



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10634 OF 2018

- 1 Shram Sadhana Bombay Trust,
At College of Engineering and Technology,
Bambhori, Tq. And Dist. Jalgaon,
Through its Chairman,
The petitioner No. 1 duly authorized
The Deputy Registrar by passing resolution
to that effect
Shri. Yashwant Kondusing Chitte,
Age : 47 years, Occu : Service,
- 2 The Principal
College of Engineering and Technology
Bambhori, Tq. And Dist. Jalgaon
Dr. Kishor s/o Sopan Wani,
Age : 58 years, Occu : Service **Petitioners**

Versus

Shri. Chandrakant Ramdas Joshi
Age : 55 years, Occu : Nil,
R/o : 1, Sailila, Adarsha Nagar,
Jalgaon, Tq. And Dist. Jalgaon **Respondent**

Advocate for Petitioners : Mr. P. V. Barde i/b Senior Advocate
Mr. A. G. Talhar
Advocate for Respondent : Mr. A. R. Syed

WITH
CIVIL APPLICATION NO. 2359 OF 2024
IN WP/10634/2018

WITH

WRIT PETITION NO. 10631 OF 2018

1 Shram Sadhana Bombay Trust,
At College of Engineering and Technology,
Bambhori, Tq. And Dist. Jalgaon,
Through its Chairman,
The petitioner No. 1 duly authorized
The Deputy Registrar by passing resolution
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Shri. Yashwant Kondusing Chitte,
Age : 47 years, Occu : Service,

2 The Principal
College of Engineering and Technology
Bambhori, Tq. And Dist. Jalgaon
Dr. Kishor s/o Sopan Wani,
Age : 58 years, Occu : Service

.... **Petitioners**

Versus

Shri. Vijay Govindrao Nagpure
Age : 51 years, Occu : Nil,
R/o : Shriratna Colony, Pimprala Parisar,
Near Munda High School, Jalgaon
Tq. And Dist. Jalgaon

.... **Respondent**

WITH
CIVIL APPLICATION NO. 2358 OF 2024
IN WP/10631/2018

Advocate for Petitioners : Mr. P. V. Barde i/b Senior Advocate
Mr. A. G. Talhar
Advocate for Respondent : Mr. A. R. Syed

CORAM : MANJUSHA DESHPANDE, J.

RESERVED ON : 19 MARCH, 2025

PRONOUNCED ON : 08 MAY, 2025

COMMON JUDGMENT :

1. In these two writ petitions, petitioners are challenging the common judgment and order dated 22.12.2017 passed in Appeal No. NMU-02/2009 and NMU-03/2009 respectively by the Presiding Officer, University and College Tribunal, Aurangabad.

2. The petitioner No. 1 is a Trust registered under the provisions of Societies Registration Act, 1860 and Maharashtra Public Trust Act, 1961. Petitioner No. 2 is the Engineering College run by the petitioner No. 1 Trust. The respondents in respective appeals were permanent employees of the petitioner No. 2 College, appointed as Laboratory Technician and Laboratory Attendant respectively.

3. The respective respondents had approached the University and College Tribunal, Aurangabad (hereinafter referred to as "College Tribunal") against the order of termination with a prayer for reinstatement with back-wages. Their appeals were allowed by the College Tribunal vide common judgment and order dated 22.12.2017, directing reinstatement with 100% back-wages.

4. Being aggrieved by the judgment and order passed by the College Tribunal, the petitioners who are the employer of the respondents have approached this Court by filing the present writ

petitions.

5. When the matter was heard by this Court on 06.12.2018, this Court has granted 'Rule' and refused to grant stay to the order of reinstatement. The petitioners were directed to permit the respondent to join the services w.e.f. 02.01.2019. So far as the back-wages are concerned, this Court has directed the petitioners to deposit 50% of back-wages by calculating it after taking into consideration various Government Resolutions within a period of eight (8) weeks from the date of the order. The stay to the back-wages was made subject to deposit of 50% of back-wages.

6. Being aggrieved by the order dated 06.12.2018, passed by this Court, the petitioners had approached the Hon'ble Apex Court and the Hon'ble Apex Court, after hearing the respective parties, has been pleased to modify the order passed by this Court granting stay to the order of reinstatement of the respondents pending the disposal of writ petition. The petitioners were directed to deposit an amount of Rs. 15,00,000/- towards back-wages payable to the respondents within a period of two months from the date of order, in addition to the amount which was already directed to be deposited pursuant to the interim order passed by this Court on 29.04.2019. The respondents were granted liberty to withdraw the amount of

Rs.15,00,000/- which was made subject to the final disposal of the pending writ petitions and the writ petitions were expedited. In terms of the modified order, the Civil Appeals No. 1011 of 2021 and 1012 of 2021 have been disposed of by the Hon'ble Apex Court vide order dated 19.03.2021.

Facts in Appeal No. NMU-02/2009 filed by appellant Shri. Vijay Govind Nagpure :-

7. The respondent Vijay Nagpure was appointed as Laboratory Technician in the College on 06.10.1992. His service record was satisfactory and unblemished. The respondent alongwith other employees had filed Writ Petition No. 1420 of 2002, before this Court against the petitioners demanding salary as per the recommendations of the 4th and 5th Pay Commissions. It was the contention of the respondent that due to his participation in such activities, the Petitioners / Management was enraged and consequently, the following major events of disciplinary action were initiated against him :-

- (I) On 11.06.2007, notice of show cause was issued to the respondent.
- (II) On 01.10.2007, reply was given by the respondent to show cause notice.
- (III) On 22.09.2007, charge-sheet and the statement of allegations were given to the respondent.

