



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3762 OF 2022

Dr. Shaikh Imran s/o Shaikh Usman .. Petitioner

versus

Maulana Azad Education Society, Aurangabad
& others .. Respondents

Mr. S. V. Dixit, Advocate for the Petitioner.
Mrs. M. N. Ghanekar, AGP for the State.
Mr. R. N. Dhorde, Senior Counsel instructed by Mr. P. S. Dighe,
Advocate for Respondent Nos. 1 and 2.
Mr. M. V. Navandar, Advocate for Respondent No. 4.

CORAM : R. M. JOSHI, J.

RESERVED ON : 15th APRIL, 2025.

PRONOUNCED ON : 21st APRIL, 2025.

PER COURT :

1. This petition takes exception to the judgment and order dated 10.01.2022 passed by the Presiding Officer, University and College Tribunal, Aurangabad in Appeal No. BAMU-3/2019 whereby the appeal filed by Petitioner against the order of his dismissal from service came to be rejected.

2. The facts which led to filing of this petition can be narrated in brief as under :-

Petitioner was initially appointed as Lecturer on 26.07.2005 and further on 07.10.2016 he was appointed as Principal of Respondent No. 2/college. It is the case of the Petitioner that before his appointment as Principal, Dr. Sohail Ahmed Khan was working as Principal of the college. According to him, while discharging his work as Principal, Mr. Khan furnished incorrect information which resulted in closure of two units of the college. Considering the said mistake committed by him, the management was intending to take disciplinary action against him. Mr. Khan however, in order to avoid said action, seek voluntary retirement. Mr. Khan had a belief that Petitioner is instrumental in compelling him to obtained voluntary retirement and therefore had a grudge against him. Mr. Khan lodged First Information Report on 03.11.2016 being Crime No. 487/2016 with City Chowk Police Station alleging that the Petitioner has demanded Rs.25,00,000/- by way of extortion. In connection with this crime, Petitioner was arrested and was in police custody for more than 48 hours. This has resulted in suspension of the Petitioner on 08.01.2016. After he was released on bail, he was permitted to work as Principal and his suspension was orally revoked. It is his grievance that some persons working in the college were having grudge against him and they could not digest that the

Petitioner had joined back the work and therefore, they started pressurising the management to revoke the said decision. Petitioner claimed to have suffered mental trauma due to registration of crime and arrest in connection thereto and therefore, went on medical leave. After expiry of the period of medical leave when he tried to resume the work, he was not permitted to discharge any work by the management. Since the management was not allowing him to work, he preferred Writ Petition No. 3110/2017. During the pendency of said petition, Petitioner raised contention in respect of lack of any departmental enquiry being conducted against him so also non-payment of salary. In order to justify deprivation of work, the management issued charge-sheet to the Petitioner addressing him as Assistant Professor. It is also alleged that he had submitted resignation which was a fabricated document. Petitioner has got the said document examined from the handwriting expert and it was revealed to that that the said document contained his forged signature. He, therefore, lodged First Information Report No. 126/2017 against the then President of Respondent No. 1/society and others. He further claims that due to registration of said First Information Report, the Chairman of Respondent No. 1/society was having grudge against the Petitioner.

3. Writ Petition No. 3110/2017 filed by Petitioner came to be disposed of on 11.07.2018 directing completion of departmental enquiry within a period of six months with further direction to the Petitioner to cooperate in the said enquiry. It is contended by Petitioner that management however did not initiate enquiry immediately nor paid subsistence allowance. Respondent Nos. 1 and 2 in the meanwhile filed Special Leave Petition No. 16366/2018 before the Supreme Court challenging the judgment and order passed by this Court in Writ Petition No. 3110/2017. Petitioner also filed Special Leave Petition against the said order. The Supreme Court dismissed both these petitions.

4. It is further claimed by the Petitioner that inspite of issuance of first charge-sheet, one more charge-sheet came to be issued against him and the said charge-sheet was received by him only after paper publication. Petitioner had sought documents including CCTV footage for submitting his reply. However, the said documents were not provided to him. Since the charge-sheet contained the incident which was covered by Crime No. 487/2016, he filed petition bearing Writ Petition No. 10857/2018 challenging the validity of the charge-sheet. This Court, however, by judgment dated

07.01.2019 dismissed the petition. It is claimed by the Petitioner that without giving an opportunity of hearing, the Enquiry Officer passed order rejecting adjournment application of the Petitioner and proceeded to decide the enquiry ex-parte in utter disregard to the principles of natural justice. In Writ Petition No. 10857/2018, enquiry was allowed to be continued however the management was directed not to pass final order till decision of the petition. Enquiry thereafter was concluded and the Petitioner was issued with final show cause notice. Petitioner did not submit any reply to the show cause notice due to pendency of writ petition and challenge to the validity of the enquiry. After the writ petition came to be disposed of, Petitioner was issued with order of dismissal. This order of dismissal was challenged before the University and College Tribunal in Appeal No. BAMU-3/2019 unsuccessfully. Hence, this petition.

