

Shabnoor

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

WRIT PETITION NO.3494 OF 2024

Shivnagar Vidya Prasarak

Mandal Through Its Chairman & Anr

... Petitioners

V/s.

Vikrant Bhausa Pawar & Anr

... Respondents

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Mr. Dilip Bodake, for Petitioners.

Mr. Sushant S. Prabhune, for Respondents.

CORAM : AMIT BORKAR, J.

DATED : APRIL 4, 2024

P.C.:

1. The petitioners/Management are challenging order dated 13 December 2023 passed by the Presiding Officer, Savitribai Phule, Pune University and College Tribunal, Pune in Appeal No.23 of 2022, reinstating respondent No.1 as lecturer with petitioners institution.

2. The respondent No.1 filed Appeal No.23 of 2022 under Section 81 of the Maharashtra Public University Act, 2016 (“**University Act**”) challenging termination order dated 15 December 2020. According to respondent No.1, he was qualified for being appointed as lecturer in petitioner No.2’s Engineering College through duly constituted Selection Committee on 9 September 1996. After completion of two years, the probation was

completed, and he was acquired status of permanent employee. From 17 December 2008, he was not allowed to perform the duties. He, therefore, challenged his otherwise termination by filing Appeal No.2 of 2009 before the College Tribunal. The College Tribunal by an order dated 28 February 2011 allowed the Appeal and directed the petitioners to reinstate respondent No.1 in services with continuity in services from 17 December 2008. Despite issuance of such direction, respondent No.1 was not allowed to join the duties; hence, he filed Miscellaneous Application No.2 of 2018 before the College Tribunal. In the said proceeding, the petitioners / Management appeared and contended that the petitioners have initiated an enquiry against respondent No.1 for his unauthorized absence from the date of order of the College Tribunal i.e. from 2011 to 2018. Respondent No.1 contended that the disciplinary enquiry conducted by the petitioners / Management, was in breach of principles of natural justice and in breach of mandatory provisions of relevant Statute and Rules.

3. The petitioners appeared in the said Appeal and contested by filing its reply. It is pointed out that, the respondent No.1 services were terminated with the effect from 15 December 2020. It is submitted that the charges against respondent No.1, were unauthorized absence and willful persistent neglect of duty as per Statute 431(i)(iii).

4. The College Tribunal, by the impugned order allowed the Appeal broadly on following grounds:

- (i) the respondent No.1 was not granted proper opportunity to cross-examine the petitioners witnesses;
- (ii) respondent No.1 was not granted opportunity to produce his defence witness;
- (iii) an enquiry was conducted in breach of Statute 433(D) (ii), 433(F), 433(G) and 433(H).

5. The College Tribunal, therefore, directed petitioners to reinstate respondent No.1 and to pay backwages as per the pay-scale from 15 December 2020 till the date of reinstatement. The said order is the subject matter of the present writ petition.

6. Learned Advocate for the petitioners submitted that the Enquiry Officer granted sufficient opportunity to respondent No.1 by adjourning the proceeding on 11 occasions. He submitted that respondent No.1 never applied for production of defence witness. He is relying on unreported judgment of this Court in **Writ Petition No.2731 of 2021 (Vidya Vikas Education Society & Anr. Vs. Sunil Gulabrao Wadatkar & Ors.)** delivered on 17 October 2023. He submitted that the College Tribunal ought to have remanded the proceedings to the Enquiry Officer for continuing the proceedings from the stage of illegality occurred. He, therefore, submitted that the impugned order deserves to be quashed and set aside.

7. Per contra, learned Advocate for respondent No.1 submitted that the petitioners instead of complying earlier direction of the College Tribunal for reinstating respondent No.1, are taking

advantage of their own wrong by charging upon respondent No.1 that, unauthorized absence and not allowing respondent No.1 to join duties till filing of the Miscellaneous Application before the College Tribunal for reinstatement. He submitted that respondent No.1 was allowed to join his post only on 5 April 2018. However, based on illegal enquiry, his services were terminated on 17 December 2008. He, submitted that before respondent No.1 was allowed to join the services, in compliance with earlier order of the College Tribunal, the petitioners/Management had already initiated another enquiry based on which petitioners services were terminated on 17 December 2008. Therefore, the College Tribunal has rightly allowed the Appeal.