- (IV) On 01.10.2007, the respondent demanded documents for submitting the reply and on 01.10.2007, reply was given by him to the charge-sheet with the available documents.
- (V) On 27.10.2007, Mr. Mohikhede was appointed as Enquiry Officer.
- (VI) On 13.12.2007, detailed reply to the charge-sheet was given by the respondent.
- (VII) The Management examined five witnesses. The respondent did not lead any oral evidence.
- (VIII) On 22.05.2008, final defence statement was submitted by the respondent.
- (IX) On 08.07.2008, Enquiry Report was submitted.
- (X) On 28.07.2008, a show cause notice was issued by the Disciplinary Authority.
- (XI) On 21.08.2008, reply to the show cause notice by the respondent.
- (XII) On 01.09.2008, an order of termination was issued.

Facts in Appeal No. NMU-03/2009 filed by appellant Shri. Chandrakant Ramdas Joshi :-

8. The appellant Chandrakant Ramdas Joshi was appointed as Helper on 21.08.1985 and thereafter, promoted as Lab Assistant on 13.07.1990. He was a permanent employee and had rendered satisfactory and unblemished service with respondent No. 2 College. The Petitioners / Management was enraged on account of filing of

Writ Petition No. 1420 of 2002, for grant of appropriate pay scales as per the recommendations of 4th and 5th Pay Commissions. Therefore, with a vindictive approach, the Petitioners / Management had reduced him in rank from the Post of Lab Assistant. He had challenged the order of Petitioners / Management in Appeal No. NMU-06/2004 before the University and College Tribunal which was allowed on merits vide order dated 17.01.2005.

9. Being aggrieved by the decision of College Tribunal, the Petitioners / Petitioners / Management has filed Writ Petition No. 4125 of 2005, before this Court. Rule was discharged in the writ petition on 26.08.2005. Although the petitioners could not obtain stay to the order passed by the College Tribunal dated 17.01.2005, they failed to implement it. The respondent was shown to be reinstated on the post of Lab Assistant but was paid salary of Lab Attendant till his dismissal. Since he participated in the agitation against the petitioners and made various complaints against them, the following major events of disciplinary action were initiated against him :-

- (I) On 17.08.2007, notice of show cause was issued to the respondent.
- (II) On 09.10.2007, reply was given by the respondent to show cause notice.

- (III) On 25.10.2007, charge-sheet and the statement of allegations were given to the respondent.
- (IV) On 27.11.2007, the respondent demanded documents for submitting the reply and on 09.01.2008, reply was given by him to the charge-sheet with the available documents.
- (V) On 19.01.2008, Mr. Mohikhede was appointed as Enquiry Officer.
- (VI) On 09.01.2008, detailed reply to the charge-sheet was given by the respondent.
- (VII) The Management examined two witnesses. The respondent did not lead any oral evidence.
- (VIII) On 10.05.2008, final defence statement was submitted by the respondent.
- (IX) On 09.06.2008, Enquiry Report was submitted.
- (X) On 28.07.2008, a show cause notice was issued by the Disciplinary Authority.
- (XI) On 21.08.2008, reply to the show cause notice by the respondent.
- (XII) On 01.09.2008, an order of termination was issued.

10. It was his contention before the College Tribunal that the allegations levelled against him are not serious and sufficient for imposing major penalty of dismissal from the service.

Grounds of Challenge before the Tribunal :-

11. The respondents had challenged the order of termination

before the College Tribunal on the ground that the petitioners have not followed the statutory procedure as contemplated under the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of Non-Teaching Employees) Rules, 1984 (hereinafter "Standard Code Rules, 1984" for short). There was a clear violation of principles of natural justice while conducting enquiry. It is alleged that since appellants have filed Writ Petition No. 1420 of 2002, and various complaints against the Petitioners, a vindictive approach has been adopted by the Petitioners / Management.

12. It was also contended that punishment awarded is grossly illegal and shockingly disproportionate. The unblemished service of 24 and 16 years rendered by the respective respondents has been wiped out by terminating them without any justifiable reason by recording perverse finding and without following principle of natural justice.

13. Both the appeals filed by the respective respondents were heard together by the College Tribunal and decided by common judgment. After taking into consideration the Enquiry Report dated 09.06.2008, and the order of the Disciplinary Authority, the Presiding Officer has allowed the Appeals by relying upon the judgment of this

Court in case of **Anant Bhagwan Kamble Vs. Principal, M.N. Dahanukar College of Commerce and Ors. [2007(3) Bom. C. R. 929]**.

This Court, relying on Section 60 of the Maharashtra Universities Act, 1994, has held that the College Tribunal, being the First Appellate Court is entitled to re-appreciate the evidence and come to its own conclusion. The Tribunal, after re-appreciating the evidence which was part of the departmental inquiry, has held that the procedure for imposing the major penalty, as prescribed in Rule 47 of the Standard Code Rules, 1984, is not followed.

