



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL WRIT PETITION NO. 8354 OF 2022

Ainpur Parisar Shikshan Prasarak
Mandal and Another ...Petitioners

Versus

Nitin Uttamrao Bari and Others ...Respondents

- Mr. S. B. Deshpande, Senior Advocate i/by Mr. A. G. Talhar, Advocate for the Petitioners
- Mr. C. V. Dharurkar, Advocate for Respondent No. 1
- Mr. S. N. Kendre, AGP for the Respondent/State

CORAM : R. M. JOSHI, J
DATE : APRIL 16, 2025

PER COURT :

1. This Petition takes exception to the order dated 18.04.2022 passed by the Presiding Officer, University and College Tribunal, Aurangabad in Appeal No. KBCNMU-14/2021 whereby the Tribunal set aside the order of termination issued by the Petitioner – Management to Respondent No. 1 dated 10.07.2021 and consequently directed the Petitioner to reinstate the Respondent No. 1 in the service.

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

Petitioner is a Educational Trust and runs Arts and Science College at Jalgaon. Respondent No. 1 pursuant to the advertisement published on 10.12.1997 came to be selected to the post of Lecturer. Pursuant to his appointment, he was granted approval by the University on 11.12.1998. Since then, he was in continuous service of the Petitioner. Petitioner issued charge-sheet dated 16.01.2021 to Respondent No. 1 levelling in all 17 charges/misconducts. The charges leveled against Respondent No. 1 include absenteeism, non attendance of republic day celebration, late coming etc. Respondent No. 1 filed reply to the charge-sheet. Enquiry Officer came to be appointed. Statements of witnesses were recorded in the enquiry. After Enquiry Officer submitted its report, Petitioner – Management issued show cause notice dated 25.06.2021 to Respondent No. 1 calling upon him to show cause as to why his services should not be terminated. This notice was duly replied by Respondent No.1. Petitioner – Management terminated services of Respondent No. 1 on 10.07.2021. Being aggrieved by the said order of termination, Respondent No. 1 filed Appeal before College Tribunal. By passing impugned judgment and order, College

Tribunal caused interference in the said order of termination and directed reinstatement of the Respondent No.1 in the service of Petitioner. Hence, this Petition.

3. Learned Senior Counsel appearing on behalf of Petitioners – Management submitted that Tribunal has committed serious error in law by allowing the Appeal solely on the ground that the charges leveled against the Respondent No. 1 are stale in nature. It is his submission that this observation of the Tribunal is contrary to the law settled by the Division Bench of this Court in case of *Bhupendra Pal Singh and Others vs. Union of India and Others, 2022 (1) AIR Bom R 627.*

He specifically drew attention of the Court to paragraphs 27 and 31 of the said judgment. It is his submission that Tribunal ought not to have caused interference in the order of termination on this count. Apart from this, he took this Court to the material on record in order to support submission that Respondent No. 1 has committed as many as 17 acts of misconduct and as such, there was no reason or justification for setting aside order of termination. It is his further

submission that Tribunal has recorded the findings that the enquiry conducted against Respondent No. 1 is fair and proper and once such finding is recorded, it is not open for the Respondent No. 1 now to claim that the enquiry was not conducted properly. It is his further submission that employment misconduct, which has been duly covered by judgment, has been committed by Respondent No.1 and as a result of proof thereof the order of termination is justified. On these amongst other submissions, he seeks interference in the impugned order and seeks restoration of order of dismissal of Respondent No. 1 from service.

4. Learned Counsel appearing for Respondent No. 1 supported the impugned order. It is his contention that the Respondent No. 1 was issued charge-sheet after lapse of 14 years which amounts to not only leveling of stale charges but also victimization of Respondent No. 1. It is his submission that admittedly in respect of all alleged incidents memorandums were issued to the Respondent No.1 and after Respondent No. 1 satisfactorily explained each of them, no action was initiated against him, meaning thereby, Petitioner has

accepted the explanation put forth by Respondent No. 1. It is his submission that Tribunal has not only set aside the order on the ground of staleness of the charges but also has considered the merits of the case. It is his submission that having regard to the facts of the case no interference is called for in the impugned order.

5. Admittedly, Respondent No. 1 has been appointed on the post of Lecturer in the Petitioner College by following due procedure of law. Further, Respondent No. 1 does not dispute issuance of memorandums to him on several occasions. He however specifically claims in his reply that all these memorandums are duly responded/replied by him and that the Petitioner – Management has accepted the said explanation. In this regard specific query was made to the learned Senior Counsel appearing on behalf of Petitioner as to whether is it a fact that in respect of all acts memorandums were issued to the Respondent No. 1 and he replied the same. Learned Senior Counsel, on instructions, submitted that though it is a fact that memorandums were issued and same were replied, it

is not correct to say that Petitioner – Management has accepted the explanation tendered by Respondent No. 1. Once it is accepted that in respect of charges sought to be leveled in the charge-sheet memorandums were issued to Respondent No.1 and he duly replied to the same, with no further action, there is reason to believe that Petitioner – Management being satisfied by the explanation provided by Respondent No. 1 in respect of those memorandums issued to him, decided not to initiate action against him. It is not necessary that Management informs to the employee about acceptance of explanation to be satisfactory. Inaction on the part of the Management on such memorandums leads to the conclusion that after being satisfied by the explanation, Management had not initiated action on the Respondent No. 1.