5. Learned counsel for Petitioner submits that the Petitioner was working as Principal and that show cause notice and charge-sheet came to be issued against him in the capacity of Assistant Professor, and such issuance of show cause notice is not in accordance with law. He drew attention of the Court to various factual aspects involving resignation of ex-Principal Mr. Khan.

According to him, Mr. Khan had grudge against him and hence he lodged First Information Report which resulted into arrest of the Petitioner. It is his submission that after he was released on bail and was permitted to work as Principal, the same was not appreciated by others and hence they pressurised the management to take action against the Petitioner. It is his submission that a fabricated document in the form of his resignation was brought on record and hence after ascertaining correctness thereof, Petitioner lodged First Information Report against the management and Chairman of the society. It is his submission that owing to the said First Information Report, action was initiated against him. A grievance is made on behalf of the Petitioner that Petitioner had sought relevant documents from the management in order to enable him to respond to the charge-sheet but those documents were not provided. It is his further submission that the Enquiry Officer in undue haste proceeded with the enquiry and completed the same within a period of three to four dates of hearing. It is his submission that once application is made by the Petitioner seeking adjournment owing to the pendency of the petition, it was obligatory on the part of the Enquiry Officer to grant time. Since the same has not been done, principles of natural justice are compromised. It is his submission

by referring to the proceeding of the enquiry that the witnesses examined have not proved the documents and inspite of the same, Enquiry Officer has considered the said document and read them in evidence. It is his submission that in absence of any proof of the said document including CCTV footage, which was relied upon by the Enquiry Officer to hold Petitioner guilty, the said document ought not have been referred to and relied upon. It is his submission that the facts which led to the action against him clearly indicate that it is a case of malafide action on the part of the management and for want of any proof, the order of dismissal cannot sustain. It is his submission that in view of Rule 8(11) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, (for short "MCSR"), the Enquiry Officer was duty bound to give an opportunity to the Petitioner for responding to the documents/evidence placed before him. It is his submission by referring to the judgment of the Hon'ble Supreme Court in case of Ministry of Finance and another vs. S. B. Ramesh, **AIR 1998 SC 853**, that in respect of similar rules the Supreme Court has held that even if enquiry proceeded ex-parte the Enquiry Officer was supposed to give an opportunity of explaining the evidence against the delinquent. It is his submission that considering said judgment, the enquiry proceeding and the order of dismissal deserves

to be set aside. This Court has also gone through the written notes of argument filed on behalf of counsel for Petitioner. To support his submissions in respect of non-compliance of principles of natural justice and affording reasonable opportunity to the employee, and other contentions to challenge enquiry and order of dismissal, he placed reliance on following judgments :-

- (i) Khemchand vs. Union of India, AIR 1958 SC 300
(Re- what is reasonable opportunity in departmental enquiry)
- (ii) State of Madhya Pradesh vs. Chintaman Sadashiv
Waishampayan, AIR 1961 SC 1623
(Re- Exhibition of documents without examination of witnesses)
- (iii) Meenglas Tea Estate vs. The Workman, AIR 1963 SC 1719
(Re-Compliance of principles of natural justice)
- (iv) Central Bank of India vs. Prakash Chand Jain
AIR 1969 SC 983.
(Re- Powers of Tribunal to appreciate the evidence in the domestic/departmental enquiries)
- (v) State of Punjab vs. Bhagatram, AIR 1974 SC 2806,
- (vi) Kashinath Dixita vs. Union of India, AIR 1986 SC 2118,
Sawai Singh vs. State of Rajasthan, AIR 1986 SC 995.

Union of India vs. Mohd. Ramzan Khan, AIR 1991 SC 471
(Re-compliance of principles of natural justice, reasonable opportunities, supply of documents, vagueness of charges etc.)