14. The Presiding Officer has observed that in both the appeals, the record does not disclose that, the statements of witnesses were recorded in the preliminary inquiry, for forming opinion, in order to initiate a departmental inquiry against both the appellants. Therefore, in view thereof, he has come to the conclusion that the Enquiry Report in both the cases being vitiated is unsustainable. The penalty imposed is disproportionate to the charges.

15. The College Tribunal has recorded a finding that inspite of opportunity available to the Petitioners, they have failed to bring on record any memos or warnings given to the appellants.

16. Considering that the charges could not be proved by the

Petitioners by leading cogent evidence and its failure to adhere to appropriate procedure while conducting the departmental inquiry, the order of dismissal on the aforementioned background was held to be disproportionate. Therefore, the appeals filed by the respective respondents herein were allowed by holding them to be entitled for reinstatement in service with back-wages. The Petitioners were directed to reinstate the appellants within a period of two months from the date of order i.e. 22.12.2017.

17. Shri. Barde, Learned Advocate for petitioners, submits that the Petitioner No. 1 is running Petitioner No. 2 College which is on 100% non-grant basis. Based on various complaints, serious lapses in discharging of functions and indisciplined behaviour of respondents, the petitioners decided to initiate Disciplinary proceedings against respondents. After conducting the inquiry, the Enquiring Authority submitted the Report on 08.07.2008. After considering serious misconduct of the respondents, the Enquiring Authority has recommended major penalty against the respondent.

18. It is further submitted that after receiving the inquiry report, second show-cause notice alongwith inquiry report was served to the respondent on 28.07.2008. The respondent has filed reply to the said show-cause notice on 21.08.2008. The Reply to the show-

cause notice was placed before the Governing Body of the College held on 26.08.2008, a resolution was passed by the Governing Body holding that charges of misconduct were proved, hence, it was decided to remove respondents from the service with immediate effect without any terminal benefits. Accordingly, dismissal order was issued on 01.09.2008.

19. It is the contention of the petitioners that being aggrieved by the order of termination, respondents had approached the University and College Tribunal. The College Tribunal, after finally hearing the parties, issued order of reinstatement with back-wages. According to the petitioners, the Presiding Officer, College Tribunal, has exceeded his jurisdiction while passing the order impugned. The Tribunal has committed grave error by re-appreciating the evidence, purportedly in exercise of powers under Section 60 of the Maharashtra Universities Act, 1994. It is his contention that no specific pleadings and prayers are made by the appellants before the Tribunal challenging the inquiry conducted against them.

20. The Petitioners have approached this Court challenging the order of College Tribunal by filing present writ petitions. The order of University and College Tribunal is challenged on the

following grounds.

- (I) The respondents were not discharging their duties as per rules and regulations.
- (II) They were issued notices and warning from time to time.
- (III) They were not following the orders issued by their superiors and they were making false and frivolous allegations against the Petitioners / Management, causing prejudice to the reputation of the College.
- (IV) In spite of the fact that the Petitioners / Management has fulfilled their demands, the respondents have indulged in activities prejudicial to the interest of Petitioners / Management by raising grievance with the Government Authorities, as well as by making complaints to the University.

21. It is also contended by the petitioners that there are no specific pleadings and evidence, as to which specific documents are not provided to the appellants and in what manner, the prejudice is caused to them by not providing the documents.

22. As per Section 41 of the Standard Code Rules, 1984, it is mandatory to frame points for consideration which are not framed by the Presiding Officer, Tribunal. According to him, there are various judicial pronouncements which make it mandatory to frame points for consideration.

23. It is further submitted that the findings of the Presiding Officer about non-adherence to Rule 47 of the Standard Code Rules, 1984, vitiates the inquiry is totally incorrect and misplaced. Rule 47 provides for action on enquiry report in case, Enquiring Authority is not the Disciplinary Authority. According to the learned Advocate for petitioners, it is only in case of disagreement regarding findings recorded by the Enquiring Authority, finding on each charge is required to be recorded by the Disciplinary Authority. If the Disciplinary Authority is in agreement with the findings recorded by the Enquiring Authority, it is not necessary for him to record his separate findings on each of the charges.

24. It is also contended that if at all the Tribunal was of the opinion that the procedure adopted while conducting the Disciplinary Inquiry was vitiated, at the most, the College Tribunal could have remanded the matter back to the Disciplinary Authority for observance on Rule 47 and inquiry should have proceeded from the stage where it was vitiated.

25. In support of his contention, the learned Advocate for petitioners relies on decision of **Ravindra Shrawan Vyas Vs. North Maharashtra Universities Jalgaon [2015 DGLS (Bom.) 529]**, wherein it is held that the re-appreciation of evidence from the vitiated

inquiry is not permissible in law since it is not a reliable evidence. It is thus contended that it was not within the domain of the College Tribunal, to re-appreciate the evidence from vitiated inquiry.

26. As regards grant of back-wages, it is contended that while granting back-wages to the respondents herein, no opportunity is granted to the petitioner to cross-examine the respondents about their gainful employment. The respondents have not adduced any evidence about their gainful employment, during pendency of Appeal, which is necessary to be proved by the delinquent employee.

27. It is, therefore, submitted that in view of the aforementioned facts and circumstances, the appropriate procedure has been followed by the Enquiring Authority and based upon the Inquiry Report, the Disciplinary Authority has imposed appropriate punishment in the form of dismissal of the respondents. No interference in the order of termination issued by the petitioners is warranted. As a result, the judgment and order passed by the Presiding Officer, University and College Tribunal needs to be quashed and set aside.

