

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO.11237 OF 2024**

Dr.Manohar Kacharu Sanap .. Petitioner

**Versus**

Savitribai Phule Pune University & .. Respondents  
Ors.

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Mr.Anil Anturkar, Senior Advocate with Mr.Akshay Karlekar, Mr.Atharva Date, Mr.Vinayak Pandit and Mr.Ajinkya Udane for the Petitioner.

Mr.Rajendra Anbhule with Smt.Nisha Ahire and Smt. Pooja Patil for the Respondent Nos.1 and 2.

Mr.Girish Godbole, Senior Advocate with Mr.Arun Unnikrishnan and Smt.Vanshika Shroff i/b Jadeja & Satiya for the Respondent Nos.3 and 4.

Mr.B.V.Samant, Addl. G.P. with Mr.Abhijeet Naik, AGP for the Respondent State/Respondent Nos.5 and 6.

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**CORAM : BHARATI DANGRE &  
ASHWIN D. BHOBE, JJ.**

**RESERVED ON : 08<sup>th</sup> JANUARY, 2025**  
**PRONOUNCED ON : 20<sup>th</sup> JANUARY, 2025**

**JUDGMENT:- (Per Bharati Dangre, J)**

1. The Petitioner, Dr.Manohar Sanap, working as Professor of Commerce in Ness Wadia College of Commerce, Pune, is aggrieved by the letter of suspension issued to him by the Modern Education Society, Pune i.e. Respondent No.3, thereby placing him under suspension, pursuant to the decision taken

by the Board of Trustees on 02/08/2024, in the wake of complaints received from various lady teachers and *prima facie* finding him guilty of criminal offences, involving criminal turpitude.

The said letter direct that he shall be placed under suspension with immediate effect, during the pendency of the enquiry.

Alongwith the letter of suspension, a charge-sheet containing the statement of allegations is also served upon the Petitioner, which has levelled four charges, which according to the Society, warrant major penalty, on they being proved.

By the very same communication, a retired Ad-hoc District Judge, Pune is appointed as Enquiry Officer to conduct the enquiry and the Petitioner is asked to submit his reply to the charge-sheet alongwith the statement of allegations within three weeks thereafter.

2. It is the specific case of the Petitioner that the suspension order and the enquiry proceedings are clamped upon him, as being duly qualified to be appointed as Registrar of the Respondent No.1-University, as per the provision of Section 14 of the Maharashtra Public Universities Act, 2016 (for short, "**Act of 2016**") and on going through the selection process, he was expecting to be appointed on the said post, but in order to rebuff the chances of his appointment, some miscreant elements were instrumental in getting him suspended, by issuance of letter dated 02/08/2024, so that he is kept away from the appointment to the post of Registrar, despite being qualified to hold the post.

3. We have heard learned senior counsel Mr.Anturkar, with Mr.Akshay Karlekar for the Petitioner, Mr.Rajendra Anbhule with Nisha Ahire for the Respondent Nos.1 & 2. Learned senior counsel Mr.Girish Godbole with Mr.Arun Unnikrishnan has represented Respondent No.3-Modern Education Society and the Ness Wadia College of Commerce-the Respondent No.4.

The Principal Secretary of Higher and Technical Education and the Director of Higher Education are represented by Mr.B.V.Samant, learned Additional Government Pleader.

By consent of the respective counsel appearing for the parties, we issue 'Rule'. Rule is made returnable forthwith. Petition is taken up for hearing.

4. Learned senior counsel Mr.Anturkar, in support of the Petitioner, would submit that the power of initiating an enquiry against the Petitioner or for placing him under suspension can be traced to the statute governing the terms and conditions of service of the teachers appointed in the university/colleges and institutions run by the university/affiliated colleges/constituent colleges/recognised institutions of the University of Poona under Section 42 and/or 73 of the Poona University Act, 1974.

Statute 433-A is invoked by him, as it prescribe the procedure for inflicting penalties and, according to him, the power to be exercised in suspending a teacher, shall be exercised only if the teacher is alleged to be guilty of offence of a criminal nature, involving moral turpitude and if there are reasons to believe that the offence being proved, he deserves to

be removed or dismissed from the service and the competent authority shall first decide, whether the person concerned shall be placed under suspension.

As per the said statute, alongwith the order of suspension, the order of appointment of the Inquiry Officer/Committee, charge-sheet and list of evidence shall be furnished simultaneously and it is imperative for the Authority to commence the inquiry and complete the same expeditiously.

The teacher under suspension is entitled for the salary, as provided under the statute and the statute itself set out the entire procedure of conduct of the inquiry, with a specific provision that period of suspension of the teacher shall be mentioned in the service book alongwith the final decision of the inquiry.

According to the learned senior counsel, as per statute 433-B, if a teacher is convicted of an offence of criminal nature involving moral turpitude by a Court of Law, he shall be dismissed or removed from the service immediately on receipt of the official copy of the decision of the Court of Law, without following the procedure laid down in statute 433-A.