- (vii) State of U.P. vs. Shatrughan Lal, AIR 1998 SC 3038.
(Re-non-supply of copies of documents)
- (viii) M. V. Bijlani vs. Union of India, AIR 2006 SC 3475,
Roop Singh Negi vs. Punjab National Bank,
AIR 2008 SC (Supp) 921.
(Re-vagueness of charge-sheet and its effect on the outcome of enquiry)
- (ix) State of Uttaranchal vs. Kharaksingh, 2008 AIR SCW 7507
(Re-non-supply of documents and non examination of witnesses in presence of delinquent -effect)
- (x) Jagdamba Prasad Shukla vs. State of UP, AIR 2000 SC 2806
(Re- non-payment of subsistence allowance)
- (xi) Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya, AIR 2014 SC (supp)121.
(Re- principles applicable for grant or refusal of backwages)
- (xii) Masuood Alam Khan vs. State of Maharashtra & others
2009(5) Mah.L.J. 68

(Re-non compliance of rule of audi alteram partem vitiates enquiry)

(xiii) The Imperial Tobacco Company of India Ltd. vs. Workmen, AIR 1962 SC 1348
(Re-compliance of procedure laid down inspite of withdrawal by delinquent from enquiry)

(xiv) Surat Singh vs. S. R. Bakshi, AIR 1971 Del 133.
(Re-Delinquent's right to seek documents not only relied by Government but also documents necessary for defence)

6. Learned Senior Counsel appearing on behalf of Respondent/Management has drawn attention of the Court to the sequence of events which led to the final action of dismissal of the Petitioner from service. It is his submission that it was the management who had appointed the Petitioner as Principal in the year 2016. Further his arrest in connection with crime registered by a person not connected with the management, has resulted into his suspension. According to him, since there were serious allegations against the Petitioner of extorting money from Mr. Sohail Khan and others, there was no other option for the management but to conduct an enquiry against the Petitioner. It is his submission that the Petitioner was working as a Principal and then Assistant Professor

and in that capacity if he commits such acts on the premises of the college, the same could not have been ignored by the management. It is his submission by referring to the relevant rules that Rule 8(7) mandates personal presence of the employee before the Enquiry Officer and Rule 8(22) deals with enquiry to be proceeded ex-parte. It is his submission that once the Petitioner fails to avail opportunity of appearing in the enquiry to resist the proceeding of enquiry, it is not open for him to make any grievance with regard to non-compliance of principles of natural justice. To support his submission, he placed reliance on following judgments :-

- (i) State Bank of India and others vs. Atindra nath Bhattacharyya and another, (2019) 8 Supreme Court Cases 134.
- (ii) Bank of India vs. Apurba Kumar Saha, (1994) 2 Supreme Court Cases 615.
- (iii) Board of Directors, Himachal Pradesh Transport Corporation and another vs. K. C. Rahi, (2008) 11 Supreme Court Cases 502
- (iv) Smt. AnupamaKishor Khanolkar vs. Abhinav Education Society and others, 2017(1) ALL MR 701.
- (v) Major U. R. Bhatt vs. Union of India, AIR 1962 SC 1344

It is his further submission that Petitioner was fully aware of initiation of enquiry proceeding so also continuation thereof. It is his submission that inspite of pendency of Writ Petition Nos.

3110/2017 and 10857/2018, Petitioner made no attempt to participate in the enquiry and as such the Enquiry Officer was justified in proceeding ex-parte against Petitioner. He further pointed out that even after enquiry report was submitted to the Petitioner alongwith final show cause notice, he chose not to respond/reply to the said show cause notice. This indicates that Petitioner had no intention to oppose the action proposed by the management against him. Learned Senior Counsel took exception to the part of the judgment of the Tribunal contending that it was not open for the Tribunal to cause interference in the findings of the Enquiry Officer by re-appreciating the evidence. According to him, this is wholly impermissible in law. To seek dismissal of petition, he placed reliance on following judgments :-

- (i) Shashi Bhushan Prasad vs. Inspector General, Central Industrial Security Force and others
(2019) 7 Supreme Court Cases 797
- (ii) Adinath s/o Narayan Jadhav vs. Chief General Manager, State Bank of India and others
2012(5) ALL MR 108
- (iii) Kendriya Vidyalaya Sangathan and another vs. Satbir Singh Mahla
2008(3) ALL MR 850
- (iv) State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya
(2011) 4 Supreme Court Cases 584.

Finally, it is argued that since charges have been proved in the enquiry and the same being serious in nature, action of dismissal of Petitioner from service is not disproportionate to the charges levelled and proved against him. Thus, according to him, this is not a case to cause any interference in the impugned order.