28. Per contra, learned Advocate for the respondents submits that the action of the petitioners is a result of filing of W. P. No. 1420

of 2002, filed by the employees including the respondents herein, against the petitioners for grant of appropriate pay scales. W. P. No. 1420 of 2002 was finally decided by this Court on 11.07.2017, wherein this Court has issued directions to the Petitioners / Management to fix the pay scales and pay alongwith allowances to the petitioners who are non-teaching staff of the petitioner Institution as prescribed by 4th, 5th and 6th pay commissions w.e.f. 01.01.1986, 01.01.1996 and 01.01.2006 respectively and pay them the arrears thereof in respect of the period of three years preceding the respective dates of filing the writ petitions till they were serving with the respondents.

29. According to the learned Advocate for respondents, since the respondents have raised their legitimate demands by filing proceedings in the Court of law, the Petitioners have adopted a vindictive approach against them by initiating Disciplinary Inquiry. Every attempt was made by the Petitioners to paralyse and demoralise the respondents.

30. It is the contention of the learned Advocate for respondents that the entire inquiry is vitiated due to violation of principles of natural justice and provisions of Standard Code Rules, 1984. There was a blatant disregard to mandatory Rule 47(1) and

(2) of the Standard Code Rules. Though the Disciplinary Authority and Inquiry Authority were distinct in the present matter, no separate findings are recorded by the Disciplinary Authority. It is further contended that the documents which are annexed at Exhs. A to H to the writ petition, were never produced before the Inquiry Committee or the Tribunal, therefore, no reliance can be placed on it.

31. It is the contention of the learned Advocate for the respondents that the documents were not supplied to the delinquent to set up his defence which is in breach of Rule 46(2)(b), of the Standard Code Rules, 1984. The procedure adopted was defective and against the principle of natural justice, even the punishment imposed is shockingly disproportionate. Hence, the order passed by the Presiding Officer does not deserve any interference.

32. According to the learned Advocate for the respondents, though it is claimed by the petitioners, that there is no statement about their gainful employment, there is an averment in the Appeal memo itself that the respondents were unemployed during pendency of Appeal and they had no source of income after the termination. Therefore, in view of the fact that they remained unemployed during the pendency of the Appeal, the Presiding Officer has rightly granted back-wages with continuity of service.

33. The learned Advocate for respondents relies on the judicial pronouncement of Hon'ble Apex Court in **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Vidyalay [2014(2) Mh. L. J. 480]**, wherein it is held that reinstatement with continuity of services and back-wages is a normal rule. While deciding such issue, the adjudicating authority or the Court may take into consideration the length of service of the employee / workman, the nature of misconduct, if any, found proved against the employee / workman, the financial condition of the employer and similar other factors. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he / she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, he has to plead and also lead cogent evidence to prove that the employee / workman was gainfully employed and was getting wages equal to the wages he / she was drawing prior to the termination of service. Once the employee proves that he was not employed, the onus lies the employer specifically to plead and prove that the employee was gainfully employed and was getting the same or substantially similar

emoluments.

34. Even otherwise, considering the gravity of allegations and the vindictive approach of Petitioners, fresh inquiry is neither advisable nor permissible. It is further urged that the conduct of Petitioners / Management also needs to be noted by this Court. In spite of interim direction, petitioners have not reinstated the respondents. The respondents were required to invoke contempt jurisdiction, for compliance of directions issued by this Court in W. P. No. 1420 of 2002, directing the Petitioners / Management to fix the salary and pay scales. In view of aforementioned facts and circumstances, the Petitioners are not entitled for any discretionary relief in the writ jurisdiction. It is further submitted that there is no perversity or error of jurisdiction in the judgment and order passed by the Presiding Officer of the College Tribunal while allowing the Appeals. Hence, writ petitions deserve to be dismissed with costs.

35. After considering the rival pleadings and the impugned order passed by the Presiding Officer alongwith documents placed on record, it is evident that the Presiding Officer has scrutinized the record in the light of the pleadings of the parties right from the show-cause notice issued against the respective respondents, charge-sheet and reply filed by the them.

36. The Presiding Officer, while deciding the Appeals, has exercised the powers under Section 60 of the Maharashtra Universities Act, 1994, which reads thus :

General powers and procedure of Tribunal.

60. (1) For the purposes of admission, hearing and disposal of appeals, the Tribunal shall have the same powers as are vested in an appellate court under the Code of civil Procedure, 1908, and shall also have the power to stay the operation of any order against which an appeal is made, on such conditions as it may think fit to impose and such other powers as are conferred on it by or under this Act.

(2) The Presiding Officer of the Tribunal shall decide the procedure to be followed by the Tribunal for the disposal of its business including the place or places at which and the hours during which it shall hold its sittings.

(3) Every appeal shall be decided as expeditiously as possible. In every case, endeavor shall be made by the Tribunal to decide an appeal within three months from the date on which it is received by the Tribunal. If the Tribunal is unable to dispose of any appeal within this period, it shall put on its record the reasons therefor.

37. It is observed by the Presiding Officer that the College Tribunal is vested with same powers as vested in a Appellate Court under the Code of Civil Procedure, 1908. An appellate Court is entitled to re-appreciate the evidence and come to its own conclusion. In exercise of the powers vested in the Appellate Court, the Presiding Officer has scrutinized the record pertaining to the

disciplinary enquiry initiated against the respondents herein.

