



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1541 OF 2008

Shri. Bharat son of Nagnathrao Khogre
died through Legal Heirs

1. Smt. Suman Wd/o Bharatrao Khogare
Age : 59 Years, Occu. Nil R/o N-9
L-159-4, Shivajinagar, CIDCO,
2. Shri. Shivkumar s/o Bharatrao Khogare
Age : 47 Years, Occu. Nil R/o N-9
L-159-4, Shivajinagar, CIDCO, Aurangabad,
3. Sou. Shubhangi W/o Laxmikant Khogare,
Age : 42 Years, Occu. H.W., R/o N-9
L-159-4, Shivajinagar, CIDCO, Aurangabad,
4. Shri. Shashikumar s/o Bharatrao Khoagre,
Age : 42 Years, Occu. Private service, R/o N-9
L-159-4, Shivajinagar, CIDCO, Aurangabad.

... PETITIONERS

VERSUS

1. The State of Maharashtra
2. The Registrar,
Dr. Babasaheb Ambedkar Marathwada University,
Aurangabad, for the University
3. The Presiding Officer, University Tribunal,
Dr. Babasaheb Ambedkar Marathwada University,
Aurangabad.

... RESPONDENTS

Mr. R. B. Dhakane, Advocate for the Petitioner
Mr. M. V. Navandar, Advocate for Respondent No.2
Mr. K. N. Lokhande, AGP for the Respondent/State

CORAM : R. M. JOSHI, J.
DATE : 5th AUGUST, 2025

JUDGMENT :-

1. This Petition takes exception to the judgment and order passed by the University and College Tribunal in Appeal No. BAMU-3 of 1998, dated 20/09/1999, whereby the order passed by the Registrar of compulsorily retiring the Petitioner from the services came to be confirmed.

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

(i) The Petitioner has been in service of Respondent-University in its printing press. He came to be compulsorily retired from service on allegations of misconduct. An inquiry, he was issued order of suspension and charge-sheet dated 09/08/1994. He filed statement of defence. On 01/11/1994, notice came to be issued to the Petitioner to remain present for the departmental inquiry and for recording of the statement before the Inquiry Officer. The inquiry was concluded on the same day by relying the confessional statements of the Petitioner and other employees allegedly recorded during the investigation of the crime. The Inquiry Officer submitted the report holding Petitioner guilty for the misconduct alleged against him. Show cause notice came to be issued to him on 30.01/01.02.1995 along with the inquiry report. He submitted explanation on 07/02/1995. The Management has not accepted the said

explanation and by relying upon the report of the Inquiry Officer, the order of compulsory retirement as a punishment came to be issued. The Petitioner being aggrieved by the said order preferred Appeal before the University and College Tribunal, Aurangabad.

(ii) The learned Presiding Officer by passing impugned order dismissed the Appeal. The Appeal came to be dismissed essentially on the ground that the Petitioner has accepted the charges in the inquiry proceeding and had permitted the Inquiry Officer to read the statements recorded by the Investigating Officer during the course of the investigation of the crime.

3. Learned Counsel for the Petitioner submits that the Petitioner died during the pendency of the Petition and his LR's are prosecuting the Petition. It is his submission that at no point of time nor even during the course of inquiry proceedings the Petitioner has admitted charges of misconduct levelled against him and as such it was the responsibility of the Management to prove the said charges by leading evidence. It is his further submission that the Inquiry Officer as well as the Tribunal has committed error in considering the communication dated 07/11/1994 to be admission of the statements recorded by the Investigating Officer. It is his contention that in any event unless the Investigating Officer was examined, it was no open for the Inquiry Officer to rely upon the said

statement in order to hold that the Petitioner is guilty of the misconduct. It is his further submission that even if this Court comes to the conclusion that the matter is required to be relegated back to the University for proving of the misconduct, the same cannot not done in view of the fact that the Petitioner is no more. It is his further submission that in view of the fact that there is acquittal of the Petitioner, no further inquiry proceedings even otherwise could be initiated against the Petitioner. It is his submission by relying upon the judgment of the Hon'ble Supreme Court in case of ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. And Another, AIR 1999 SC 1416*** that where the departmental proceeding and criminal case based on identical set of facts, and that the employee is acquitted, dismissal from the service would be liable to be set aside on the basis of the departmental inquiry. He further placed reliance on the following judgments in order to seek the relief of reinstatement with full back wages and continuity of service.

- (i) *Maharashtra State road Transport Corporation Vs. Mahadeo Krishna Naik in Civil Appeal No. 13834/2024 (SC), dated 14/02/2025,*
- (ii) *Jayantibhai Raojibhai Patel Vs. Municipal Council, Narkhed and Ors. in Civil Appeal No. 6188/2019 (SC), dated 21/08/2019,*
- (iii) *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others, (2013) 10 SCC 324,*
- (iv) *Ranchhodji Chaturji Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Another, (1996) 11 SCC 603,*
- (v) *Surendra Kumar Verma and Others Vs. Central Government*

Industrial Tribunal-cum-Labour Court, New Delhi and Another, (1980) 4 SCC 443.

