

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 1815 OF 2022

Dr. J.J. Magdum Trust and another. ... Petitioners.

V/s.

Shivaji University Kolhapur and another. ... Respondents.

Mr.Sumit Kate i/b. Dr.Uday Warunjikar for the Petitioner.

Mr.Vikram Walawalkar for Respondent No.1.

Mr.Ashutosh Gavnekar i/b. C.G.Gavnekar for Respondent No.2.

Ms.P.M.Joshi-Deshpande, AGP for the Respondent- State.

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**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE : 28 February 2024.

P.C. :

Heard the learned counsel for the parties.

2. The Petitioner- Management is before us aggrieved by the action of the Respondent- University refusing to grant approval to the appointment of the Enquiry Officer appointed by the Petitioner- Management for a proposed enquiry against Respondent No.2, an employee of the Petitioner No.2- Institution.

3. Under Statute 216 of the Respondent- University, certain procedure is prescribed for holding an enquiry against the employee

in respect of institution affiliated to the Respondent- University. The Statutes are framed under section 42(1) of the Shivaji University Act, 1974 and they have been continued as of today even under the new enactment governing the University. Statute 216 reads thus:

“S.216 : Procedure for inflicting major penalties:

A) The service of a teacher shall not be terminated under S.211 Clause 3(ii)(1) to (6) above, without holding a full inquiry in the matter by the College/ Recognised Institution.

Before holding such inquiry, a preliminary inquiry shall be held by a committee consisting of

- 1) Principal/ Head of the Recognised Institution (Chairman of the Committee)*
- 2) Head of the Deptt., or Head of Deptt. Of College/Recognised Institution nominated by the Vice-Chancellor of the same faculty of Head of Deptt., whose inquiry is to be made.*
- 3) One teacher of the College/ Recognised Institution nominated by the Vice-Chancellor.*

This Committee will find out whether there is a prima facie case against the teacher. The teacher concerned shall be given an opportunity to represent his case before this Committee.

The findings of the Committee shall be forwarded to the Governing Body for further action if necessary.

B)

*C) **Appointment of an Inquiry Authority/ Officer:** Immediately after the decision to hold an inquiry of a teacher is taken, the competent authority shall appoint an Authority/ Officer with the approval of the University to hold the departmental inquiry into the conduct of the teacher*

concerned. The Officer to be so appointed shall, as far as possible, not be the person who has made any preliminary investigation into the conduct of the teacher. The order appointing the Inquiry Authority/ Officer shall be generally in the form as specified (Appendix I).

.....

4. Therefore, as regards the enquiry to be conducted against the teacher/ employee, certain safeguards are provided in Statute 216(A). Before holding a full enquiry a preliminary enquiry is contemplated where the Committee will find out whether there exists a *prima facie* case. Thereafter, after the decision in the enquiry is taken, the appointed authority will appoint an officer with the approval of the University to conduct the enquiry.

5. The impugned order declining to appoint Inquiry Officer has commented on the report of the Committee constituted for holding preliminary enquiry that it does not state which are the charges fixed or otherwise and that the report is incomplete and therefore approval cannot be granted. Now in the reply affidavit filed by the Respondent- University, it is sought to be contended that what was submitted by the Petitioner- Management was a document which could not be understood and it was not in a proper format. If that was the position, then response of the University could have been to submit a proper request and not to enter into and comment upon the outcome of the preliminary enquiry. The impugned communication is outside the power conferred on the University under Statute 216(C).

6. Accordingly the impugned communication dated 30 January 2021 is quashed and set aside. The Petitioner- Management will furnish the report of the preliminary enquiry to the Respondent- University communicating their decision to hold a full-fledged enquiry with a request to grant an approval to the appointment of the Inquiry Officer. Once such a request is submitted with the above document, the University will consider granting necessary approval as per the governing statute within a period of four weeks thereafter.

7. Writ petition is accordingly disposed of.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)