38. The Presiding Officer has taken into consideration each and every charge in the charge-sheet and the reply filed by the respondents herein, based upon which, the order impugned has been passed by the Disciplinary Authority.

39. Following are the charges in the charge-sheet issued against the Vijay Govind Nagpure who is respondent in Writ Petition No. 10631 of 2018.

- (I) Refusal to accept the correspondence and order passed by the Petitioners / Management thereby committing misconduct.
- (II) Total disregard to the orders of superiors, resulting in violation of the terms and conditions of the service, amounting to misconduct.
- (III) Causing interference with the educational and administrative work by his conduct.
- (IV) Violation of standing orders and rules.
- (V) Making false allegations against the superiors.

40. The Presiding Officer, has assessed the charges alongwith the supporting documents which were placed on record and the reply filed to it by the respondents. Upon scrutiny of the record, it is observed by the Presiding Officer, that inspite of demand made by the respondents for relevant documents, forming basis of

the show-cause notice, those were not supplied to him, which amounts to violation of principles of natural justice.

41. Charge No. 1 was in respect of notice dated 26.05.2007 which was issued by the Head of the Department to all the Lab Assistants and Lab Technicians directing to keep the lab apparatus ready for practical examinations. It is alleged that the respondent has not followed the directions. After going through the explanation given by the respondent, the Presiding Officer has held that since he was given overlapping duty, he had sought guidance from the superiors which does not amount to any misconduct.

42. Second charge again about notice issued by the Authority on 25.06.2007. It is alleged that the respondent has not done his duties as directed and thereby created interference in the work of the examination which was also held to be not proved by the Presiding Officer after taking into consideration the reply given by the respondent.

43. As regards the Charge No. 3 is concerned, it is alleged that when the local inquiry committee was on a visit to the College on 11.08.2005, the respondent had adorned black strip on his forearm while doing his work, which was in protest against the

petitioners. It is alleged that it was against the Management and its administration which amounted to misconduct. Even this charge could not be proved for want of evidence.

44. Charge No. 4 was about an incident of 18.09.2003 wherein the respondent was directed to arrange the apparatus in the laboratory during the practical examinations. This charge was held to be not proved since there was no witness or a student examined by the Management.

45. So far as Charge No. 5 is concerned, it was alleged that respondent had made false allegations against the Superiors regarding deduction of the amount of provident fund and also complaint was made by the respondents to the Government against the Management alleging that Management has failed to make payment as per the recommendations of Pay Commissions. Similarly, complaints are also made to the All India Technical Education Council, Mumbai and other Government Authorities. The Presiding Officer held that there were no misconduct since the complaints made by the respondents were genuine. After going through the record annexed with the charge-sheet and the charges levelled against the respondent, the Presiding Officer has recorded his finding that none of the charges could be proved against the respondent.

46. As far as charges against respondent Shri. Chandrakant Ramdas Joshi in Writ Petition No. 10634 of 2018 are concerned, there are only two charges against him. First charge is regarding tying black strip around the shoulder during the visit of local enquiry committee on 27.07.2007. It is alleged to have caused breach of Rule 41(6)(c) of the Standard Code Rules, 1984 which amounts to misconduct under Rule 42(d) of the Standard Code Rules, 1984. It is held by the Presiding Officer, that for this very charge against respondent Vijay Govind Nagpure, the charge was held to be not proved for want of substantive evidence.

47. The Presiding Officer, has relied on the decision in **Mysore Paper Mills Officers' Association, Bhadravathi, and Ors. Vs. Mysore Paper Mills, Ltd.. Bhadravathi, and Ors [1999 SCC Onlie Karnataka 62]**, wherein it is held that whenever the Petitioners / Management fails to fulfill the demand of employee or neglects the grievances and problems of the employees or if any adverse decision is taken against them or if any of the officers cause harassment to the subordinates, the same will be protested by various means. Such as conducting demonstrations by raising slogans, taking out processions, gheraoing tools / pen down strike, etc. Wearing black badge is also one of the kinds of protest, that can be exhibited by the petitioners

under Articles 19(1)(a) to 19(c) of the Constitution of India and the same cannot be considered as 'misconduct' for any reason.

48. Normally, in such circumstances, the protesters merely wear black badges and will engage in their duties without causing any sabotage to the property of the establishment unit. No harm is caused to anybody by wearing badges. It is the expression of their feelings against the decision of the Petitioners / Management that were affecting their fundamental rights and statutory rights. Therefore, wearing black badge cannot be termed as misconduct as alleged and it will not be an act subversive indiscipline or good behaviour.

49. In view of the above judicial pronouncement of the Hon'ble Supreme Court and also considering that the same charge held to be not proved for want of evidence against the petitioner in Writ Petition No. 10631 of 2018, the Presiding Officer has held that it does not amount to misconduct.

50. The other charge i.e. Charge No. 2 was regarding the disbursement of pay and allowances to the respondent, in implementation of the recommendation of pay commissions as directed by the Government from time to time.

