



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 927 OF 2018

Shri Gajanan Shikshan Prasarak

Mandal & another

.. Petitioners

versus

Swami Ramanand Teerth Marathwada

University & others

.. Respondents

Mr. R. N. Dhorde, Senior Counsel instructed by Mr. V. R. Dhorde,
Advocate for Petitioner.

Mr. S. G. Sangle, Addl. G. P. for the State.

Mr. V. P. Latange, Advocate for Respondent No. 1.

Mr. V. D. Sapkal, Senior Counsel instructed by Mr. M. P. Tripathi,
Advocate for Respondent No. 3.

WITH

WRIT PETITION NO. 5913 OF 2018

Satyanarayan Gangabisanji Sarda

.. Petitioner

versus

Shri Gajanan Shikshan Prasarak Mandal

& others

.. Respondents

Mr. V. D. Sapkal, Senior Counsel instructed by Mr. M. P. Tripathi,
Advocate for the Petitioner.

Mr. S. G. Sangle, Addl. G. P. for the State.

Mr. R. N. Dhorde, Senior Counsel instructed by Mr. V. R. Dhorde,
Advocate for Respondent No. 1.

Mr. V. P. Latange, Advocate for Respondent No. 3.

CORAM : R. M. JOSHI, J.

RESERVED ON : 8th SEPTEMBER, 2025.

PRONOUNCED ON : 24th SEPTEMBER, 2025.

PER COURT :

1. Since both these Petitions raise challenge to order dated 14.11.2017 passed by the University and College Tribunal, Aurangabad in Appeal No. SRTMU-03/2015, they are heard and decided by common judgment, by consent of both sides.

2. Facts which led to filing of these Petitions are narrated in brief as under :-

Satyanarayan Sarda, Petitioner in Writ Petition No. 5913/2018 and Respondent No. 3 in Writ Petition No. 927/2018 (for short 'the employee') was employed as Assistant Professor in Commerce in the year 2005 in Toshniwal Arts, Commerce and Science College, Sengaon (for short 'the college') run by Shri Gajanan Shikshan Prasarak Mandal, Yeldari Camp, Tq. Jintur (for short 'the trust'). In the year 2009, he was detected with tongue cancer and had undergone chemotherapy and radiation treatment in November 2010. After submitting fitness certificate by competent Medical Officer, he resumed his duties. On 10.04.2014, he made representation to the Principal of the college alleging certain illegalities, mis-appropriation of funds and corruption by the management and college authorities. He had also given an ultimatum of fast untill death. The University appointed a

Committee to hold preliminary enquiry and the Committee submitted its report to the University observing certain illegalities at the hands of the Trust and the College. The Sub-Divisional Officer, Hingoli, recommended criminal action against the Principal of the College. The Trust and the College suspended the Petitioner on the allegations of mis-conduct, disobeying orders etc. After suspension, preliminary enquiry was conducted and the committee submitted its report recommending major punishment of termination. The Trust had appointed Advocate Shri G. S. Baj as Enquiry Officer. The Enquiry Officer proceeded with the enquiry and submitted report holding the employee guilty for the charges levelled against him. The Respondent, after issuing show-cause notice for dismissal of service in favour of the employee, dismissed him from service. The dismissal order came to be challenged before the University and College Tribunal. The Tribunal partly allowed the appeal filed by the employee by setting aside the enquiry report along with dismissal order and directed conduct of enquiry afresh. It however, did not grant re-instatement with continuity and backwages. Hence, these Petitions.

