

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1107 OF 2025

Dr. Manohar Kacharu Sanap

...Petitioner

V/s.

Modern Education Society

...Respondent

Mr. Akshay Karlekar *for the Petitioner.*

Mr. Vineet Naik, *Senior Advocate with Mr. Arun Unnikrishnan, Ms. Neha Wadekar and Ms. Vanshika Shroff i /b. M/s. Jadeja and Satiya for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 27 January 2025.

P.C. :

1) Petition challenges order dated 5 December 2024 passed by the Enquiry Officer permitting the Respondent Management to amend the charge-sheet issued to the Petitioner by incorporation of additional charge No.5 in the original charge-sheet.

2) I have heard Mr. Karlekar, the learned counsel appearing for the Petitioner and Mr. Vineet Naik, the learned senior advocate appearing for the Respondent.

3) Having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that during conduct of enquiry proceedings, an allegation is levelled against the Petitioner that he tried to pressurise the trustees of the Trust as well as witness for withdrawal of enquiry by threatening them with dire consequences.

4) In my view, the employer has inherent right to issue a supplementary charge-sheet or add an additional charge to the original charge-sheet and it is not even necessary to file any separate application before the Enquiry Officer seeking permission for amendment to the charge-sheet. Respondent - Management could have actually simply intimated the Enquiry Officer that additional Charge No.5 is being incorporated in the original charge-sheet. It was not necessary for the Enquiry Officer to undertake the process of adjudication on the issue as to whether the employer can be permitted to add Charge No.5 to the original charge-sheet. Nonetheless, the Respondent-Management filed an Application before the Enquiry Officer, who happens to be a retired District Judge, who has proceeded to allow the said Application by order dated 5 December 2024.

5) Firstly, it is highly questionable as to whether order passed by the Enquiry Officer permitting incorporation of additional charge can be questioned before this Court in exercise of jurisdiction under Article 227 of the Constitution of India. However, even if the said aspect is ignored, I do not see any fetter

on the part of the employer to add charge to the existing charge-sheet, if it believes that Petitioner has committed additional misconduct during pendency of the enquiry.

6) Mr. Karlekar would rely upon provisions of Statute No. 433-A (1) of Statutes of Pune University in support of his contention that before issuance of additional charge, a *prima facie* enquiry must be conducted by issuance of show cause notice to the Petitioner. Statute 433-A (1) provides thus:

Statute 433-A. (1) Procedure for inflicting Penalties:

On a complaint being received against a teacher or *suo moto*, the competent authority as specified in S. 433 shall first determine itself and record in writing or have it determined by any person or committee appointed by it for the purpose, if there is a *prima facie* case against the teacher for infliction of either minor penalty/penalties or major penalty/penalties.

7) Thus, Competent Authority is entitled to *suo motu* form an opinion that the case is made out for infliction of either major or minor penalty on a teacher and can accordingly proceed to issue charge-sheet on him/her. I am unable to find any provisions under Statute 433-A (1) which requires issuance of show cause notice before formation of such *prima facie* opinion by the Competent Authority. Merely because resolution is straightaway adopted by the Respondent for addition of Charge No.5 to the charge-sheet, it cannot be contended that no mind was applied to the position whether the *prima facie* case exists for addition of charge No.5 to the original charge-sheet.

8) Mr. Karlekar would then rely upon provisions of Statute 433-A(3)(B) in support of his contention that conduct of preliminary investigation is mandatory before issuance of charge-sheet. In my view, provisions of Clause B of Sub Rule 3 of Rule 433 merely bars a person from acting as an Enquiry Officer, who has conducted any preliminary investigation into the conduct of the teacher. The provisions cannot be read to mean as if there must be a preliminary investigation in every case before issuance of a charge-sheet.

9) In my view, therefore no patent error can be traced in the decision of the Enquiry Officer in permitting the Respondent - employer to add Charge No.5 to the existing charge-sheet. If permission for addition of charge No.5 in the existing enquiry was to be denied, another set of disciplinary proceedings would have been necessitated against the Petitioner. Addition of charge No.5 to the existing disciplinary enquiry would in fact obviate multiplicity of disciplinary proceedings against the Petitioner. I therefore, do not find any valid reason to interfere in the impugned order dated 5 December 2024.

10) Writ Petition, being devoid of merits, is accordingly **rejected**. Needless to state that all contentions of the Petitioner about merits of additional charge No.5 are expressly kept open.

[SANDEEP V. MARNE, J.]