51. According to the Petitioners / Management, inspite of making payment as per pay scales, the appellant has filed false complaint on 29.11.2006 to the Chairman, All Indian Technical Education Council, Bombay and the Direction, Technical Education, Maharashtra State, Mumbai. It is not disputed that the appellants Vijay Nagpure and Chandrakant Joshi had approached for redressal of their grievance regarding pay scales in writ petition by filing W. P. No. 1420 of 2002. By passing the order in said writ petition, this Court has directed the Petitioners / Management to make payment to the petitioners therein according to the recommendations of Pay Commission which are applicable to them.

52. Therefore, on the background of the order passed by this Court, it is held by the Presiding Officer that there is no substance in the Charge No. 2. Thus, it is held by the Presiding Officer that none of the charges were proved by the petitioners during the Disciplinary Enquiry against respondent Chandrakant Joshi.

53. The Presiding Officer has further relied upon Rule 47 of the Standard Code Rules, 1984 which reads thus :

47. Action on Enquiry Report :-

(1) The Disciplinary Authority, if it is not itself Enquiring

Authority, shall consider the report and record its findings on each charge.

(2) (i) If the Disciplinary Authority having regard to its findings on any of the articles of charge, is of the opinion that any of the major penalties shall be imposed on the employee, then it shall -

(a) furnish to the employee, a copy of the report of the inquiry held by it and its findings on each article of charge or where the inquiry has been held by an Enquiring Authority appointed by it, a copy of the report of such Authority and a statement of its findings on article of charge expressly stating whether or not it agrees with the findings of the Enquiring Authority, together with brief reasons for its disagreement, if any, with the findings of the Enquiring Authority; and

(b) give to the employee a notice stating the penalty proposed to be imposed on him and 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 on the basis of the evidence adduced during the inquiry.

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

(3) If the Disciplinary Authority, having regard to the findings, is of the opinion that any of the minor penalties shall be imposed on the employee, it shall notwithstanding anything contained in these rules, determine what penalty shall be imposed on the employee and make an order imposing such penalty.

(4) If the Disciplinary Authority, having regard the findings on the charges, is of the opinion that its no penalty shall be imposed or that the employee be honourably acquitted, the Disciplinary Authority shall

inform the employee accordingly.

(5) The Disciplinary Authority, itself not being the Enquiring Authority, shall consider the enquiry report and if it disagrees with the Enquiring Authority on any article of charge, it shall record its reasons for such disagreement, and refer the case back to the Enquiring Authority for further enquiry and report. The Enquiring Authority shall thereon proceed to hold further enquiry according to the provisions of the proceeding rule as far as may be.

(6) The orders made by the Disciplinary Authority under this rule shall be communicated to the employee and the Enquiring Authority.

54. According to the Presiding Officer, while imposing the major penalty i.e. dismissal from service, the procedure for the enquiry is provided in Rule 46 of the Standard Code Rules, 1984. Upon scrutiny of the record, the Presiding Officer has held that during Disciplinary Enquiry against both the respondents, the statement of imputation of misconduct or misbehaviour in support of each article of charge is not annexed to the Article of Charges. When in fact, it was incumbent on the part of disciplinary Authority to comply with Rule 46(2)(b) of the Standard Code Rules. Rule 46(2)(b) is reproduced hereunder which reads thus :

Rule 46(2)(b) :

A statement of imputation of misconduct or misbehaviour in support of each article of charge which shall contain :-

(i) a statement of all relevant facts including admission, or confession by the employee, and

(ii) a list of documents by which a list of witnesses by whom, the articles of charge are proposed to be sustained.

55. Another important aspect which is recorded by the Presiding Officer about disciplinary proceedings is that after perusing the entire record in both the appeals, he found that statements of witnesses were not recorded in the preliminary enquiry, for forming opinion requiring to institute a departmental enquiry against both the appellants. Therefore, he has recorded finding that the Enquiry Report in both the cases cannot be sustained.

56. Considering the charges levelled against the respondents herein, the Presiding Officer has found the punishment to be disproportionate and violative of Article 14. The observations made by the Presiding Officer about disproportionate punishment are on the background that the respondent Petitioners / Management has not placed on record any memo or warnings issued to the respondents about their behaviour, conduct while discharging their duties. It is observed that considering that the respondents had claimed that they have put in unblemished service, the punishment of dismissal from services is found to be shockingly disproportionate to the charges levelled against them.

57. Relying on the reported decision of the Hon'ble Apex Court in case of **Color Chem Limited Vs. A. L. Alaspurkar and Ors. (AIR 1998 SC 948)**, the Presiding Officer has come to the conclusion that the punishment of dismissal was shockingly disproportionate to the charges against the appellants. It is held that respondent could not prove the charges levelled against the appellants, hence are entitled to be reinstated in services with back-wages.

58. Upon making the aforementioned observations, both the appeals filed by the respondents herein were allowed directing the respondents No. 1 and 2 Petitioners / Management before the College Tribunal to reinstate the appellants therein with continuity of service and pay arrears of back-wages with service benefits accrued thereof.

59. Upon going through the judgment and the grounds raised by the petitioner in both the writ petitions, following questions arise before this Court for consideration :-

- (I) Whether it was within the powers of Presiding Officer, University and College Tribunal, Aurangabad to re-appreciate the evidence adduced during the Disciplinary Enquiry ?
- (II) Whether the enquiry was vitiated on account of non-

adherence to Rule 47 of the Standard Code Rules, 1984 and if yes, what was the course that was required to be adopted ?