7. At the outset, it needs to be seen as to whether there is any substance in the contention of the Petitioner that the action of dismissal from service by management is malafide as alleged. There is no dispute about the fact that Petitioner has been working as Principal since 2005 and after resignation of Mr. Sohail Khan, ex-Principal of the college, Petitioner came to be appointed as Principal. As per the case of Petitioner himself, pursuant to the registration of crime against him and his arrest, he came to be suspended. But the said suspension was revoked and he was permitted to work. These facts clearly indicate that there was no reason for the management to take any malafide action against the Petitioner. At the same time, it cannot be ignored that there were allegations against the Petitioner of extorting money from the colleagues as well as ex-Principal in the premises of the college. Thus, it was not possible for the

management to ignore the same and not to take any action against the Petitioner in this regard. In this backdrop, charge-sheet came to be issued against the Petitioner on 05.01.2017. The articles of charges levelled against him clearly indicate that the charges were absolutely clear to communicate to the Petitioner that there is allegation against him that First Information Report came to be lodged against him in respect of offence of extortion and demand of Rs. 25,00,000/-. There was also allegation against him of blackmailing and threatening Mr. Khan. There was further specific case sought to be made out that pursuant to the said blackmailing, he obtained two cheques of Rs. 2,00,000/- and Rs. 3,00,000/- each so also there was withdrawal of money from the account of Mr. Khan from ATM in the college campus. There was also allegation against him that he forced other employees to act on his instructions to withdraw amount from account of Mr. Khan. There was a supplementary charge-sheet dated 03.07.2018 alleging against him that offence was registered against the management on false grounds so also without any authority he entered the college premises while under suspension in order to take away record from the college.

8. Petitioner filed Writ Petition No. 3110/2017 alleging against management that the management has kept him away from the work illegally. Division Bench of this Court by judgment dated 26.04.2018 had issued following directions :-

A) The respondents shall pay subsistence allowance to the petitioner as per rules from the date of suspension till date within four weeks and shall regularly pay the subsistence allowance.

B) The respondents shall conclude the departmental inquiry within six (6) months.

C) The petitioner shall co-operate in conclusion of the departmental inquiry.

D) In case the departmental inquiry is not concluded within six (6) months upon the petitioner co-operating the departmental inquiry, then the order of suspension shall stand revoked by culmination of six (6) months from the date of this order.

E) The aforesaid order is passed hoping that petitioner would co-operate in the departmental inquiry.

F) In case the petitioner does not co-operate in the departmental inquiry, then the respondents are at liberty to take appropriate steps in the matter.

Above order clearly indicates that the Petitioner was directed to cooperate in the conclusion of departmental enquiry and if he does not cooperate, it was open for the respondent/management to take appropriate steps in the matter. Similarly, a direction was issued that in case departmental enquiry is not concluded within period of six months, the order of suspension shall stand revoked. This order was taken exception to by Petitioner as well as Respondent/management unsuccessfully before the Supreme Court. This order therefore, holds field and in case Petitioner does not cooperate, option was given to the Respondent/management to take appropriate steps in the matter.

9. There is one more proceeding filed by the Petitioner against management being Writ Petition No. 10857/2018. Division Bench of this Court by judgment dated 04.01.2019 decided said petition by observing that enquiry has been concluded on 06.10.2018 and hence petition filed to seek quashment of charge-sheet came to be dismissed. Division Bench of this Court has made observations in

this judgment which are relevant for decision of this case and the same are reproduced as under :-

12. So far application of Uniform Statutes is concerned, the said Statute is not yet brought into force and therefore, the submission of senior counsel appearing for the Petitioner that enquiry is not conducted under the said Uniform Statutes and therefore the same is vitiated, is devoid of any substance. Respondent Nos. 1 to 3 have filed the additional affidavit and stated that, despite of service of noticed by Registered Post A.D., which were unclaimed and thereafter despite of publishing the notice in the newspaper, the Petitioner did not remain present, therefore the enquiry officer passed an order proceeding the enquiry ex-parte according to the rules. It is further submitted that witnesses were examined on behalf of the Respondent Management and the enquiry has been concluded on 6th October, 2018, by the enquiry officer. Therefore, keeping in view the fact that the enquiry has been complete, there is no question of entertaining the prayer of the Petitioner to quash the charge-sheet or to interfere in such proceedings, and particularly keeping in view the directions issued by the Division Bench (CORAM : S. V. GANGAPURWALA AND A. M. DHAVALA, JJ.) in Writ Petition No. 3110 of 2017.