3. Heard learned Senior Counsel for both sides. Perused Petitions, reply, documents and record of Tribunal.

4. Learned Senior Counsel for Petitioner submits that the Tribunal has committed error in not taking into consideration the fact that the University had granted permission by letter dated 09.10.2014 to hold departmental enquiry against the delinquent/teacher. It is his further submission that the Tribunal ought not to have gone into the issue as to the correctness of the said permission granted by the University. It is his further submission that the relevant statute applicable to the employee requires charge-sheet to be signed by the Enquiry Officer. He drew attention of the Court to Form Appendix IX indicating that the same is to be signed by the Enquiry Officer. It is his submission that in view of the peculiarity of the provisions of the statute, the judgment relied by other side would have no application to the present case. It is his further contention that though it is sought to be alleged that the charge-sheet is not issued along with the statement of allegations as per the statute 228(2)(3), bare perusal of the charge-sheet indicates that the statement of imputation forms part of the charge-sheet. It is his submission that in view of non-communication of the statement

of imputation independently or otherwise the Tribunal has erred in holding that there is non-compliance of the relevant statute. He drew attention of the Court to the said charge-sheet wherein the names of witnesses are also duly mentioned. On the point of non-supply of documents, it is contended that as per the statute it is the duty of the employee to show the relevancy of the document and that the employee has failed to show any relevancy thereof. In any case, it is his submission that the said documents have no relevance to the charges levelled against the delinquent/teacher. He drew attention of the Court to the proceedings of the enquiry wherein it was clearly accepted by the delinquent/teacher that he has received all the documents and has no grievance in respect of conduct of enquiry. Reference is made to the statement made therein indicating receipt of enquiry proceedings along with statements recorded.

5. Insofar as non-supply of statement of witnesses prior to three days of examination is concerned, it is his contention that the employer has examined 5 witnesses and they were duly cross-examined by the delinquent/teacher. It is his submission that the delinquent has chosen not to appoint any representative and to defend his own case in the departmental enquiry. It is his

submission that the departmental enquiry was video-graphed and this indicates transparency maintained in conduct of the enquiry. It is his submission that at no point of time before the Enquiry Officer any grievance is made by the delinquent/teacher in respect of non-compliance of principles of natural justice or he being denied any opportunity of hearing.

6. On the point of an opportunity to explain notice imposing punishing is concerned, it is his submission that a resolution is passed and on the basis of said resolution the decision of imposition of punishment was taken. By relying upon the judgment of the Hon'ble Supreme Court in case of Union of India vs. K. Rajappa Menon, **1970 AIR 748**, it is argued that, the disciplinary authority is not required to record independent findings in respect of the findings recorded by the Enquiry Officer and confirmation of the said findings is sufficient compliance. It is his submission that notice was duly issued upon the delinquent/teacher and inspite of the same, he failed to reply to the said notice. Thus, according to him, once show cause notice is not replied, the delinquent/teacher is precluded from making grievance in respect of non-compliance of the relevant statute. It is also sought to be argued that there is no substance in

the grievance made by the delinquent with regard to obtainment of minority status by the Petitioner/Institution.

7. In support of his submissions, reliance is placed on following judgments :-

- (i) State Bank of India vs. Bidyut Kumar Mitra & others
AIR 2011 SC (Supp) 798
(In case relevancy of documents is not shown, non requisitioning of document does not render enquiry void and there is no presumption of prejudice having been caused to delinquent by the same)
- (ii) Syed Rahimuddin vs. Director General, CSIR and others,
(2001) 9 SCC 575
(If no grievance is made during course of enquiry, no grievance permissible at subsequent stage.)
- (iii) State of U.P. and others vs. Ramesh Chandra Mangalik
(2002) 3 SCC 443
(Non consideration of documents by Enquiry Officer of those not provided to the delinquent, no violation of principles of natural justice.)
- (iv) Syndicate Bank and others vs. Venkatesh Gururao Kurati
(2006) 3 SCC 150
(Non-supply of documents – not relied by prosecution – neither prejudicial to delinquent so as to violate principles of natural justice.)
- (v) M. H. Devendrappa vs. The Karnataka State Small Industries Development Corporation.
AIR 1998 SC 1064
(On the point of mis-conduct detrimental to the interest and prestige of Corporation (employer))

- (vi) Biman Basu vs. Kallol Guha Thakurta and another
(2010) 8 SCC 673
(Paragraph no. 32 to support submissions regarding
importance of schedule form/appendix)
- (vii) Kuldeep Singh vs. State of Punjab and others
AIR 1997 SC 79
- (viii) State Bank of Patiala and others vs. S. K. Sharma
(1996) 3 SCC 364
(Regulation regarding furnishing copies of statement of
witnesses within three days is a procedural provision and not
substantial or mandatory in nature. In case no grievance is made in
enquiry and no prejudice is shown to have been caused- no
interference.)