- (III) Whether penalty is shockingly disproportionate and whether the respondents are entitled for back-wages ?

60. The Presiding Officer, while passing the impugned order, has in unambiguous terms observed that he has re-appreciated the evidence produced during the disciplinary proceedings in exercise of his powers under Section 60 of the Maharashtra Universities Act, 1994. Being the first appellate Authority, it was well within the powers of the Presiding Officer to re-appreciate the evidence that was adduced during the disciplinary proceedings. While making the above observations, reliance is placed on **Anant Bhagwan Kamble Vs. Principal, M. L. Dhanukar College of Commerce and Ors. [2007(3) Bom. C.R. 929]**, this Court has made following observations :-

“9. [Section 59](#) of the Maharashtra Universities Act, 1954 says that notwithstanding anything contained in any law or contract for the time being in force any employee (whether a teacher or other employee) in any university, college or recognised institution (other than that managed and maintained by the State Government, Central Government or a local authority), who is dismissed removed or whose services are otherwise terminated or who is reduced in rank by the university or the management and who is aggrieved, shall have a right of appeal against any such order to the Tribunal. For the purpose of adjudication, hearing and disposal of appeals the Tribunal shall have the same powers as are

vested in an appeal Court under the Code of Civil Procedure, 1908. It also states that the Tribunal shall have the power to stay the operation of any order against which an appeal is made, on such terms and conditions, as the Tribunal may think fit. Section 61 of the Maharashtra Universities Act, confers power on the Tribunal, after giving reasonable opportunity of being heard, to decide and set aside the order of the University or the management, partly or wholly and direct reinstatement of the employee to the same post or to a lower post or to restore the employee to the rank which he held before reduction or to grant any other relief.

10. It is true the normally in a revision, writ or other proceedings the against an order passed in a domestic enquiry the authority hearing the revision, writ or other proceedings does not re-appreciate the evidence adduced before the Enquiry Officer. However, Section 60 of the Maharashtra Universities Act, provides that the Tribunal shall have the same powers as are vested in an Appellate Court under the Civil Procedure Code. An Appellate Civil Court is entitled to re-appreciate the evidence and come to its own conclusions. It is entitled to set aside the findings which are not perverse but erroneous. The Tribunal constituted under the Maharashtra Universities Act, 1994 hearing an appeal under Section 59 being an Appellate Court, in my view, is entitled to re-appreciate the evidence adduced before the Enquiry Officer and come to its own conclusion as to the correctness of the findings of fact recorded by the Enquiry Officer. The Tribunal does so like a Court of appeal exercising appellate powers under the Civil Procedure Code. The Tribunal is entitled to reappreciate the evidence and reverse a finding of fact which it considers erroneous though not perverse. Therefore, the contention of the learned Counsel for the college that the Tribunal erred in reappreciating the evidence and setting aside the finding of guilt on seven out of fourteen charges has to be rejected.”

61. In view of the observations of this Court as reproduced herein above, as far as re-appreciation of evidence while exercising the powers vested under Section 60 of the Maharashtra Universities Act, 1994 is concerned, I do not find any perversity in the findings recorded by the Presiding Officer, University and College Tribunal. It is well settled law that first appellate Court can re-evaluate and re-appraise both oral as well as documentary evidence. First appellate Court is a final fact finding Court.

62. In the case of **Santosh Hazari Vs. Purushottam Tiwari (AIR 1995 SC 965)**, it is held as under.

“The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law.

The judgment of the appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general agreement with reasons given by the Court, decision of which is under appeal, would ordinarily suffice.

As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is entitled to interfere with the finding of fact”

63. The Presiding Officer of the College Tribunal who is the First Appellate Court has taken into consideration all the relevant material and evidence that was placed before the Disciplinary Authority and after scrutinizing the said material, recorded the finding that the charges against the appellants are not proved. The order passed by the Presiding Officer is a well reasoned order which does not need any interference.

64. The next question that arises for consideration is whether the inquiry was vitiated on account of non-adherence to Rule 46 and 47 of the Standard Code Rules, 1984. So far as the finding about necessity of recording of findings by the Disciplinary Authority on each charge is concerned, in the present case, there is no disagreement recorded by the Disciplinary Authority to any of charge. The Disciplinary Authority has recorded its agreement with all the charges, therefore, the enquiry would not vitiate on that count. It is only in case where the Enquiring Authority and the Disciplinary Authority are not one and the same, the exercise of recording opinion either in agreement or disagreement on each charge is required to be undertaken.

65. In the present case, admittedly, Enquiring Authority and

the Disciplinary Authority are distinct and it was necessary to record findings on each charge. However, considering that there was no disagreement on any of the charges, the Disciplinary Authority is in agreement with the Enquiring Authority on all the charges, it would have been an futile exercise of recording agreement on each of the charges. Therefore, I do not find any substance in the observation that the enquiry is vitiated on account of non-adherence to the Rule 47(2)(a) of the Standard Code Rules, 1984. The enquiry cannot be said to have vitiated on account of non-adherence to Rule 47 of the Standard Code Rules, 1984.

66. The Presiding Officer has recorded his finding on the basis of evidence produced on record in the enquiry and after re-appreciating the evidence, it is held that the charges are not proved. In view of the findings that charges are not proved, the penalty of dismissal from service cannot be sustained. Even if the charges would have been proved, the penalty of dismissal from service after rendering 24 and 16 years of respective service, is shockingly disproportionate to the charges levelled against the respondents.

