

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3656 OF 2024

Milind Balu Shikare

...Petitioner

V/s.

President,

Adarsh Vidya Prasarak, Sanstha of Adarsh

Arts & Commerce College,

Kulgaon, Badlapur, Thane and Ors.

...Respondents

Mr. Chandrakant G. Jadhav for the Petitioner.

Ms. Lancy D'Souza a/w Ms. Deepika Agarwal, Mr. V. M. Parkar for
Respondent Nos. 1 & 2.

CORAM : AVINASH G. GHAROTE, J.

DATE : 20TH JUNE, 2024.

P.C. :-

1. The petition questions the Judgment dated 04.10.2018 passed by the University and College Tribunal whereby challenge to the correctness and legality of the order dated 12.11.2014, whereby the Petitioner was removed from service of the Respondent No.2 has been rejected.

2. On the basis of an audit report which pointed deficiencies and defalcation on behalf of the petitioner who was an Head clerk

with the Respondent No.2 an inquiry was initiated. It is not in dispute that though the allegations of defalcation is more than Rs.3,00,000/- , an amount of Rs.56,000/- was repaid by the Petitioner.

3. After examining witnesses and permitting the petitioner to cross-examine them, on the basis of the recommendation of the Inquiry Officer as contend in the inquiry report 19.07.2013 the charges were held to be proved, and subsequently the petitioner was terminated.

4. The Appeal to the University and College Tribunal by the Petitioner, came to be dismissed by the Judgment dated 04.10.2018.

5. It is the contention of the learned counsel for the Petitioner, that the inquiry report as well as the impugned Judgment as well as inquiry suffer from legal infirmities in as much as there were 7 witnesses who were examined by the management and no witness was left for the Petitioner to examine.

6. It is further contended that the auditor was not examined to prove the Audit Report on the basis which the inquiry was initiated. It is also contended that the charge-sheet was vague in as much as no

specific provision of the Rule was quoted for the purpose of the inquiry.

7. In so far as the plea that the management had examined all the witnesses and left none for the petitioner to examine, in my considered opinion, this cannot be a ground for holding that the inquiry was infirm, in as much as the Petitioner was afforded an opportunity to cross-examine the witnesses. Nothing prevented the Petitioner to examine any other witness, if available.

8. The next contention is that specific provisions were not quoted vis-a-vis the charge, which cannot be a ground to overturn the inquiry, as that would be a mere irregularity, as no legal prejudice has been alleged and established, more so when the Petitioner on the basis of the allegations in the charge-sheet participated in the inquiry. When the learned counsel for the Petitioner was asked to point out any objection raised in that regard before the Inquiry Officer, he has been unable to do so.

9. In so far as the plea that the auditor has not been examined it is material to note, that the charges have been held to be proved on the basis of material on record. The report of the auditor is merely the

starting point for initiation of the proceedings and if the material on which, it is based, is established on record, the absence of examining the auditor would not come in the way of recording the finding of guilt.

10. It is also claimed, that though there is no procedure for the delinquent employee to be cross-examined, on the defence statement this has been so done in the inquiry. The learned Tribunal has considered this in paragraph 27 of the impugned Judgment and held that it is an irregularity and not an illegality as the cross-examination in that regard can be ignored. I am in agreement with what has been held by the learned Tribunal in this regard.

11. The very fact, that the Petitioner had repaid a part of the amount claimed to have been defalcated, would itself indicate admission of a guilt, as it has not been brought to my notice, that such payment was without prejudice and was under pretext, or was under any false promise claimed to have been given by the management.

12. I therefore do not see any reason to interfere in the impugned Judgment as no legal infirmity has been pointed out.

13. Petitioner is therefore dismissed. No costs.

(AVINASH G. GHAROTE, J.)

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