8. Learned Senior Counsel on behalf of the Respondent/employee at the outset has sought to contend that charge-sheet could not have been issued by the Enquiry Officer. According to him, statute 228(3) mandates the disciplinary authority to deliver or cause to deliver to the delinquent in the form of copies of charges and statement of imputation of mis-conduct. It is his submission that the statute requires list of witnesses to be appended to the same, which has not been done in this case. It is his submission that the disciplinary authority could not have appointed the Enquiry Officer unless charge-sheet was issued and an opportunity of being heard was granted to the Petitioner. It is his

submission that by doing so the Petitioner has been denied chance to point out to the management that no enquiry is contemplated against him.

9. On the point of show cause notice, it is sought to be argued that the statute 231 requires the management to furnish to the teacher copy of enquiry report and his findings on each article of charge expressly stating whether he agrees with the findings of Enquiry Officer or otherwise. It is his submission that the resolution now sought to be relied upon was neither referred in the show cause notice nor it was placed before the Tribunal. It is his submission that unless express finding is recorded by the disciplinary authority agreeing findings of the Enquiry Officer, it cannot be said that there is compliance of statute 231(5)(i) & (ii). It is his submission that in any case, show cause notice was mandatory to be issued to the teacher before penalty is executed. According to him, these statutory provisions are being not complied. It is his further submission that once the mandatory provisions are not complied, the delinquent is not required to show any prejudice being caused to him independently. To support his submissions, he placed reliance on following judgments :-

- (i) State of Uttar Pradesh vs. Amitabh Thakur
2017 LAB.I.C. (NOC) 45 (ALL)
(Appointment of Enquiry Officer before any written statement of defence could be filed is contrary to Rule 8(6)(a) of 1969 Rules read with Circular dated 25.11.1981)
- (ii) State Bank of Punjab vs. V. Khanna
AIR 201 SC 343
(Announcement of Enquiry Officer even before receipt of reply of delinquent/employee to the charge-sheet shows bias.)
- (iii) State of Punjab vs. V. K. Khanna
2000 DGLS(Soft)1698
(Regarding malice or malafide or motive involved in the matter of issue of charge-sheet or the concerned authority was biased that the enquiry would be of mere parciple show.)
- (iv) S. Pratap Singh vs. State of Punjab
1964(4) SCR 733
(Commencement of conduct of enquiry contrary to the rules)
- (v) Govt. of A. P. vs. A. Majeed and another
2005 CJ(AP) 329
(Disciplinary Authority shall deliver or cause to deliver to the Government Servant copy of charge, statement of mutation of misconduct and the witnesses by which each article is proposed to be substantiated.)
- (vi) M.V. Bijalani vs. Union of India
2006 DGLS (Soft) 277
(framing of appropriate charge and proof thereof.)
- (vii) Union of India and others vs. B. V. Gopinath
2013 DGLS (Soft) 711
(Departmental Enquiry – misconduct- absence of proof of charge memo by Finance Minister and consequence thereof.)

- (viii) Kuldeep Singh vs. Commissioner of Police
1998 DGLS (Soft) 1163
(Findings recorded in the domestic enquiry if not supported by any evidence, can be characterised as perverse)
- (ix) State of U.P. and others vs. Saroj Kumar Sinha
2010 DGLS (soft) 90
(Removal from service without observing principles of natural justice and relevant rules not tenable)
- (x) Nandkumr Mahadeo Dengane vs. Bhavika Vidya P.M.
2008(4) Bom.C.R. 319
(proportionality of punishment)
- (xi) Vidya Vikam S. P. Mandal and another v. Education Officer's and another
2007(3) Bom.C.R. 281
(Under MEPS Act, non-compliance of relevant rules)
- (xii) State of Punjab and others vs. Dr. Harbhajan Greasy
1996(9) SCC 322.
(In case of enquiry held to be not proper, the proper course is to remit back for fresh enquiry from the stage fault was committed.)
- (xiii) Public Education Society vs. Deputy Director of Education
(Writ Petition No. 3709/2009)
(In case of enquiry held to be not proper, the proper course is to remit back for fresh enquiry from the stage fault was committed.)