5. Referring to the statute, Mr.Anturkar has submitted that since the power of suspension under statute 433-A shall be exercised only in the circumstances mentioned therein, by no stretch of imagination, the charge-sheet issued to the Petitioner justify the issuance of suspension order and before exercising the said power, the respondent authority did not express satisfaction about the reasons to believe, that in the

event of the offence being proved against him, he would be removed or dismissed from service. It is thus submitted that only upon meeting the said threshold, the power of suspension ought to have been exercised by the Board of Trustees of Modern Education Society. According to him, in none of the charges levelled against the Petitioner, there is a reason to believe that assuming that the charges are ultimately proved, the Petitioner would deserve removal or dismissal from service.

6. The learned counsel has taken us through all the four charges covered in the charge-sheet and though we do not intend to dissect them threadbare at this stage, in nutshell, it is his attempt to demonstrate that none of the incidents, which are included in the charge-sheet, constitute a charge against him sufficient for proceeding departmentally, since it involve moral turpitude or attracts an offence of criminal nature involving moral turpitude. An apprehension is, therefore, expressed that the suspension order is passed *mala fide* only with an intention of creating hurdle in the way of the Petitioner to be appointed on the post of Registrar, despite the fact that he applied to the said post through proper channel and the Management had accorded its No-Objection in his favour and he is entitled to maintain his lien over his present post, though he will be relieved for joining the post of Registrar.

Very fairly Mr.Anturkar would concede that prayer clause (b) in the Petition may not be the remedy available to him through this Court, as what he can only get is consideration of his candidature for the post of Registrar of the

Respondent No.1-University, as definitely his selection do not confer a right of appointment upon him.

7. Learned senior counsel Mr.Godbole representing the Management has raised two preliminary objections; the first being the existence of an alternate and efficacious remedy in form of grievance being raised before the Grievance Committee under Chapter VII of the Act of 2016, constituted for redressal of grievance of the teachers and other employees of the university and if at all a person is aggrieved by the said decision, there is a remedy of appeal to the University and College Tribunal under Section 80 of the Act. It is thus the submission of Mr.Godbole that since an alternative remedy is available to the Petitioner, this Court may not exercise its writ jurisdiction under Article 226 of the Constitution of India.

The second objection raised by Mr.Godbole is that this Court may not show inclination to issue a writ against a private body and he would place reliance upon the catena of decisions in support of his contention. It is his specific contention that no public duty is involved in the present scenario and, since, placing an employee under suspension is not an action in exercise of a public duty, a writ may not be issued to the Management.

Arguing on merits of the case, Mr.Godbole has contended that even if the Court is inclined to exercise its writ jurisdiction, whether the Court would interfere in the order of suspension, as it is the discretion of the Management, whether to keep an employee out of service, so that he would not interfere in the departmental proceedings against him, which are in progress.

It is the specific contention of Mr.Godbole that Respondent No.3 is neither a State nor the instrumentality of the State within the meaning of Article 12 of the Constitution and this Court may not exercise its jurisdiction against it by issuing a writ and in fact, the grievance raised by the Petitioner ought to have find a redressal either through the Grievance Committee or Civil Court, but definitely not by filing the writ petition, with the reliefs sought therein.

8. On merits, Mr.Godbole has taken us through the various complaints received against the Petitioner and in addition, he has also pointed out to us the additional charge levelled against the Petitioner by the letter dated 13/12/2024. In addition, we are also informed by Mr.Godbole that pursuant to the appointment of the Enquiry Officer, the enquiry proceedings are in progress and thirteen hearings are held since 23/08/2024 and the Petitioner had appeared before the Enquiry Officer on twelve occasions and, presently, the enquiry is at the stage of filing of reply by the delinquent to the additional charge. Considering that an enquiry is on a fast track mode, it is the submission of Mr.Godbole that there is every chance of the Petitioner influencing the witnesses and, in fact, in the affidavit-in-sur-rejoinder filed by the Management on 31/12/2024, a specific accusation is levelled against him that he tried to influence the witnesses to give evidence in his favour and he had approached the trustees of Respondent No.3 to withdraw the enquiry and/or to provide evidence favouring him, but when they refused to do so, he is accused of threatening the witnesses and trustees with dire consequences, which had constrained Respondent No.4 to file a

complaint before the Deputy Commissioner of Police, Army Police Division, Pune to take necessary action and the copies of the complaints dated 21/10/2024 and 28/10/2024 filed by Respondent No.4 and Respondent No.3 respectively are placed alongwith the sur-rejoinder.

9. We shall now deal with the arguments of Mr.Godbole raising a preliminary objection on the maintainability of the Writ Petition.

The pleadings in the Petition reflect that the Petitioner was appointed as Lecturer (Assistant Professor) in the year 2000 in Respondent No.4-College and, thereafter, he was promoted to the post of Associate Professor in 2013 and was conferred with the benefit of Career Advancement Program in the year 2021 and, since then, he is working as Professor in Ness Wadia College of Commerce, Pune.