67. It is but apparent that merely because the respondents herein have approached this Court raising their legitimate grievance about non-payment of salary and emoluments as per

recommendations of the Pay Commissions applicable to them. Holding grudge against the respondents, the Petitioners / Management have taken such a drastic step against the respondents. The respondents were required to file Writ Petition No. 1420 of 2002 in this Court and it is only after filing of writ petition, the present petitioners have started the disciplinary proceedings against the them.

68. So far as case of respondent Chandrakant Joshi is concerned, two charges were levelled against him for registering protest by wearing black strip and also making representations to the Government Authorities for grant of appropriate pay scales which was not paid by the Petitioners / Management.

69. Similarly, even in case of Vijay Nagpure, there were five charges among which the third charge was held to be not proved for want of evidence. As far as Charges No. 1, 2, 4 and 5 are concerned, it pertain to the alleged misconduct of not following instruction of superiors and not performing the assigned duties and thereby committing misconduct.

70. The charges against the respondents cannot be said to be grave to such extent that only dismissal from service and no other

lesser punishment could have been awarded for such charges. Though the petitioners have urged that if at all the Presiding Officer was of the opinion that the enquiry is vitiated, he should have remanded the matter back to the Enquiring Authority to take corrective steps and pass orders afresh after taking corrective measures. From the findings recorded by the Presiding Officer, I do not find any perversity in the findings recorded by the College Tribunal about shockingly disproportionate punishment. It is perfectly inconsonance with the reasoning recorded by him after taking into consideration each charge. The order of College Tribunal is neither arbitrary nor perverse. Therefore, it does not need any interference.

71. As far as the objection to the grant of back-wages is concerned, when the Court is of the opinion that the termination itself was bad in the eyes of law, reinstatement with grant of back-wages is the necessary and natural consequence, as has been held by the Hon'ble Supreme Court in case of **Deepali (cited supra)**, the relevant paragraphs of the said judgment are already reproduced herein above.

72. Hence, I do not find any illegality or perversity in grant of back-wages to the present respondents. Even otherwise, upon

going through the averments made in the appeal filed by the respondents herein before the Tribunal, there is averment in the appeal memo that the appellants are entitled for back-wages since they are rendered jobless and they are not having any source of income and they are not gainfully employed in any public or private sector. Therefore, in view of averments made by the respondents herein in the appeal before the College Tribunal, there is no substance in the contention of the petitioners that back-wages ought not to have been granted to the respondents. In fact, it was for the petitioners to prove before the Tribunal that the respondents herein were gainfully employed during the pendency of the proceedings in rebuttal of the averment made in the appeal memo.

73. The petitioners have approached this Court invoking jurisdiction under Article 227 of the Constitution of India. The powers to interfere with the orders of the subordinate Court in exercising its powers under Article 227 are very limited. The order of Subordinate Court can be interfered with only in following cases.

- (I) If the order is arbitrary, capricious or perverse.
- (II) The order is passed ignoring the settled proposition of law.
- (III) There is an error of law.
- (IV) There is lack of jurisdiction while passing the order.

74. The tests of exercise of powers under Article 227 of the Constitution of India has been considered by the Hon'ble Apex Court in a Five Judges Constitution Bench in case of **Rajendra Diwan Vs. Pradeep Kumar Ranibala and Ors.** [(2019)20 SCC 143]. While considering the scope of powers conferred by Article 227 of Constitution of India, the Hon'ble Apex Court has held that the power of judicial superintendence must be exercised sparingly, to keep the subordinate Courts and tribunals within the limits of their authority. When a Tribunal has acted within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised "in the cloak of an appeal in disguise". It is further observed that in exercise of its extraordinary powers of superintendence and/or judicial review under Article 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-assess or re-analyze the evidence and/or materials on record.

75. In view of the above observations as already discussed herein above, I do not find that there is any case for interference made out by the petitioners in both the writ petitions. Therefore, both writ petitions deserve to be dismissed.

76. Needless to state that the petitioner in W. P. No. 10634 of 2015, who has already attained the age of superannuation, will be entitled to all the retiral benefits, which he is entitled to receive on his retirement, within a period of three months from the date of the order. The amount of Rs. 15,00,000/- that has already been deposited and received by both the petitioners shall be adjusted in the dues payable to them. As a result of dismissal of writ petitions, the order dated 22.12.2017 passed by University and College Tribunal, Aurangabad, shall be implemented by the parties concerned. Hence, following order :-

ORDER

- I. Both Writ Petitions are **dismissed**.
- II. Rule stands discharged.
- III. All the pending civil applications stand disposed of.

[MANJUSHA DESHPANDE, J.]

Omkar Joshi

77. After pronouncement of judgment, learned Advocate appearing for petitioners makes a request that after the remand of the matter by the Hon'ble Supreme Court, an interim relief was operating in favour of petitioners. Hence, he makes a request that the implementation of the judgment and order may kindly be stayed for approaching the Hon'ble Supreme Court.

78. Considering the request made by the learned Advocate for the petitioners and in view of the fact that interim relief was operating in favour of the petitioners, the operation and implementation of the judgment and order shall be stayed for a period of six weeks from today.

[MANJUSHA DESHPANDE, J.]

Omkar Joshi