10. The issue involved before the Tribunal was whether the enquiry conducted against the teacher is fair and proper and is in consonance with the Statute applicable. The correctness or otherwise of findings recorded by Tribunal is considered on

touchstone of the facts, provisions of statute and precedents cited by both sides.

11. At the outset, it needs to be recorded that for the purpose of conducting a departmental enquiry, permission of the University was necessary and admittedly, such permission has been granted. The permission for conduct of departmental enquiry is preceded by preliminary enquiry conducted by the Institution and pursuant thereto, permission was granted by the University. It would not be open to take exception to said permission granted by the University in view of the fact that such permission would be granted on prima facie appreciation of the material on record. It would be also necessary to record that no undue importance to the preliminary enquiry can be given and certainly not for deciding the fate of the departmental enquiry conducted thereafter. The Tribunal seems to have granted undue importance to the conduct of the preliminary enquiry. The entire purpose of conduct of preliminary enquiry is to get satisfaction that there is sufficient material in order to proceed further in conducting departmental enquiry before initiating any action against the teacher.

12. In this backdrop, initially the President of the Institution was appointed as Enquiry Officer. The teacher took exception to his appointment and hence at the later stage, appointment of a retired District Judge came to be done for the purpose of conducting enquiry. There is no dispute about the fact that the teacher participated fully in the said enquiry without making any grievance in respect of fairness of the enquiry or the authority of the Enquiry Officer.

13. The first contention on merit is with regard to non-issuance of statement of allegations as per Statute 228(2)(3). The said Statute indicates that the statement of allegations is required to be issued along with charge-sheet. The whole purpose of issuance of such statement of allegation is to enable the delinquent to meet with specific allegations and imputations made against him. The question now arises as to whether the statement of allegations must be separately forwarded with the charge-sheet or that it could become a part of the charge-sheet. Perusal of the charge-sheet dated 03.12.2014 issued to the teacher indicates that the statement of imputation forms part thereof. A careful perusal thereof further indicates that the statement of allegations is specifically made in

detail in respect of each charge sought to be framed against the teacher. Thus, the purpose of Statute 228(2)(3) has been achieved substantially. This being a substantial compliance of the provisions, this Court finds no reason to accept the findings recorded by the Tribunal that along with charge-sheet statement of allegations has not been submitted and it would become reason to quash enquiry proceeding.

14. Insofar as the list of witnesses is concerned, no doubt, relevant provisions of the Statute require the management to furnish a list of witnesses who are to be examined to support/prove the charges against the teacher. In the charge-sheet itself, similar to the case of statement of allegations, the names of witnesses are specifically mentioned in the charge-sheet against each charge. It is therefore clear that the management well in advance has intimated the teacher the proposed witnesses to be examined for proving independent charges levelled against him. Needless to say that the whole intention behind intimating to the teacher the names of witnesses is to enable him to defend properly in the course of enquiry and said requirement has been duly fulfilled with in the instant case.

15. One more issue sought to be canvassed by the learned counsel on behalf of the teacher is with regard to the authority of Enquiry Officer to issue charge-sheet. It is contended on behalf of the teacher that as per the relevant Statute the charge-sheet is required to be issued by the management and not by the Enquiry Officer. It would be relevant to take note of the said Statute at this stage which reads thus :-

Statute 228 :-

(1) Whenever the Disciplinary Authority is of the opinion that there are grounds for enquiry into the truth and/or substance of imputation(s) of misconduct on the part of the teacher(s), which may result in major penalty, it may itself enquire into or appoint an Enquiry Officer not below the rank of District Judge; to enquire into the truth thereof. The appointment order of the Enquiry Officer shall be issued in the Form appended in Appendix.