Ness Wadia College of Commerce-Respondent No.4 is under the control of Modern Education Society, Pune, a society registered under the the Societies Registration Act, 1860 and Bombay Public Trusts Act, 1950. The suspension order issued to the Petitioner on 02/08/2024 is under the signature of authorised trustee of Respondent No.3-Modern Education Society and even the charge-sheet, including the statement of allegations are also furnished by Respondent No.3.

The objection of Mr.Godbole is about the Respondent Nos.3 and 4 being not amenable to the writ jurisdiction of this Court.

It is time and again held that the term 'Authority' in Article 226 must receive a liberal meaning unlike the term in

Article 12, as Article 12 of the Constitution clearly stipulate that 'the State' includes the Government and Parliament of India and the Government and Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India, but as Article 12 indicate that it is restricted to part III i.e. fundamental rights and shall be construed to be so unless the context otherwise requires.

Article 226, the power of High Courts to issue certain writs, extend to the territories in relation to which it exercises jurisdiction and shall be issued to any person or authority, including in appropriate cases, any Government, for the enforcement to any of the rights conferred by Part III or for any other purpose. The word 'any person or authority' used in Article 226 is not confined only to the statutory authorities and instrumentalities of the State and it may cover any other person or body performing public duty.

In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust Vs. V.R.Rudani*<sup>1</sup>, in considering whether a writ of mandamus can be issued against a private body, it is held that 'any person or authority' performing the public duty and owing positive obligation to the affected party is amenable to writ jurisdiction and dealing with the objection that the Management of the College being a Trust, registered under the Bombay Public Trusts Act, is not amenable to the writ jurisdiction of the High Court, as the Trust is a private institution, and the College was not a statutory body, since not created by or under a statute, the

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<sup>1</sup> (1989) 2 SCC 691

exercise of writ jurisdiction was opposed. In paragraph 15, the objection raised is turned down by specifically recording thus :-

“15. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellants-trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working as educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating University. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff, and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.”

Referring to the power of High Court to issue writ under Article 226, reliance was placed upon the decision in the case of *Dwarkanath Vs. Income Tax Officer*<sup>2</sup> and the observations of Justice Subba Rao, were reproduced, to the following effect:-

“This article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised.....That apart, High Courts can also issue directions, orders or writs other than the prerogative writs and it enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country.”

10. The clear distinction in Article 226 and Article 12 with reference to the term ‘authority’ was also clearly noted in the following words :-

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2 (1965) 3 SCR 536

“20. The term “authority” used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article 12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words “any person or authority” used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists mandamus cannot be denied.”

11. In *Marwari Balika Vidyalaya Vs. Asha Srivastava & Ors.*<sup>3</sup>, by referring to the earlier decision in *V.R.Rudani* (supra) and also the decision in *Unni Krishnan J. P. Vs. State of A.P.*<sup>4</sup> and in *Zee Telefilms Ltd. Vs. Union of India*<sup>5</sup>, declaring that in view of the law laid down, the view of the High Court could not be sustained that writ petition would not be maintainable merely because the respondent/institution is purely unaided private educational institution, as the appellant had taken a specific plea that the respondent perform public functions i.e. providing education to children in their institutions throughout India.

It was thus concluded that writ petition is maintainable in such a matter even as against the private unaided educational institution.

12. In the wake of the aforesaid position of law emerging before us, we do not find any merit in the preliminary objection raised by Mr.Godbole about the Respondent Nos.3 and 4 not being amenable to the writ jurisdiction as Ness Wadia College

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<sup>3</sup> (2020) 14 SCC 449

<sup>4</sup> (1993) 1 SCC 645

<sup>5</sup> (2005) 4 SCC 649

of Commerce, Pune run by Respondent No.3, which is a Society registered under the Societies Registration Act, offers education and is a College affiliated with Savitribai Phule Pune University, Maharashtra State and it offers various curriculum for graduation and post graduation degree/diplomas alongwith various autonomous courses. Apart from this, it has also received accreditation from the National Assessment & Accreditation Council (NAAC) and it cannot be said that it is a private entity not amenable to the writ jurisdiction of this Court.

It is true that if an action on part of 'State' or the 'Authority' which is a State, is arbitrary, if it is violative of the fundamental rights, a Writ Petition would be maintainable. Writ can also be issued where the action is unsupported by law or arbitrary or the decision is taken in violation of principles of natural justice.

13. We shall now deal with second objection raised by learned senior counsel Mr.Godbole that the Petitioner has a remedy to approach the Grievance Committee constituted under the Act of 2016, with a further right of appeal conferred under Section 81 before the University and College Tribunal.

