



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4121 OF 2024

Sukhadeo Rakhmaji Bakhale

VERSUS

K. G. College Of Arts And Commerce Through Its Trustee
Director And Another

- Dr. R. R. Deshpande h/f Ms. P. R. Deshpande, Advocate for the Petitioner
- Mr. A. P. Bhandari, Advocate for the Respondent No. 1

CORAM : R. M. JOSHI, J

DATE : MARCH 20, 2025

PER COURT :

1. Not on board. Upon mentioning, taken on board.
2. Learned Counsel for Respondent No. 1 seeks modification of the order by mentioning words "employment misconduct (absenteeism)" in place of word "misconduct" appearing in line 4 of paragraph 13 of order dated 24.02.2025.
3. In view of above, prayer is allowed. Fresh order be uploaded after carrying out necessary corrections.

(R. M. JOSHI, J.)

(This order is modified by order dated 20.03.2025)

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- Dr. R. R. Deshpande h/f Ms. P. R. Deshpande, Advocate
for the Petitioner
- Mr. A. P. Bhandari, Advocate for the Respondent No. 1

CORAM : R. M. JOSHI, J

DATE : FEBRUARY 24, 2025

PER COURT :

1. By consent of both sides, heard finally at the stage of admission.

2. Respondent No. 2 is University of Pune, which is formal party. Notice to Respondent No. 2 stands dispensed with.

3. This Petition takes exception to the judgment and order dated 25.01.2024 passed by the University and College Tribunal, Pune in Appeal No. 35/2022.

4. The facts, as they appear from the record, can be narrated in brief as under:

Petitioner is the ex-employee of the K.G.

College of Arts and Commerce. He retired from the service on 31.07.2019. After his retirement, there was a post available of Principal in the college. He was interviewed by the Committee and he came to be appointed by order dated 20.03.2021. There is further no dispute about the fact that the approval for the appointment of the Petitioner was initially for a period of 2 months i.e., 01.04.2021 till 01.06.2021 only. However, later on by order of the competent Authority the said approval was extended till Petitioner attaining age of 65 years.

5. The Respondent No. 1/College issued communication dated 06.09.2022 alleging that the Petitioner is remaining absent unauthorizedly and on that count the administration of the College has suffered. In the said letter of termination, he was called upon to explain the reason for the absence and in failure thereto, this communication was said to be treated as his termination. Petitioner claims that he responded to the said termination order by letter dated 09.09.2022. Respondent, however, disputes the receipt of any such reply.

6. In this backdrop, Appeal came to be filed under Section 81 of the Maharashtra Public University Act, 2016 challenging termination of the Petitioner by Respondent/College. Learned Presiding Officer of the Tribunal by impugned order dismissed the Appeal with observations that in view of Clause No. 439 of Pune University State, it was not necessary for the College to conduct prior enquiry or to extend opportunity of hearing to the Appellant before issuing order of termination.

7. Learned Counsel for the Petitioner has drawn attention of the Court to the various admitted facts including the fact that during the period of so called absenteeism, resolution was passed by the College for further approval of the employment as a Principal of the Petitioner till he attains age of 65 years. It is his contention that if the Petitioner was absent there was no question of any such resolution being passed. It is his further submission by relying upon the judgment of Hon'ble Supreme Court in case of N. K. Taneja, Vice Chancellor, Chaudhary Charan Singh University, Meerut and Another vs. Maharaj Singh, SLP(C) No. 4978 of 2021

that in any case there could not have been termination of service of Petitioner without following due process of law and without conducting an enquiry against him.

8. Learned Counsel for contesting Respondent vehemently opposed the Petition and grant of any relief. It is his submission by relying upon the order of appointment that it was agreed between the parties that in case Petitioner found absent continuously for more than 30 days without prior permission, his services stands terminated automatically. Apart from this, he referred to the Pune University Statute, more particularly, Statute No. 439 which according to him exempts the Respondent/College being minor institution from application of provisions of statute from 411 to 439. On merit, it is his submission that in any case since the Petitioner has no responded to the order of termination and no explanation is provided for his absence, there would be no reason or justification to cause interference in the impugned order.

9. Even if it is accepted that Statute No. 439 exempts from its application Statute Nos. 411 to 439 to the minority institutions, it is impermissible to accept

the proposition that on account of such exemption there could be valid termination of any employee without following principles of natural justice and without holding disciplinary enquiry. Irrespective of the said statutory provision, it was absolutely incumbent on the part of the Respondent/College to follow principles of natural justice before taking action of termination/dismissal of any employee.

10. Apart from this, merely because there is clause in the letter of appointment that in case of continuous absence of more than 30 days the services of the Petitioner stands terminated automatically, the same will not give any right to the College to terminate the services of the Petitioner unless it is established that he has so remained absent. The said term of appointment would not dispense the employer from proving such allegation, which can be done only by conducting an enquiry. Such a enquiry even in absence of statutory provision, should be sufficient enough to give an opportunity to the employee to put-forth his side and it is only thereafter the termination would be permissible. Moreover, in view of alleged absence from

duty, there was no urgency to dispense with such enquiry.

11. There is allegation against Petitioner that he remained absent unauthorisedly for the period from 02.07.2021 to 06.09.2022. In the light of this allegation, the documentary evidence placed on record before this Court assumes importance. There is a resolution passed on 30.01.2022 by the Respondent/College for seeking approval of the appointment of the Petitioner till he attains age of 65 years. Pertinently, the time of resolution comes within the period of alleged unauthorised absence of the Petitioner. Though in paragraph 30 of the reply it is sought to be explained that said approval was sought in order to attend the requisite qualification for obtaining NAAC accreditation and even if such contention is accepted for the sake of arguments, still it would not be permissible for the Respondent/College to effect termination of service of Petitioner without following the principles of natural justice.

12. It is sought to be argued on behalf of Respondent that now the Petitioner has attained age of

superannuation and hence, he is not entitled for any reinstatement so also since he is getting pension from previous employment, no further order is required to be passed. This Court finds no substance in the said submission for the reason that at the first instance if the termination is found to be illegal, the same is required to be set aside and consequential reliefs must follow. Apart from this, the judgment impugned also needs to be set aside for the reason that it will amount to giving license to the minority institutions to effect termination of employees without compliance of principles of natural justice and hence, this is a fit case to set aside the impugned order. In the result, impugned judgment and order dated 25.01.2024 passed by the Presiding Officer, University and College Tribunal, Pune is set aside

13. Since the termination of the Petitioner is punitive in nature and the same has been effected on the alleged absenteeism of the Petitioner, liberty is granted to the Respondents to prove the **employment misconduct (absenteeism)** before the Tribunal. It is open for the learned Tribunal thereafter to pass order

in accordance with law.

14. At this stage, learned Counsel for the Petitioner seeks direction against Respondent/College for payment of salary for the relevant period to the Petitioner.

15. The grant or refusal of such relief would depend upon the fact whether the College is in a position to prove the misconduct against the Petitioner. Hence, this Court is not inclined to grant relief at this stage. However, Petitioner is not precluded from making such prayer before the Tribunal.

16. Petition stands allowed in above terms.

(R. M. JOSHI, J.)