(2) Where it is proposed to hold enquiry against the teacher, the Disciplinary Authority shall draw up or cause to draw up -

(a) the substance of imputation(s) of misconduct into definite and distinct article(s) of charge(s).

(b) a statement of imputation(s) of misconduct in support of each article of charge(s) which shall contain -

- (i) a statement of all relevant facts including any admission or confession by the teacher, and
- (ii) a list of documents by which and a list of witnesses by whom, the article(s) of charge(s) are proposed to be sustained.

16. No doubt, the Statute indicates about issuance of charge-sheet by management against the delinquent/teacher. At the same time, however, the form provided for issuance of charge-sheet cannot be given a complete go by. Appendix IX provides for form of memo of charges. A perusal thereof indicates that the charge-sheet is required to be signed by the Enquiry Officer. From conjoint reading of the Statute and the Form of the charge-sheet, only possible interpretation would be that when the Disciplinary Authority is of opinion that there are grounds for enquiry into the substance of imputations and further decides to appoint Enquiry Officer for that purpose, it would be necessary to make such appointment of Enquiry Officer at that stage itself. The form of charge-sheet indicates that charge-sheet though to be drawn by the Disciplinary Authority, it must be signed by Enquiry Officer. In such circumstances, if the

charge-sheet is signed by the then Enquiry Officer, no fault can be found with the same. In view of this peculiarity in the provision of Statute, it would not be possible to accept the challenge to the enquiry on the ground that charge-sheet is signed by Enquiry Officer.

17. It is relevant to note that earlier President of the Institution was appointed as Enquiry Officer, who signed charge-sheet and on objection being raised to his appointment, retired District Judge came to be appointed to conduct enquiry. There is no case made out by the teacher that on account of charge-sheet being signed by Enquiry Officer any prejudice has been caused to him. Similarly, since there was earlier appointment of President of Institution as Enquiry Officer, no fault could be found in he singing charges.

18. Pertinently, Statute 226 from clause (1) to (17) provides for the sequence in which the different stage are to be followed i.e. from the formation of opinion by Disciplinary Authority to hold an enquiry into the charges/imputations till the conclusion of the enquiry of Enquiry Officer. The stage of appointment of Enquiry Officer arises immediately on formation of opinion by the Disciplinary

Authority to conduct enquiry through an Enquiry Officer and such appointment formality is mandated in view of the form of (1) provided by Statute, requiring it to be signed by Enquiry Officer. Sub-clause (5) of the said Statute reads thus :-

(5) On receipt of written statement of defence and on admission of any or all article(s) of charge(s) by the teacher or on its non-receipt, the Disciplinary Authority may further enquire or cause to enquire into the charge(s) not admitted in the manner as prescribed.

19. Having regard to the stage of enquiry provided herein this case, the said provision could only mean that depending upon the written statement submitted by teacher it may be open for the Disciplinary Authority to make not admitted charges proved by further enquiry. This only enables the Disciplinary Authority to conduct or get conducted the enquiry into the charges not admitted by teacher. It would further mean that in case of admission of charges no further enquiry would be necessary. In case of State of U.P. (supra) Full Bench of Allahabad High Court, was dealing with the provision which permitted dropping of charges after filing of written statement by Delinquent. As reflected in paragraph No. 13 (8.6) of judgment, on receipt of written statement of defence,

Disciplinary Authority may appoint under sub-rule (2) an enquiring authority for purpose of enquiring into articles of charges. In the instant case, the appointment of the Enquiry Officer is not deferred to stage of written statement and in any case it could not be so, in view of charge-sheet being required to be signed by Enquiry Officer. Full Bench in paragraph No. 17 of the judgment in case of State of Punjab vs. V. K. Khanna (supra) considering the said rule went on to observe as under :-