There is no dispute that the Grievance Committee is constituted in each University to deal with all types of grievance of the teachers and other employees of the University affiliated in autonomous colleges and recognised institutions and it is empowered to hear, settle and decide grievances as per law.

14. Mr.Anturkar has however urged that the said remedy is toothless, since there is no mechanism prescribed to implement the directions of the Grievance Committee and we find substance in the said submission as under Section 79(6), the Grievance Committee is competent to hear, settle and decide grievances as per the law, as far as may be practicable within three months and it is also lawful for the Committee to decide grievances or complaints, which would not fall within the jurisdiction of the Tribunal constituted under Section 80, but, we do not find any mechanism to implement the decisions of the Grievance Committee nor does the statute makes it mandatory that the decision of the Grievance Committee shall be complied by the Management and even if, an employee gets a relief at the hands of the Grievance Committee, in absence of any mechanism being prescribed about how it shall be implemented, we find that the remedy of Grievance Committee is no short of a form which is breeding with Pious Hope that the direction issued by the Grievance Committee shall be implemented by the Management, without any hesitancy.

15. If the grievance of an employee/teacher is not redressed by the Grievance Committee then there is a derivative remedy provided i.e. filing of an appeal before the Tribunal and in fact this is not a direct remedy as it is not open for an employee to approach the College Tribunal directly unless and until his case falls within Section 81(1) i.e. when he is dismissed or removed or his services are terminated or is compulsorily retired or is reduced in rank by the University or the Management.

16. We find the two remedies, one to be followed by the other, to be not efficacious remedy as by approaching the Grievance Committee, the Petitioner may not get his grievance redressed as its decision has no enforceability and only upon availing this remedy, he could not have approached the College Tribunal by filing an appeal under Section 81.

It is a trite position of law that rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion, as in appropriate cases, despite availability of an alternative remedy, the High Court may exercise its writ jurisdiction, when the petitioner seeks enforcement of any of the fundamental rights or where there is a failure of principles of natural justice or where the orders or proceedings are without jurisdiction. It is not uncommon for the Courts to deviate from the self imposed restrictions in exercise of writ jurisdiction and in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors.*<sup>6</sup>, the Apex Court has observed thus :-

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. Rashid Ahmed v. Municipal Board, Kairana laid down that existence of an adequate legal remedy was a factor to be taken into

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6 (1998) 8 SCC 1

consideration in the matter of granting writs. This was followed by another Rashid case, namely, K.S. Rashid & Son v. Income Tax Investigation Commission which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances."

17. An alternative remedy, therefore, unless and until it is efficacious, would be no bar, in this Court entertaining the Petition and in the peculiar facts of the case, we deem it appropriate to exercise a discretion to examine the case of the Petitioner as it is alleged that the action of the respondents is violative of his fundamental right under Article 19(1)(g) as well as Article 21 of the Constitution of India.

18. On turning down, both the preliminary objections raised by Mr. Godbole, we shall now come to the contest raised to the claim of the Petitioner about the scope for interference in the order of suspension, which is passed pending the departmental enquiry.

Reliance is placed on the decision in case of *Union of India & Anr. Vs. Ashok Kumar Aggarwal*<sup>7</sup> and by relying upon paragraph 14, the submission advanced is, that the scope of judicial review is limited in case of suspension, since the said act is administrative in nature and suspension is not a punishment, but an employee is placed under suspension to only forbid him from working in the office, while the enquiry is on going and definitely the Court and Tribunal cannot sit as an Appellate Authority over the decision of the employer.

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7 (2013) 16 SCC 147

There can be no quarrel about the proposition about the purpose of putting an employee under suspension and the service rules governing employees in various institutions, clearly contemplate the exercise of such power, in the circumstances specified and one of them may be a conduct of an departmental/disciplinary enquiry and when the enquiry is pending, the employee shall be kept under suspension, so that there is no interference by him in the inquiry proceedings, as it is a well accepted proposition in service jurisprudence that the suspension is not a punishment, but it is merely an administrative order, which forbids the delinquent from working in the office by keeping him out.

At times, even when an employee is under continued suspension for a considerable length of time, the highest Courts of this country have taken a view that it is a complete discretion of the employer, as to when that suspension period should come to an end, as during the period of suspension, the relationship between the employer and the employee is merely suspended i.e. kept in abeyance and has not come to an end and in fact, the employee continue to gain monetary benefits, despite being under suspension, as it only temporarily deprives him from discharging his functions on a particular post.

In *O.P.Gupta Vs. Union of India*<sup>8</sup>, it is categorically held that in certain cases the suspension cause stigma even after exoneration in the departmental proceedings or acquittal by the Criminal Court, but despite this it cannot be treated as punishment in strict legal sense.