6. In this backdrop, perusal of the charge-sheet dated 10.01.2021 indicates that the misconducts are alleged against Respondent No. 1 are of the alleged acts right from year 1999 till 2020. First 13 charges are of the incident of year 1999 to 2016. It is thus clear that for the incidents of 5 to 14 years old, an

action is sought to be initiated against Respondent No. 1. As far as charge no. 14 is concerned, the same is as vague as possible. It was expected by the Management that to inform the Respondent No. 1 as to the dates on which he reported late for the duty and remained absent. It is sought to be argued on behalf of Petitioner that Respondent No. 1 has submitted detailed reply to the charge-sheet which indicates that he has clearly understood charges and charges are not vague. The vagueness of charge can be determined by perusal thereof. The charge-sheet itself must indicate that charge is so clear which enables the employee to understand and respond to the same. This charge, on the face of it, is totally vague and could not have been allowed to be established in the departmental enquiry.

7. In any case, even the memorandum issued to Respondent No. 1 on 23.01.2020, was replied by him. It is after one year of the said incident, the Respondent is sought to be chargesheeted for the same. It was open for the Petitioner – Management to take action against Respondent No. 1 if his explanation was not satisfactory. The Petitioner – Management however

waited for a period of one year and thereafter initiated action by consolidating all memorandums issued to the Respondent No. 1 since year 1999. In view of this fact, there is reason to accept the contention of Counsel for Respondent No. 1 that in order to victimize him, charge-sheet has been issued by incorporating alleged acts committed from 1999 on wards till 2020.

8. Coming to the judgment of Division Bench of this Court in case of **Bhupendra Pal Singh and Others** (supra) relied upon by Counsel for Petitioner, Division Bench of this Court has culled out the principles from the decisions referred before it and summarized them as follows:

a. It would always be desirable to initiate disciplinary proceedings immediately after the alleged misconduct is detected but if charge-sheet is issued after a considerable length of time has passed since such detection, it would be unfair to the charged officer to proceed against him on the basis of stale charges.

b. Disciplinary proceedings may not be interdicted at the stage of charge-sheet and should be allowed to proceed according to the relevant rules since a charge-sheet does not affect any legal right of the

delinquent unless, of course, it suffers from an invalidity that strikes at the root of the proceedings.

c. If there is delay in initiation of disciplinary proceedings by drawing up charges against the delinquent and such proceedings are challenged, the disciplinary authority is under an obligation to explain the reasons for the delay; and, depending upon the worth of such reasons, the Court may proceed to decide one way or the other.

d. There cannot be any exact measurement of the length of delay by reference to years to fall into the category of 'too long a delay', and what would amount to the same has to be decided depending upon the facts of a given case.

e. Should the delay be found to be too long and unexplained, that would definitely have a bearing on the seriousness of the disciplinary authority to pursue the charges against the charged officer and the Court may, in a fit and proper case, quash the proceedings because prejudice to the officer in such case would be writ large on the face of it.

f. Even if, in a given case, the delay is satisfactorily explained, the charge-sheet could still be quashed if the charged officer proves to the satisfaction of the Court that he would be severely prejudiced if the proceedings were allowed to continue, a fortiori, lending credence to the claim of unfair treatment.

g. For the mistakes committed by the department in the procedure for initiating disciplinary proceedings, the charged officer should not be made to suffer.

h. Delay in initiation of disciplinary proceedings per se may not be a vitiating factor, if the charges are grave and in such case the gravity of the charges together with the factors, for and against the continuation of the proceedings, need to be balanced before arriving at a just conclusion.

9. While dealing with the issue as to whether there should be disciplinary proceeding initiated against the employee immediately preceding his retirement on superannuation and the same is null and void on the ground of delay as well as subsequent acquittal in judicial proceedings, above principles are laid down. One of principles lay down that delay in initiation of disciplinary proceedings per se may not be a vitiating factor, if the charges are grave and in such case the gravity of the charges together with the factors, for and against the continuation of the proceedings, need to be balanced before arriving at a just conclusion. The Division Bench, therefore, has clearly held that the delay in initiation of the disciplinary proceeding is not only the vitiating

factor but could be one of the factors while deciding the validity of enquiry. Pertinently, the issue before the Bench was with regard to causing or not of interference in the enquiry proceeding at the initial stage. In the instant case, however, the enquiry has proceeded and resulted in the dismissal of employee.

10. The perusal of the record indicates that the delay is not only the factor which is relevant but also seriousness/graveness of the charges. Charges against Respondent No. 1 are of absenteeism, late coming etc, which pertains to the period prior to 5 to 20 years. Inaction on the part of the Management pursuant to the issuance of memorandums to Respondent No. 1 indicates that the Management had accepted the explanation of the Respondent No. 1 and therefore, no further action was contemplated therein. Present case, therefore, totally differs from the facts which were involved in the judgment of **Bhupendra Pal Singh and Others** (supra) and as such, would not come to the aid of the Petitioner.

11. In view of above discussion and considering peculiarity of the facts of the case, this Court is unable to accede to the submissions of learned Senior

Counsel appearing for Petitioner that in view of judgment of Division Bench of this Court, the impugned judgment and order passed by Tribunal deserves interference.

12. This Court, therefore, finds no merit in the case. In the result, Petition stands dismissed.

(R. M. JOSHI, J.)