“17. The aforesaid circular quoted herein above, itself goes to indicate that confusion, if any, stand clarified and it is incumbent upon the disciplinary authority to consider the written statement of defence submitted by the officer and thereafter appoint the enquiry officer in the matter. In the present case, it has to be seen that opposite party No. 1 was not available before the disciplinary authority and before any written statement of defence could be submitted by the opposite party No. 1, the enquiry officer has been appointed by the disciplinary authority. This itself goes to indicate that the disciplinary authority has not proceeded in the manner as provided under the Rule and the requirement of Rule 8(6)(a) of 1969 Rules read with circular dated 25.11.1981 stands altered and the safeguard provided to the opposite party No. 1 by way of consideration of his written statement of defence, also stands nullified and his chance of convincing the

disciplinary authority not to proceed in the matter, also stands overruled. Opposite party no. 1 has submitted his written statement of defence on 15.7.2015, but prior to submission of the written statement of defence, enquiry officer has already been appointed by the disciplinary authority. Therefore, the opportunity as contemplated under rule 8(6)(a) stands defeated by virtue of the appointment of the enquiry officer prior to submission of written statement of defence by the opposite party No. 1.

20. Considering totally different stages of appointment of Enquiry Officer, said judgment would have no application to the case in hand. Consequently, it cannot be held that there is non-compliance of Statute in respect of appointment of Enquiry Officer.

21. Coming to the issue of fairness of the actual conduct of enquiry is concerned, when the teacher has raised objection to the appointment of the President of the Institution as Enquiry Officer, the management has changed the Enquiry Officer and has appointed a retired District Judge to conduct the Departmental Enquiry against the teacher. Though it is canvassed that the retired District Judge is not equivalent to the person to the rank of District Judge, however, needless to say that the District Judge while in service cannot be

permitted to take up any other work much less Departmental Enquiry. The requirement of the Statute only to be considered for appointment of a person who was of the cadre of District Judge. Even the Tribunal has rightly not accepted the said contention of the teacher citing provisions of the Maharashtra Civil Service Rules and this Court agrees with the said finding recorded by the Tribunal in that regard.

22. Insofar as the procedure followed in conduct of enquiry is concerned, as per the demand of the teacher the entire enquiry proceeding was videographed though it was not mandatorily required to be done under the Statute. Perusal of the record of enquiry clearly indicates that at all stages of the enquiry appropriate opportunity of hearing was given to the teacher. Here in this case, the teacher has cross-examined all the witnesses of the management and was provided with relevant documents. At no stage of enquiry any grievance was made by him. On the contrary, the record of enquiry indicates that rules of natural justice were adhered to. In any case, it was necessary for teacher to show non-compliance during enquiry itself, so the same could have been remedied. Since, no such occasion arose, there is no protest recorded by him.

23. As far as the issue raised on behalf of the teacher with regard to non-providing of the documents sought from the management is concerned, it would be relevant to take note of the judgment of the Hon'ble Supreme Court in case of State Bank of India vs. Bidyut Kumar Misra (supra) which deals with the issue with regard to the effect of non-requisitioning of the documents. The law on the point is settled to say that in case relevancy of the documents is not shown, non-requisitioning of the documents does not render the enquiry void. Similarly, if no grievance is made during the course of enquiry, no grievance in this regard is permissible to be raised at the subsequent stage. Keeping in mind the law settled by the Supreme Court in this regard, the issue sought to be raised is considered.

24. It is contended on behalf of the teacher that certain documents which were sought were not produced and this leads to setting aside of the enquiry conducted against him. Insofar as those documents are concerned, not only before the Enquiry Officer in the Departmental Enquiry but even before this Court the teacher was unable to substantiate relevancy of the said documents in respect of the enquiry conducted against him. Mere non-supply of the copies of

the documents would not lead to the conclusion that the enquiry conducted against him is not fair and proper and what is required to be shown is that any prejudice has been caused to him. Since the documents in question were not relevant for decision of the enquiry and for proof/dis-proof of the charges against the teacher, non-supply of the said documents is not consequence on the fairness of the enquiry.