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8 (1987) 4 SCC 328

19. It is equally true that the order of suspension would be passed after taking into consideration the circumstances in which the power deserve its exercise and this may include the gravity of the misconduct sought to be inquired into or investigate and the nature of evidence to be placed before the disciplinary authority. It is expected that the Appointing Authority or the Disciplinary Authority, as the case may be, will put an employee under suspension only when it is expedient to do so and in *State of Orissa Vs. Bimal Kumar Mohanty*<sup>9</sup>, the Apex Court observed thus :-

“13..... the order of suspension would be passed taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by the disciplinary authority. Appointing authority or disciplinary authority should consider ..... and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law should be laid down in that behalf.....In other words, it is to refrain him to avail further opportunity to perpetuate the alleged misconduct or to remove the impression among the members of service that dereliction of duty will pay fruits and the offending employee could get away even pending inquiry without any impediment or to provide an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had an opportunity in office to impede the progress of the investigation or inquiry etc.... It would be another thing if the action is actuated by *mala fides, arbitrarily or for ulterior purpose*. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The Authority also should keep in mind *public interest of the impact of the delinquent's continuation in office* while facing departmental inquiry or a trial of a criminal charge.”

20. In *Ashok Kumar Aggarwal (supra)*, the Apex Court while finding very little scope of inference in the suspension order, clearly held as below :-

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9 (1994) 4 SCC 126

“21. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

22. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank, etc.”

23. .... ..

24. .... ..

25. .... ..

26. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in *State of M.P. v. Shardul Singh*, *P.V. Srinivasa Sastry v. Comptroller & Auditor General*, *ESI v. T. Abdul Razak*, *Kusheshwar Dubey v. Bharat Coking Coal Ltd.*, *Delhi Cloth & General Mills Ltd. v. Kushal Bhans*, *U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan*, *State of Rajasthan v. B.K. Meena*, *Prohibition and Excise Deptt. v. L. Srinivasan* and *Allahabad Bank v. Deepak Kumar Bhola*, wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question and in order that the disciplinary proceedings may continue unhindered the

court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial cannot be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in *mala fide* and without there being even a *prima facie* evidence on record connecting the employee with the misconduct in question.”

21. In the aforesaid observations of the Hon’ble Apex Court, an exception made is, where the charges levelled are baseless, *mala fide* or vindictive and are framed only to keep the delinquent out of job and in such contingencies, a case for judicial review is made out.

22. It is in light of the aforesaid window being available providing a scope to interfere in an order of suspension and by keeping in view the effects of suspension, particularly when a person like the Petitioner apprehends that on account of the suspension imposed upon him, despite his selection as Registrar by the Respondent No.1-Savitribai Phule Pune University, he may not be offered the post.

In any case, we must clarify ourselves that we are not getting into the *mala fides*, which are attributed to Respondent Nos.3 and 4 in suspending the Petitioner, so as to keep him away from the post, as we are conscious of the position in law that mere selection of an employee for a particular post or his placement in the select list, will not confer a right of appointment.

We must make it clear that we are testing the order of suspension in the light of the nature of accusations levelled against the Petitioner in the charge-sheet, in the backdrop of Statute 433-A, which contemplate suspension.

Before we exercise our writ jurisdiction, we must test the argument of Mr Anturkar that the exercise of power is arbitrary and hence violates article 14 of the Constitution .

As per the statute 433-A, the power of suspension can be resorted to, if the teacher is alleged to be guilty of an offence of a criminal nature involving moral turpitude and if there are reasons to believe that in the event of the offence being proved against him, he would deserve to be removed or dismissed from service and in such a case, the competent authority shall decide whether the person concerned should be placed under suspension.

Reading of the said statute makes it evidently clear that power of suspension can be resorted to, when there is an accusation involving moral turpitude and there are reasons to believe that if the offence is proved against a delinquent, he would deserve removal or dismissal from service.

23. 'Moral turpitude' is not defined anywhere but anything done contrary to justice, honesty, modesty or good morals can be said to be an act of moral turpitude. An act of vileness or depravity in the private and social duty which a person owes to his fellowmen or to his society in general, contrary to the accepted customary rules of rights and duties between man and man, may make that act an act of moral turpitude. **In Mangali Vs. Chhakki Lal and ors,**<sup>10</sup> the

<sup>10</sup> AIR 1963 Allahabad 527

Allahabad High Court had categorically observed thus in regards to the offence of moral turpitude “With great respect, it appears to me that some of the observations in the decisions have been widely stated and if followed, literally may make every act punishable in law an offence involving moral turpitude, that however, could not be the intention. From consideration of the dictionary meaning of the words, “moral” and “turpitude” as well as the real ratio decidendi of the cases, the principle which emerges appear to be that the question whether a certain offence involve moral turpitude or not, will necessarily depend on the circumstances in which the offence is committed. It is not every punishable act that can be considered to be an offence involving moral turpitude. Had that been so, the qualification "involving moral turpitude" would not have been used by the Legislature and it would have disqualified every person who had been convicted of any offence, the tests which should ordinarily be applied for judging whether a certain offence does or does not involve moral turpitude appear to be: (1) whether the act leading to a conviction was such as could shock the moral conscience or society in general, (2) whether the motive which led to the act was a base one and (3) whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.”

