apart from the students even the faculty and staff have been photographed at various functions and are seen posing for the photographs. Some of the photographs have been published in the college magazine. The college being co-ed college, the photographs are of male as well as female students in the class rooms and engaged in various activities. There is no evidence of any objectionable photographs of the female students and no complaint by any student.

24. In my opinion, the act of the Petitioner of photographing the students including girl students during various functions and while being engaged in classroom and other activities is an act of over-enthusiasm, however, the commission of the act without the permission of the management of the College and the students amounts to misconduct. The incident which occurred on 13th October, 2011 was reported in media, however it needs to be noted that the Petitioner had immediately brought the incident to the notice of the Principal and nothing has been brought on record to show that the media reports has resulted in tarnishing the image of the College to such an extent justifying the penalty of termination. Though the evidence on record would establish that the Petitioner has committed an act which has interfered with the proper management of the College, the imposition of the drastic punishment of termination of services is severely disproportionate to the misconduct of

photographing students without permission leading to the incident of 13th October, 2011.

25. The Tribunal has upheld the termination order by holding that the termination is based on unsatisfactory performance during probationary period without appreciating the fact that services of the petitioner has become permanent and as such findings of unsatisfactory performance is not a ground sufficient for termination of the permanent employee. It is well settled that in exercise of powers of judicial review, if it is found that the punishment is shockingly disproportionate only in exceptional and rare cases in order to shorten the litigation the Court may impose appropriate punishment with cogent reasons.

26. In the present case, the order of termination is of the year 2013 and the judgment of the Tribunal is of the year 2015. The Petition has been adjudicated in the year 2024. In my view, the remand the matter to the Disciplinary Authority to revisit the penalty imposed in light of findings of this Court, would result in further litigation by the parties. In order to shorten the litigation, in my view, in facts and circumstances of the case where the misconduct though established is not so grave as to justify the drastic penalty of termination, it would be appropriate to reduce the penalty and reinstate the Petitioner. As far as payment of back wages is concerned, there are no submissions

advanced on this aspect and it has not been demonstrated that from the date of termination in the year 2013, the Petitioner is unemployed and cannot be so for period of almost a decade. In my view as the misconduct has been proved though required to be visited with reduced penalty, in the absence of any material to justify payment of back wages, the Petitioner is entitled to reinstatement without back wages.

27. Statute 212 provides for imposition of major penalties which include stoppage of increment with or without effect on future increments. In my view, the facts of present case justify reduction of penalty of termination to stoppage of increments for two years.

28. Hence the following order is passed:

:ORDER:

(a) The termination order dated 6th September, 2013 and the impugned judgment and order dated 2nd September, 2015 are hereby quashed and set aside;

(b) The penalty of termination is set aside. Instead of penalty of termination, the penalty of stoppage of increments for two years is imposed on the Petitioner which shall have the effect of postponing his future increments of pay. Replaced penalty to take effect from date of termination i.e. 6th September 2013;

(c) Petitioner be reinstated in service within six weeks. The intervening period from date of termination till reinstatement be treated as duty for all purposes except for back wages.

29. Petition succeeds. Rule stands allowed in the above terms.

30. In view of disposal of petition, Interim/Civil Applications, if any, do not survive for consideration and stand disposed of.

[Sharmila U. Deshmukh, J.]

31. At this stage, a request is made for stay of the present judgment. The said request is opposed by the learned counsel for the respondents. Considering that the termination is of the year 2013, the judgment is stayed for a period of three weeks from the date of uploading the present judgment on the official website of this Court.

[Sharmila U. Deshmukh, J.]