25. At this stage, it would be relevant to take note of certain portions of the proceeding conducted by the Enquiry Officer which more than clearly substantiate that at all stages of the enquiry it was ascertained from the teacher that due procedure has been followed and complete opportunity of hearing has been provided to the teacher. Some of the roznamas reflect following :-

Enquiry dated 31.01.2015

Clause No. 4 CSE has been asked whether he has received the copies of the all these documents already. He replies in the affirmative. However, he states that the copies of said documents are not attested or certified by the management. The objection taken by the CSE is valid & in order to avoid any mischief, confusion, ambiguity it is directed to the MR to certify all such documents under his signature & seal of the Institution. CSE shall produce the

copies of all such documents before the MR of any time before the next date & MR shall certify the same so that no adjournment shall be claimed by any party on the next date. They shall coordinate in between them about date & time.

Q. 1 Whether you have received the form of charges issued against you him along with the necessary documents annexed therewith i.e. exhibit M3 Page 1 to 17 & documents at page 1 to 83 ?

Ans : Yes, I have received all the said documents & the form of charges.

Q. 2 Do you admit all the charges or any of the charges of misconduct levied against you by the management ?

Ans : I do not admit any of the charge against me. I deny all the charges.

Q. 3 Do you want to say at this stage anything ?

Ans : I have given all my say in Exhibit C-1.

Q. 4 Do you want to engage any defence representative or the lawyer to defend yourself ?

Ans : No. I will defend myself.

Though no appointed defence representative, Enquiry Officer allowed son of teacher to assist him in sitting No. 2 of enquiry.

Endorsements made at the end of each sitting of enquiry indicate that both sides were provided with the recordings forthwith

Request of time for further cross examination of witness by teacher was granted (sitting No. 3)

Sitting No. 5 MR is further directed to ensure that on or before the next date of documents agreed to be produced by witnesses are produced by MR. Copies of the same shall be served to CSE in advance.

Sitting No. 6 : By EO to MR: Whether the documents you were to file today have been brought for producing the same in the enquiry & whether the copies of the same are already supplied to CSE as per directions given on the last date.

Sitting No. 9 : By EO to both the parties : Do you want to make any submissions about any grievance or about any opportunity required by you further more before the arguments in writing are submitted & oral submissions are heard.

26. The conduct of the enquiry as done by the retired District Judge more than sufficiently demonstrate that the principles of

natural justice were duly complied with and every possible opportunity of defence has been provided to the teacher. In such circumstances, it cannot be held that the enquiry conducted against the teacher is not fair and proper requiring directions of conduct of enquiry denovo. This Court, therefore, finds no fault in the conduct of enquiry by Enquiry Officer and upto this stage the enquiry is held to be fair and proper, requiring no interference therein.

27. Statute 231 requires the management to furnish to the teacher copy of enquiry report and its findings on each article of charge expressly stating whether he agrees with the findings of Enquiry Officer or otherwise. In this regard, it is contended on behalf of the teacher that the show cause notice does not indicate any resolution being passed by the Chairman in respect of accepting the report of the Enquiry Officer. At this stage, it would be relevant to refer to Statute 231 which reads thus :-

Statute 231 :-

(1) The Disciplinary Authority, shall consider the report and record his findings on each charge.

Action on Enquiry Report :

(2) The Disciplinary Authority, himself not being the Enquiry Officer, shall consider the enquiry report

and if he disagrees with the Enquiry Officer on any article(s) of charge(s), he shall record its reasons for such disagreement and refer the case back to the Enquiry Officer for further enquiry and report. The Enquiry Officer shall thereon proceed to hold further enquiry according to the provisions of the preceding Statutes.

(3) The Disciplinary authority, having regard to the findings on the charges, comes to the decision that no penalty be imposed or that the teacher be exonerated, it shall so order.

(4) If the Disciplinary Authority, having regard to the findings, comes to the conclusion that any of the minor penalties be imposed on the teacher, it shall notwithstanding anything contained in these Statutes, determine what penalty shall be imposed, it shall so order. The order should be issued in the form appended.