8. The rival contentions fall for consideration.

9. Since, the Appeal arises out of termination of respondent No.1 after holding an enquiry, it is necessary to set out the parameters of judicial review against imposition of the penalty by the Disciplinary Officer. It is well settled that in exercise of judicial review, the Court does not act as Appellate forum over the findings of the Disciplinary Officer and does not re-appreciate evidence on the basis of which findings of misconduct have been arrived at in the course of disciplinary enquiry. The Court in exercise of judicial review must exercise its review to determine whether:(i) rules of natural justice have been complied with; (ii) finding of misconduct is based on some evidence; (iii) Statutory Rules governing the conduct of disciplinary enquiry were followed; (iv) finding of Disciplinary Officer suffers from perversity and

penalty disproportionate to prove the misconduct.

10. In the light of parameters of judicial review, it is necessary to set out established facts which are as under:

(i) Respondent No.1 was appointed as lecturer in petitioner College after following due procedure by order dated 9 September 1996. He was qualified on the date of appointment. There is no dispute about the vacant post. Respondent No.1 acquired status of permanent employee;

(ii) On 17 December 2008, respondent No.1 was not allowed to perform his duty and, therefore, he approached the College Tribunal and the College Tribunal by an order dated 28 February 2011 directed reinstatement of respondent No.1 with back-wages;

(iii) Respondent No.1 was not allowed to join the services till the filing of Miscellaneous Application No.2 of 2018 before the College Tribunal for non-compliance;

(iv) The Management in the said proceeding contended that, it had already initiated an enquiry against the respondent No.1 for unauthorized absence from 2011 to 2018. It is not in dispute that, in an enquiry under Statute 433(G) and 433(H) have been violated. Both the Statutes i.e. 433(G) and 433(H) are the mandatory.

11. Based on aforesaid factors, it is evident that the mandatory Statutory Rules governing conduct of disciplinary enquiry were not

followed by the Enquiry Officer. Moreover, charge of unauthorized absence against respondent No.1 is for the period which according to respondent No.1, was not allowed to join the services in compliance of order of reinstatement passed by the College Tribunal. In my opinion, the petitioners could not have initiated an enquiry based on charge of unauthorized absence, in which period, he was not allowed to join the services as per the College Tribunal's earlier order. The second charge is of willful persistent neglect of duty as per Statute 431(iii). Having considered the said charge, in my opinion, the material on record do not disclose proof of such charges. Therefore, on merits both the charges against respondent No.1 were untenable. Therefore, it was not necessary for the College Tribunal to remand the proceedings back to the Enquiry Officer to continue it from the stage where the illegality occurred.

12. Learned Advocate for the petitioners submitted that, the respondent No.1 had pleaded in his memo of Appeal, he was gainfully employed as and when he gets the work. Therefore, according to the petitioners, initially onus of proving that the employee did not gainfully work during his termination period which has not been discharged.

13. Though the College Tribunal has recorded a finding that the Management has not produced the evidence to the contrary that respondent No.1 was gainfully employed or employed with lesser wages, in my opinion, the present case is governed by clause 38.5 in the case of **Deepali Gundu Surwase Vs. Kranti Junir Adhyapak**

Mahavidyalaya (D.Ed.) and Ors., reported in (2013) 10 SCC 324 where the Apex Court has held as under:

“38.5. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the Court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/ workman to get full back wages or the employer’s obligation to pay the same. The Courts must always keep in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.”

14. In the facts of the case, I am of the considered opinion, that the petitioners are guilty of victimizing respondent No.1, and they have acted in gross violation of Statutory provisions and/or the principles of natural justice. Therefore, as held in the said clause, the employee is entitled to full back-wages. Hence, in my opinion, there is no legal infirmity in the order. The writ petition is dismissed. There shall be no order as to costs.

(AMIT BORKAR, J.)