The above observations indicate that the Petitioner has sought to take plea before this Court about conduct of enquiry as per Uniform Statutes. This contention of Petitioner was however rejected. This Court has also taken note of affidavit filed by Respondent/management indicating that despite of service of notice by registered AD post, they were unclaimed and inspite of publication of notice in the newspaper, the Petitioner did not remain present in the enquiry and therefore, the same proceeded ex-parte as per the rules. Thus, Division Bench of this Court, after taking into consideration relevant aspects of conducting enquiry, non-appearance of Petitioner in the enquiry, dismissed the petition.

10. Now there is no dispute about the fact that MCSR has application to the present case and the parties are governed by the said rules. It is the case of the Petitioner that in view of Rule 8(11) of MCSR, the enquiry authority was obligated to given an opportunity to the delinquent/employee to inspect the documents placed on record and 10 days notice be given to him. It would be appropriate to refer to the said rule which reads thus :-

Rule 8(11) : The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or admits to plead, require the

Presenting Officer to produce the evidence by which he proposes to prove articles of charge and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence, -

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in sub-rule (3) of this rule,

(ii) submit a list of witnesses to be examined on his behalf,

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3) of this rule, indicating the relevance of such documents.

11. Learned counsel for Petitioner argued that irrespective of the fact that appearance of Petitioner in the enquiry or not, the said rule is mandatory to be followed. To support his submission, he made reference to judgment of Supreme Court in case of Ministry of Finance (supra). Perusal of the said judgment indicates that order of

the Central Administrative Tribunal of setting aside dismissal on discarding departmental enquiry was challenged before the Supreme Court. Pertinently, Tribunal therein did find dearth of evidence to bring home charge of misconduct of unbecoming of Government servant. In the said judgment, the Supreme Court has re-produced observations made by the Tribunal in paragraph No. 12. In the light of the material placed before it, the Supreme Court did not find it to be a case of interference in the said judgment. It is thus clear that the Supreme Court in the said judgment has affirmed the findings rendered by the Tribunal in view of material placed before it and considering the facts and circumstances of the said case.

12. As far as present petition is concerned, since MCSR has application thereto, for imposing penalty, Rule 8 would apply. It would be necessary to take note of relevant portion of Rule 8 which reads thus :-

Rule 8 : Procedure for imposing major penalties -

x x x

(7) The Government servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by the inquiring authority of the articles of charge and the statement of the imputations of misconduct or

misbehaviour, as the inquiring authority may, by a notice in writing, specify, in this behalf, (or within such further time), not exceeding ten days, as the inquiring authority may allow.

x x x

(22) If the Government servant to whom a copy of the articles of charge has been delivered, does not submit a written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex-parte.

x x x

13. A bare perusal of the above rules clearly mandate the Government servant to appear in person before the Enquiry Authority on such date and at such time within 10 working days from receipt of statement of imputation. Sub-rule 22 states that the enquiry be proceeded ex-parte in case the Government servant does not submit written submission before the specified date or does not appear in person before the Enquiry Authority. Here in this case, admittedly, Petitioner has never appeared before the Enquiry Authority. Moreover, this is not a case wherein the Petitioner had no knowledge about continuation of enquiry and stages thereof. Petitioner was pursuing Writ Petition Nos. 3110/2017 and

10587/2018 and the orders passed by Division Bench of this Court clearly indicate that knowledge can be attributed to Petitioner of the enquiry proceeding. It is thus clear that inspite of having full knowledge of the pendency of enquiry proceeding, he chose not to appear therein.

14. As Rule 8(7) mandates personal appearance before the Enquiry Authority and on failure thereto it is open for the Enquiry Officer to conduct ex-parte enquiry against Petitioner, the question of permitting Petitioner to make grievance in respect of non-compliance of principles of natural justice etc. does not arise.

15. At this stage, it would be material to take note of Sub-rule 11 which is reproduced above. This rule cannot be read in isolation. This rule is preceded by Sub-rules 9 and 10 which read thus :-

Rule 8 (9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence, or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has nay defence to make and if he pleads guilty to any of the articles of charge, the

inquiring authority shall record the plea, sign the record and obtain signature of the Government servant thereon.

Rule 8(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government servant pleads guilty.