Thus, it is clear that every act punishable in law would not amount to an offence involving moral turpitude and in order to arrive at a conclusion that it is so, there

must be an element of baseness and depravity in the act for which a particular individual has been punished. The act must be vile or harmful to Society in general or contrary to accepted rules between man and men. Mere violation of a particular statute cannot amount to commission of an act involving moral turpitude.

24. What constitutes moral turpitude would depend upon its facts and circumstances. Ordinarily the test can be applied for judging an offence involving moral turpitude, would involve depravity and wickedness of character.

‘Moral Turpitude’, as per Black’s Law Dictionary, is as below :-

“The act of baseness, vileness, or the depravity in the private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rule of right and duty between man and man.”

In normal parlance, moral turpitude involves something immoral in itself, regardless of it being punished in law. It is restricted to the gravest offences, consisting of felonies, infamous crimes, and those that are malum in se and disclose a depraved mind. It may also connote bad faith, bad repute, corruption, defilement, delinquency, discredit, dishonor, shame, guilt, knavery, misdoing, perversion, shame, wrong etc.

There may be certain offences, which can straightway termed as involving moral turpitude like for example offences relating to dowry, death, Prevention of Corruption Act, 1988 Narcotics Drugs & Psychotropic Substances Rules, 1985 and Protection of Children from Sexual Offences Act, 2012 etc. On the other hand, there may be criminal cases, when a person is

convicted, but it may not be an offence of moral turpitude like in cases, where a person is convicted under Sections 147, 149, 323/149 of IPC and in such case, conviction in criminal case may not entail dismissal of the employee. The decision of the Apex Court in case of **Madhya Pradesh Vs. Hajarilal, 2008 3 SCC 273**, where a person was convicted under Section 323 read with 34 of IPC, but was not found to be involved in an act involving moral turpitude, the conviction made under Sections 323 and 341 of IPC was held not resulting into dismissal of the employee as an automatic consequence and the termination was set aside.

25. The Petitioner being placed under suspension by issuing a letter of suspension on 02/08/2024, disclose that *prima facie*, on being found guilty of criminal offences involving moral turpitude and, since, there is reason to believe that in the event of the offence being proved, he would be deserved to be removed or dismissed from service, the Board has resolved to initiate departmental enquiry.

It is only on perusal of the charge-sheet, which has included the statement of allegations, one can derive an inference, whether the charges levelled would involve moral turpitude and even if a departmental enquiry is conducted into the charges levelled, whether it would result into imposition of a major penalty.

26. The charge-sheet being served upon the Petitioner on the very same day, has levelled four accusations against him and we have carefully perused the same.

The first allegation, constituting the charge, reads thus :-

“1. In spite of the hearing before the National Commission of Scheduled Caste New Delhi and in spite of specific observations against you about mental harassment and torture to Dr. Pradnya Vhankate and recommendations relating to the same (referred to Minutes of the Meeting issued by the Members National Commission of Scheduled Caste New Delhi dated 02/03/2023, you continued harassment, trouble and the inconvenience were created for her to carry out her work. The National Commission of Scheduled Caste had also taken cognizance of the same and directed the Management to reexamine. Your said actions amount to misconduct at working place and offences involving moral turpitude.”

As regards the said accusation is concerned, from imputation of charges, it is evident that Mrs. Pradnya Vhankate had preferred a complaint to the National Commission of Scheduled Caste New Delhi, alleging mental harassment and humiliation to her and the Commissioner had issued a notice to the delinquent and also to the College and what is alleged against the Petitioner is, he appeared before the Commission, but failed to reveal that he was a functional trustee.

The Commission on hearing the complainant and delinquent made certain recommendations and this include directions to the College and the Society/Management to take proactive steps to stop harassment of the complainant. A specific direction is issued that the cubical of the complainant should be changed to a better one. As regards the Petitioner, the recommendation reads thus :-

“(iii) Dr. Manohar Sanap will not interfere in any way in the Petitioner’s official work

(iv) Considering the active involvement of Dr. Manohar Sanap in the matter, the Society/Management shall make an effort to transfer the services of Dr. Manohar Sanap to any other College/Unit of the same Management.”

Admittedly, the Petitioner was never transferred, but he tendered resignation from the post of trustee and the

Management sympathetically considered the same, is what the imputation of charges reveal.

Reading of the aforesaid, we wonder as to how the aforesaid act amount to an offence involving moral turpitude, as the Management never initiated any action for his transfer and the Petitioner continued to work on the same post.

27. After this incident, the complainant appeared before the National Commission for Schedule Caste once again made complaint on 12/04/2023, almost after a year after the recommendation of the Commission, alleging the harassment. The said letter addressed by the complainant is placed on record and we do not find any allegation of sexual harassment or any serious accusation levelled against the Petitioner, but she has referred to some inconvenience being created by Dr.Sanap and requested for an action.