4. Learned Counsel for the Respondent-University vehemently opposed the Petition. It is his submission that the charges levelled against the Petitioner were serious in nature and in case the charges are held to be proved, the order of compulsory retirement cannot be interfered with. It is his submission that the Petitioner has voluntarily tendered communication dated 07/11/1994 which according to him indicates that he has permitted the Inquiry Officer to place reliance on the statements recorded by the Investigating Officer during the investigation of the crime and hence reliance placed on such statements is cannot be called as perverse. He also supported the findings recorded by the Tribunal in this regard. Though he does not dispute the fact that now no fresh inquiry can be conducted, it is his submission that the Petitioner cannot be permitted to take advantage of his own wrong and to get back wages. On the point of the judgment relied upon by the learned Counsel for the Petitioner in case of ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. And Another*** (supra) it is submitted that the evidence in both proceedings is not common in order to apply the said judgment.

5. There is no dispute about the fact that the Petitioner was issued with charge-sheet and the allegations made against the Petitioner

on the face of it are serious in nature. There is further no denial of the fact that the charge-sheet was duly replied by the Petitioner and he denied the said charges. In view of the said denial, the Inquiry Officer came to be appointed for conducting an inquiry into the said misconduct. Before the Inquiry Officer, the Petitioner recorded the statement that the charges are denied by him. He, however, made request that during the inquiry, the Inquiry Committee to consider the statement recorded by the Officer of CID and he should be given justice. The contesting Respondent seeks this statement to be accepted as an admission on the part of delinquent for reading the statement recorded by the Investigating Officer as evidence in inquiry proceedings.

6. A bare perusal of the said statement recorded by the Petitioner clearly indicates firstly that, he has not admitted the misconduct. Secondly, he only says that while deciding the inquiry, the statement recorded by the Investigating Officer may be considered. Neither expressly nor even impliedly he admits the said statement to be truth nor permits the Inquiry committee to rely upon the said statement without its formal proof. Though strict rules of evidence are not applicable to Departmental/Domestic inquiries, however that would not mean to dispense with proof of any statement in order to place reliance upon the same. In such circumstances, unless the Investigating Officer

or the persons who had recorded the said statement was examined in the inquiry, there was no question of the Inquiry Committee relying upon the same. The learned Tribunal has failed to take into consideration the said aspect, which amounts to perversity in the findings recorded by the Tribunal, requiring interference therein.

7. The law on the point that the fairness of the inquiry is settled to say that a person who is charged with misconduct would not be entitled to get reinstatement in the service only for reason that inquiry is not fair and proper. In such event, the Court is required to give an opportunity to the employer to prove the charges afresh. This exercise, however, cannot be done in the present case for the reason that the Petitioner is now deceased.

8. Now question arises as to whether the order of compulsory retirement of the Petitioner from the service could be sustained. Since on the face of it the inquiry is conducted by the Inquiry Committee is not proper, the order of termination based upon such findings of the Committee cannot sustain. As a result of which the termination needs to be set aside.

9. Now question arises as to whether the Petitioner would be entitled to claim that on the basis of his acquittal in the criminal proceedings, no further inquiry could have been conducted by the

Management. Perusal of the judgment of the Hon'ble Supreme Court in case of *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. And Another* (supra) indicates that Hon'ble Supreme Court has held in clear terms that where the departmental proceeding and criminal case are based on identical set of fact and evidence in both proceedings is common, only in such circumstance where the employee has been acquitted, the dismissal on the basis of departmental inquiry could be set aside. Needless to say that herein this case no evidence was recorded and hence question of there being a common evidence does not arise. Moreover, it is not clear from the record that the same witnesses were sought to be examined in the inquiry who were these witnesses of the prosecution in the criminal case. Thus, for want of identical facts being involved in the said case as compared to the present case, in respectful view of this Court, the said judgment would not help the Petitioner in any manner to support his case.

10. In any case, it is settled position of law that the requirement of the proof of misconduct in a departmental inquiry would be on preponderance of the probability whereas the proof of the criminal charge must be beyond reasonable doubt. Of course, herein this case, since the Petitioner is dead, no question arises of relegating the matter back to the University for conducting the inquiry into the misconduct.

11. Admittedly, the Petitioner has not made statement before the Tribunal that he was not gainfully employed during the relevant period nor any statement has been made in this petition too. The position of law is settled to say that the employee is required to make a statement before the Court at first instance that he is not gainfully employed and in only circumstances the onus will shift upon the employer to prove otherwise. Once the statement is not made, the Petitioner is not entitled for any back wages. In such circumstances, this Court of the view that though the order of compulsory retirement of the Petitioner cannot sustain and he is required to be granted reinstatement with continuity of service, but no back wages could be granted.

12. As a result of above discussion, Petition stands partly allowed in following terms:-

- (i) The impugned order passed by the Tribunal is set aside.
- (ii) The order of compulsory retirement of the Petitioner is set aside.
- (iii) The Petitioner is directed reinstatement in the service with continuity of service with consequential benefits but without any back wages.
- (iv) Since the Petitioner is now deceased, the LR's of the Petitioner would be entitled for the retiral/ pensionary benefits, as per law.

13. Rule made partly absolute in above terms

(R. M. JOSHI, J.)

ssp