(5)(a) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, comes to the conclusion that any of the major penalties be imposed on the teacher, he shall

(i) furnish to the teacher, a copy of the Enquiry Report and his findings on all or any of the articles of

charge, expressly stating whether he agrees with the findings of the Enquiry Officer or otherwise, together with brief reasons for his disagreement, if any; and

(ii) give to the teacher a notice in the form appended, stating the penalty proposed to be imposed on him by calling upon him, to submit within fifteen days of receipt of the notice or such further time not exceeding fifteen days, as may be allowed, such representation as he may wish to make on the proposed penalty and the cause as to why the penalty, be not imposed on him.

(b) The Disciplinary Authority shall consider the representation, if any, made by the teacher and determine the quantum of penalty that be imposed on him on the basis of the evidence adduced.

(6) The final orders made by the Disciplinary Authority under this Statute shall be communicated to the teacher and the Enquiry Officer. A second show-cause notice shall be issued to the teacher before the penalty is executed.

28. This provision indicates that the management is required to record its findings on each article of charge expressly stating whether he agrees with the findings of Enquiry Officer or otherwise.

Could it be said that this exercise is required to be done in respect of two different contingencies. Firstly, in the enquiry the charges are held to be proved and the management accepts the same and proceeds further to take action against the delinquent and secondly, the Enquiry Officer's findings are to be turned over, a specific finding on each article of charge is required to be stated for referring back the case for further enquiry by Enquiry Officer. Since these two situations are totally different, the same yardstick cannot be applied thereto. When there is proof of charge against the delinquent in an enquiry and the management proposes to take action against the delinquent on the basis of said proved charges, meaning thereby the management accepts the report and the findings of the Enquiry Officer. It is only when the management wishes to differ with any of the findings, the findings on each article of charge may be required to be expressly stated. In the second scenario, when the management wishes to take different view than the view taken by the Enquiry Officer, such recording of findings would be mandatory as it would cause prejudice to the delinquent, if any further enquiry is proposed. This, however, cannot be so in case the management wishes to accept the report of the Enquiry Officer as it is. In the instant case, the report of the Enquiry Officer has been accepted by the management

and merely because no findings on each article of charge are expressly stated, it does not become a ground for setting aside the enquiry since no prejudice has been caused to the teacher by the same.

29. In this regard it is the case of the Institution that a resolution was passed on 04.04.2015, accepting the report of Enquiry Officer and based upon the said resolution show cause notice came to be issued. This submission is countered by the teacher by contending that no resolution is referred in show cause notice nor it was placed before the Tribunal.

30. Perusal of the record indicates that the resolution dated 04.04.2015 has been placed on record of the Petition but the record and proceeding before Tribunal does not show any such resolution being filed. Now question arises as to whether there would be any material difference to the defence of the teacher in responding to the show cause notice by submitting or not submitting the resolution along with the show cause notice. In case any prejudice is shown to have been caused, there could be substance in the contention of the

teacher but in absence thereof, non furnishing of resolution would not become ground to set aside the order of termination.

31. In the result, the order passed by the Tribunal of directing fresh enquiry into the charges is not sustainable and hence set aside. The matter is relegated back to the Tribunal to decide issue of perversity of finding, if any, and proportionality of punishment, after hearing both sides.

32. Both Petitions stand disposed of in above terms.

(R. M. JOSHI)
Judge

33. Learned Counsel for the Petitioner in Writ Petition No. 5913/2018 seeks stay of this order to enable the parties to challenge the said order before the Hon'ble Supreme Court for a period of six weeks.

34. Learned Counsel for the Respondent submits that if the order passed by this Court is to be stayed, the interim relief granted in Writ Petition No. 927/2018, be continued till that time.

35. In view of this, in Writ Petition No. 5913/2018, the order is stayed for a period of six weeks. Needless to say that interim relief granted in Writ Petition No. 927/2018 to continue till then.

(R. M. JOSHI)
Judge

dyb