16. Sub-rule 11 therefore contemplates that when a Government servant submits written statement and appears before the Enquiry Authority and he fails to appear on the subsequent dates of hearing before the Enquiry Authority, the Enquiry Authority is mandatorily required to give an opportunity to the employee to inspect the documents which are placed on record. This rule however, would not apply in case enquiry is proceeded ex-parte. If the contention of learned counsel for Petitioner is accepted that Rule 11 would have application even in case of enquiry being proceeded ex-parte, it will make sub-rule 7 read with sub-rule 22 redundant. No interpretation of the rule can be given in the manner to make the rule redundant. Any such interpretation would perpetuate the unholy practice of not appearing in the enquiry and then to raise cry about non compliance of rules and principles of natural justice. Since the Petitioner on his own accord has chosen not to cause

appearance in the Enquiry, he could not be permitted to make grievance later in respect of non-compliance of sub-rule 11 which otherwise also has no application to the present case once enquiry proceeds *exparte* against a delinquent.

17. Coming to the merit of enquiry proceeding conducted against the Petitioner, record placed before this Court indicates that in the enquiry in all nine witnesses were examined. These witnesses not only made oral statements but also referred to the relevant documents in support of their statements. It is argued on behalf of the Petitioner that the said statements are not made on oath and therefore cannot be relied upon. In this regard, it is pertinent to note that the procedure of enquiry as provided by the relevant rules do not contemplate statement of any person to be recorded on oath. A specific query was made to learned counsel for Petitioner in order to substantiate his submission that the Enquiry Officer had power to administer oath. However, nothing in this regard is brought to notice of this Court from side of Petitioner. Needless to say that the strict rules of evidence as strict proof of charges like criminal proceedings are not applicable to the proceeding of departmental enquiry. The witnesses examined on behalf of the management were not cross

examined by the Petitioner since he failed to appear in the enquiry. Evidence of these witnesses therefore has gone unchallenged. It was always open for the Enquiry Officer to place reliance on such uncontroverted evidence of witnesses.

18. Though it is sought to be contended by learned counsel for Petitioner that the documents sought to be relied in the enquiry to support charges were not provided to the Petitioner, however, the Petitioner himself has chosen not to participate in the enquiry and once there is such decision as it appears from record and observed hereinabove, it is not permissible for the Petitioner to now claim that there is violation of principles of natural justice. In this regard reference can be made to the judgments of Supreme Court in cases of State Bank of India and others vs. Atindra nath Bhattacharyya (supra), Bank of India vs. Apurba Kumar Saha (supra), Board of Directors, Himachal Pradesh Transport Corporation and another vs. K. C. Rahi (supra), Smt. AnupamaKishor Khanolkar vs. Abhinav Education Society and others (supra) and Major U. R. Bhatt vs. Union of India (supra). The sum and substance of these judgments indicates that when an employee fails to take part in the proceeding and as the Enquiry Officer is not bound by the strict rules of

evidence, it would not be open for the employee to raise plea with regard to non-compliance of principles of natural justice.

19. In the facts of the case, there is reason to believe that inspite of knowledge of Petitioner of the enquiry proceeding, he avoided to appear in the enquiry and this has resulted into non challenging the version of the witnesses. Once the evidence of these witnesses has gone unchallenged, the Enquiry Officer was justified in considering the same for the purpose of holding Petitioner guilty of mis-conduct charged against him.

20. The learned Tribunal has gone into correctness of the findings recorded by the Enquiry Officer by referring to the evidence on record and held that one charge has not been proved against the Petitioner. The law on the point of power of the Tribunal to cause interference in the findings recorded during enquiry proceeding is fairly settled to say that it is not open for the Tribunal to re-appreciate the evidence and record any fresh finding of fact. No doubt, if the findings recorded by the Enquiry Officer are without any evidence, it is open for the Tribunal to cause interference therein. Here in this case, however, since the findings of Enquiry Officer on

this charge are not sans evidence, interference caused by the Tribunal in respect of proof of one of the charges against the Petitioner is not justified. This however, would have no bearing on the final decision of dismissal of Petitioner or even outcome of the present petition for the reason that the charge in respect of extortion of money by Petitioner from employees of the college has been duly established. The Lecturer or Principal of college is expected to set example for the students in shaping up their own lives. On the contrary, Petitioner here being teacher has engaged himself on the premises of the college of acts like extortion, threats etc. Thus, in this case, no linient view can be taken against the Petitioner. Once serious/grave charge is proved, such sole mis-conduct would become sufficient to attract punishment of dismissal from service. The punishment of dismissal of Petitioner therefore cannot be considered as disproportionate to the charges proved against him.

21. In the result, this Court does not find any merit in the petition. Petition stands dismissed.

(R. M. JOSHI)
Judge