It is not uncommon for the employees working in an establishment to have differences and this may involve the people in the same rank or it can be between the people in hierarchy, but every quibble definitely would not attract offence involving moral turpitude.

28. Coming to the complaint of In-Charge Principal of Ness Wadia College of Commerce, Dr.Vrishali Randhir, who has alleged that the Petitioner has visited her cabin on 18/04/2024 and insisted her to give a declaration that his behaviour with female employees was proper or he has never insulted or abused any professor, and when she refused to do so, she was spoken bad words in rude and abusive manner and these acts are alleged to be amounting to criminal offence involving

moral turpitude, in subordination and misconduct on part of the Petitioner.

On Perusal of the said charge, based upon the complaint of the then In-Charge Principal, we also fail to understand as to how the alleged conduct, assuming that the accusation is proved would amount to criminal offence involving moral turpitude.

29. The third charge revolve around a complaint made by the Vice President, Mrs.Sonia Iyenfar, who has complained to the Management about the insulting and humiliating treatment given by the Petitioner, while she was engaged in college activities and by removing her from the position, where she was sitting by putting pressure on her indecently.

We have perused the said complaint placed on record minutely.

It is in respect of an incident when the annual photo-session was scheduled in the college and a typical arrangement was made, since as per the protocol, the Principal sits in centre, flanked by Vice Principal of Senior College and Vice Principal of Junior College on either of his side.

According to the complainant, she was at left hand side of the Principal Dr.Vrishali Raje and in the middle of the photo-session, it is alleged that the Petitioner has approached her chair with his hands flaying, signaling her to get up from the chair, by saying that he had to sit in that chair. She did not understand what he intended to convey, but she got up and moved aside and according to the complainant, the Petitioner

seated himself and called his department/team. After the photograph was clicked, the complainant sat in her position next to the Principal, but it is alleged that the Petitioner once again came there by saying that he had to sit on that chair, and according to her own words in the complaint, she narrate it as below :-

“2. After, a few moments, he came over again with hands flaying and mentioning for the second

time, after the 1 instance, that he has to sit on that chair; and that I have to get up. It was confusing and shocking and I failed to figure out what was transpiring. I moved aside, the second time.

After Dr. Manohar Sanap was done with the photo session the second time, I sat in my position next to the Principal.

3. After a few more moments, he came over the third time.

The same gestures and words were repeated by him, asking me to get up. I refused. "I choose to sit", was my response.

He was very livid (angry). He was shouting that he refuses to sit next to me as he belongs to Senior College. He was speaking in very loud & livid tone that she is not my authority and he will not sit for the photo session if she occupies the place in the Senior College photo session.”

The complaint thus alleged that she was humiliated as the conduct of the Petitioner lacked dignity and an action was prayed to be taken.

30. After perusal of the complaint, on the basis of which the third charge is levelled, we are astonished to note, that without any mention of an indecent behaviour on part of the Petitioner towards the complainant, being a lady, how does it involve moral turpitude, as moral turpitude specifically convey the act of brashness, vileness, or the depravity in the private and social duties which man owes to his fellow man, or to society in

general, contrary to accepted and customary rule of right and duty between man and man. A person may perceive an act to be shameful, humiliating, hurtful, but the question that arises for consideration is, does the act involve moral turpitude.

31. The fourth charge levelled against the Petitioner is equally frivolous, as it is alleged that he was allotted a laptop, which was the property of the Society and an IP address was given to him and he was required to return the laptop, when he seized to be trustee and he ought not to have used the IP address for any communication, but he had failed to return the laptop and illegally used the IP address.

As regards this charge, one thing is to be noted that the Petitioner is still continuing as a Professor in the Respondent Institute and, therefore, the allegation that he has failed to return the laptop, as he was removed from service, do not find any justification in initiating an enquiry. The Petitioner is working as a Professor with the College for last twenty-four years and we must say that despite giving such long period to the institute, if a person like a Petitioner, who was working as Professor has to suffer an accusation that he has not returned the laptop, we can only describe this as unfortunate accusation. In any case, he is not accused of any misuse of the IP Address, resulting any loss to the Society or college, either monetary or otherwise.

32. In regards to the accusations levelled, which are sought to be given a colour of criminal offence involving moral turpitude, we must note that not a single complaint is filed with the police station and moreso, it is very unworthy to take note that he is working as a Professor for last twenty-four

years and it is not the case of the Management that there were any complaints against him before the year 2023-24, which now form the basis of conduct of the departmental enquiry against him. If a person is being accused of committing an offence of moral turpitude, one wonder as to why not a single complaint was lodged against him throughout his long service tenure and how the complaints suddenly sprung up at this particular moment. In any case, we do not want to comment anything more on the issue.

