



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12975 OF 2024

Sameet Bhaskar More

VERSUS

Maharashtra University Of Health Sciences Through Its
Registrar And Others

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Advocate for the Petitioner : Mr. Bagul Dnyaneshwar Suresh
AGP for Respondent No. 1 : Mr. S.B. Pulkundwar

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CORAM : S.G. MEHARE &
SHAILESH P. BRAHME, JJ.

DATED : JANUARY 16, 2025

PER COURT :

1. Heard the respective counsel.
2. The petitioner has impugned the order of the respondent No.2/Controller of Examination dated 18.04.2014.
3. As per the impugned order, the petitioner has been punished for the other malpractices not covered under the categories mentioned in the conduct of examination and use of unfair ordinance at the time of conduct of examination and use of unfair means at an examination as well as for using the

obscene language, threat to the examiners. By the impugned order, the petitioner has been punished to the annulment of the performance of the petitioner of 2nd Year M.B.B.S. (2019) University Examination for current full examination (all subjects excluding previously passed) and debarring him for next 05 additional examinations. The petitioner took this order to the appellate authority. The appellate authority maintaining the charges levelled against him, has reduced the punishment of debarring the petitioner for 03 terms (Semester) instead of 05 terms (Semester). This order has also been challenged.

4. The petitioner has fairly conceded that on the day of the examination of the subject, the petitioner was possessing a smartwatch. However, it was not the material to be used for actual copying. He further submits that he was simply charged for possessing the smartwatch in the examination hall. However, he has been punished for the charges of watching and copying from the watch for the subject of Pathology-I and also using abusive language to principal. These were not the charges framed against him. Hence, punishing him for such charges is illegal and incorrect. He has a specific case that though he was possessing smart watch with him, it was just a watch to be used

to count the calories. The petitioner appeared in the examination hall directly from gym and the watch inadvertently remained tied to his wrist.

5. Learned counsel for the petitioner would submit that the punishment is disproportionate as provided for the alleged charges . At the most he could have been charged for the punishment as prescribed in clause no. 71.12.15, which provides annulment of the performance of the examinee at the University or College or Institution Examination in full (all subjects excluding previously passed if any) or severe/mild (fine and warning) punishment depending upon the gravity/nature of the offence. He would submit that the petitioner is a student of medical science. He has good prospects and no bad past. It was his inadvertent mistake. Therefore, a lenient view may be taken and the petition be allowed by quashing the impugned orders.

6. Learned counsel for the contesting respondent has vehemently opposed the contentions of the petitioner. He would submit that the record established the charges for which the petitioner has been held guilty and it was available before the Competent Committee. They have examined it and they did not exceed their powers. The evidence available on record was

correctly appreciated. Therefore, this Court under writ jurisdiction cannot interfere in the powers exercised by the punishing authority. There are two concurrent judgments holding the petitioner guilty for the acts done by him. To bolster the argument, he placed reliance on judgment of the Supreme Court in the case of *Board of High School and Intermediate Education, U.P., Allahabad Vs Bagleshwar Prasad 1966 AIR (SC) 875.*

7. The Hon'ble Supreme Court laid down the law in the above case that the order in ordinance on the face of record is liable to be quashed by the High Court in exercise of jurisdiction under Article 226 of the constitution. However, where no animus is suggested and no malafides have been pleaded and the equity has been fair and the student has an opportunity of making defence, the High Court should be slow and rather not to interfere with such orders under Article 226 of the constitution. Another case he relied on is judgment of the Supreme Court in the case of *Director (Studies) and ors. Vs. Vaibhav Singh Chauhan* reported in *2008 AIR(SC)(Supp) 696* in this case the Hon'ble Supreme Court has taken stringent view and observed that a leniency should not be shown because we

have to maintain the high academic standards, maintain academic discipline and academic rigor if our country is to progress. The Hon'ble Supreme Court also took a view that the Court should not show the leniency under the writ jurisdiction.