33. The respondent Management which has initiated departmental inquiry against the petitioner and for the said purpose, deemed it appropriate to place him under suspension, when tested against the nature of accusations levelled in the imputation of charges, the same being examined in the backdrop of statute of 433A which is the power vested in the management to suspend an employee, it definitely fail to justify its existence. The actions of the State and its Authority are expected to conform to standard or norms which are rational, non-discriminatory and not guided by extraneous considerations, otherwise, the same would be in violation of Article 14 of the Constitution.

Article 14 strikes at arbitrariness and State action which is arbitrary and not based on rational and relevant principle and if it is guided by any extraneous or irrelevant consideration, in that case, it would be hit by Article 14 which necessarily involve an element of equality or non-arbitrariness.

What would amount to arbitrariness depend on facts and circumstances of each case, as the meaning and true import of

arbitrariness is more easily visualized than precisely stated or defined.

An obvious test to apply to test arbitrariness is to find out whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness.

Where a mode is prescribed for performing an act and there is no impediment in following that procedure, the performance of an act in a manner which do not disclose any discernible principle may attract the vice of arbitrariness. It is a well settled position in law that every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary as Rule of law contemplate governance by Law and not by whims or caprices of the men to whom the governance is entrusted for the time being.

According to Wade and Forsyth, the rule of law has four meanings, and one of them being “government should be conducted within a framework of recognized rules and principles which restrict discretionary power”

34. In **Subodh Kumar Singh Rathory Vs. Chief Executive Officer** and ors, the test of arbitrariness is spelt out in the following manner:-

*69. To ascertain whether an act is arbitrary or not, the court must carefully attend to the facts and the circumstances of the case. It should find out whether the impugned decision is based on any principle. If not, it may unerringly point to arbitrariness. If the act betrays caprice or the mere exhibition of the whim of the authority it would sufficiently bear the insignia of arbitrariness. In this regard supporting an order with a rationale which in the circumstances is found to be reasonable will go a long way to repel a challenge to State action. No doubt the reasons need not in every case be part of the order as such. If there is absence of good faith and the action is actuated with an oblique motive, it could be characterised as being arbitrary. A total non-application of mind without due regard to the rights of the parties and public interest may be a clear indicator of arbitrary action.*

70        *One another way, to assess whether an action complained of could be termed as arbitrary is by way of scrutinizing the reasons that have been assigned to such an action. It involves overseeing whether the reasons which have been cited if at all genuinely formed part of the decision-making process or whether they are merely a ruse. All decisions that are taken must earnestly be in lieu of the reasons and considerations that have been assigned to it. The Court must be mindful of the fact that it is not supposed to delve into every minute details of the reasoning assigned, it need not to go into a detailed exercise of assessing the pros and cons of the reasons itself, but should only see whether the reasons were earnest, genuine and had a rationale with the ultimate decision. What is under scrutiny in judicial review of an action is the decision-making process and whether there is any element of arbitrariness or mala fide.*

71        *Thus, the question to be answered in such situations is whether the decision was based on valid considerations. This is undertaken to ensure that the reasons assigned were the true motivations behind the action and it involves checking for the presence of any ulterior motives or irrelevant considerations that might have influenced the decision. The approach of the court must be to respect the expertise and discretion of administrative authorities while still protecting against arbitrary and capricious actions.”*

35. In wake of the aforesaid discussion, we have no hesitancy in holding that the letter of suspension issued to the petitioner on 2/8/2024 by the respondent no.3 suspending his services as Professor of Commerce at Ness Wadia College, pending the Departmental Enquiry against him, cannot be sustained, as we find the same to be issued in an arbitrary manner and outside the scope of Statute 433A. Since the contingency stipulated under Statute 433A is not made out by suspending the services of the petitioner, we set aside the said decision by holding that the charges levelled against the petitioner are baseless, mala fide and vindictive and he has been directed to place under suspension without justifying the said action.

We must make it clear that our observations should not be construed as the findings on merits of the charges,

but we have restricted our observations qua the power of suspension which is available under Statute 433A (3)(A)(i)

As a result while we direct reinstatement of the petitioner into service with immediate effect, we permit the respondent nos.3 and 4 to continue with the enquiry and expect it to be concluded within period of six months from today.

Needless to state that upon reinstatement of the petitioner, he shall be held entitled to all the benefits flowing to him on the post of Professor in the respondent no.4 College.

Rule is made absolute in terms of prayer clause (A).  
No order as to costs.

36. On the Judgment being pronounced, the learned counsel representing Respondent Nos.3 and 4 has prayed for grant of stay which we must decline for the reasons recorded in the Judgment as the Petitioner was placed under suspension in the month of August, 2024 and the enquiry is proceeding at snail speed. In any case, we have not restrained the Respondents from proceeding with the enquiry and expeditiously complete the same and dependent upon the findings arrived at, impose an appropriate penalty upon the Petitioner. Hence, request is rejected.

**(ASHWIN D. BHOBE,J.)**

**(BHARATI DANGRE, J.)**