8. The learned counsel for the respondent/university would submit that the petitioner did not stop after having possession of the smartwatch which was a copying material, his father threatened the principal and this is a serious act. Therefore, the petitioner is liable to be punished under clause 71.12.10 of the ordinance No. 01/2014, which provides annulment of performance of the examinee(s) at the University or College or Institution examination for the current examination in full (all subjects exclusively passed, if any) and debarring/disqualifying the examinee(s) for next five additional examinations. He submits that the branch of which the petitioner is a student, has direct concern with human life. If we produce such doctors in future, it would be harmful to the society and the life of a man may be in danger. He would also argue that in the cases of the departmental inquiry or the punishment or the malpractices as in this case, a strict rule of evidence is not applicable. Such cases are to be decided on the preponderance of probabilities. There

were absolutely no malafide intentions and ill motive in punishing the petitioner. Therefore, the punishment imposed upon the petitioner is just, reasonable and proper. He would also submit that the appellate authority has already shown the leniency reducing the disqualification from 05 additional examinations to 03 examinations. Hence, he prays to dismiss the petition or in alternate, if the Court comes to the conclusion that the charges for which the petitioner has been punished, the matter be remitted to the inquiry committee for framing the charges afresh. The committee is not an expert, so such mistakes are bonafide. If the matter is remitted to the inquiry committee and charges are allowed to be framed for which the petitioner has been punished, a fair opportunity would be extended to the petitioner.

9. The first question to be answered is, can a person be punished for the charges, which were not framed against him. There is no manner of doubt that law is well settled and no man should be punished for the charges which were never framed. The idea behind this is that the person should know what the charges are to be proved against him, so he may be able to prepare with the defence to rebut the charges. This primary

principle in this matter appears to have not been followed. Even at this stage no exercise as such was done. The subsequent events of the first incident of possessing the copying material should have been the part of the charges framed against the petitioner. Admittedly, a sole charge of possessing smartwatch in the examination hall was framed to which the petitioner had explained that it was not the material used for copying. However, he could not rebut it.

10. From that part of the record, we are satisfied that the subsequent events were not brought to the notice by way of charge against the petitioner. Though the petitioner had replied thoroughly, it does not reflect that immediately after recovering the smartwatch in the examination hall its panchnama was prepared in the presence of the petitioner as well as witnesses. Even no support of the expert has been taken to retrieve the material, if any hidden or deleted from smartwatch. It has been alleged that the father of petitioner threatened the principal. The threats are not specified, it has also not been discussed in the impugned order. The orders are *prima facie* without reason. The doctrine of principle of natural justice is well known by the term of granting an opportunity of hearing has apparently not

been followed. We are of the opinion that in the absence of framing any charges, no severe punishment as such could be imposed upon the petitioner. We do not find the circumstances to believe that the departmental inquiry should be opened afresh. However, on the basis of the facts admitted by the petitioner, we may presume that the watch may probably be taken in the hall for using it for copying the subject of the examination. However, as discussed above, there were no such specific allegations in the first charge also. The petitioner has admitted that for the alleged act/conduct the punishment as per the above ordinance has been incorporated in clause 17.12.1 and the maximum punishment for that act, is annulment of the performance of the examinee at the University or College or Institution examination in that particular subject. There was a cap on the quantum of the punishment. No authority can impose more punishment than the maximum punishment provided for wrong act. Therefore, we are of the opinion that both impugned orders are *prima facie* illegal and vitiate the principle of natural justice as well as the petitioner has been punished for the alleged acts for which the charges were not framed. Therefore, we proceed to pass the following order.

ORDER

- (i) Writ Petition is partly allowed.
- (ii) Both impugned orders are quashed and set aside and the punishment is modified as follows:
 - (a) The petitioner is punished under Clause 71.12.1 of the ordinance No. 01/2014. His performance at the University examination is annulled in the particular subject i.e. Pathology-I.
 - (b) By way of the consequences of relief granted, we also direct the University to declare his result for the other subjects. The results of the petitioner withheld for the examination for which he appeared during the pendency of this petition should also be declared.
- (iii) No order as to costs.

(SHAILESH P. BRAHME, J.)

(S.G. MEHARE, J.)

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