2024:BHC-AS:34013

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7268 OF 2008

Mallinath Vithal Vathakar,)
Age 49, Maruti Mandir, Govandi Village,)
Govandi, Mumbai – 400 088.) ..Petitioner

Versus

1 The Registrar,)
University of Mumbai, Mumbai.)

2 Joint Director of Higher Education,)
Mumbai Region3, Mahapalika Marg,)
Mumbai.)

3 The Principal,)
Sree Narayan Guru College of Commerce,)
Sree Narayan Nagar, P. L. Lokhande Marg,)
Chembur, Mumbai – 400 089.)

4 The President,)
On behalf of Sree Narayan Guru College of)
Commerce, Sree Narayan Nagar, P. L.)
Lokhande Marg, Chembur,)
Mumbai – 400 089.) ..Respondents

Mr. S. K. Tripathi, Advocate for the Petitioner.
Mr. S. C. Naidu i/b. Mr. Rahul D. Oak along with Mr. Pradeep Kumar and Ms. Gunjan, Advocates for Respondent No.1.
Mr. S. D. Rayrikar, AGP for Respondent No.2-State.
Ms. Manisha V. Joshi, Advocate for the Intervenor.

CORAM : R. M. JOSHI, J.

DATE : 13th AUGUST, 2024.

JUDGMENT :

1. This petition takes exception to the judgment dated 23rd September 2008 passed in Appeal No.64 of 2008 passed by the Mumbai University and College Tribunal (for short "Tribunal").

2. The facts which led to the filing of present petition, can be narrated in brief as under:

The petitioner was appointed as a watchman (Class IV) in respondent No.4-College on 19th October 1996. After completion of two years period of probation, his services were confirmed. Respondent No.3 issued an order dated 19th June 2003, whereby the petitioner was given post of Library Attendant, which was reserved for SC community. It is alleged by the petitioner that at the behest of respondent No.4-college, some of the college staff started targeting the petitioner on trivial issues and also lodged false police complaints against him. Professor A. P. Kadam made a written complaint to respondent No.3 on 4th September 2007 alleging that the petitioner had interrupted Blood Donation Programme organised on 22nd August 2007 by unauthorisedly coming to the venue. It was also alleged by Mr. Kadam that on 4th September 2007, the petitioner threatened him in the Teachers Room and did not allow him to attend the lecture. On 12th September 2007, petitioner is issued with order of suspension and charge-sheet by respondent No.3. Enquiry officer

was appointed to conduct departmental enquiry against him, under relevant rules. The petitioner replied the charge-sheet denying the charges levelled against him. On 17th October 2007, the enquiry officer intimated the date of enquiry. The enquiry proceedings were conducted from 5th November 2007 to 3rd March 2008. On conclusion of the enquiry, the enquiry officer submitted report to respondent No.4, who in turn, issued show cause notice to the petitioner on 24th April 2008 calling upon him as to why he should not be removed from services as recommended by the enquiry officer. The petitioner responded to the said show cause notice and sought sympathetic consideration. On 13th May 2008, respondent No.4 removed petitioner from service. Being aggrieved by the said order of dismissal, an appeal came to be filed under Section 59 of the Maharashtra Universities Act 1994 before the Tribunal. Since, said appeal is dismissed by judgment dated 23rd September 2008, this petition.

3. Learned counsel for the petitioner took exception to the impugned judgment as well as removal of the petitioner from service essentially on two grounds i.e. the enquiry conducted against the petitioner was not fair and proper for the reason that all witnesses listed by the management in the enquiry were not examined in the said proceedings and that the enquiry officer by recommending punishment has committed illegality and this according to him goes to the root of matter and affects legality/validity of order of dismissal.

4. Learned counsel for respondents opposed the said contention by drawing attention of the Court to the charges leveled against the petitioner and also proceeding of departmental enquiry conducted against him. It is submitted that the enquiry was conducted during the span of more than six to seven months, which indicates that every possible opportunity has been given to the petitioner to defend himself in the enquiry. This Court was taken through the proceedings of the enquiry in order to argue that all witnesses examined by the management were permitted to be cross-examined by defense representative of the petitioner and that the petitioner after examining himself has closed his evidence without examining any witness in support of his defense. A reference is also made to the findings recorded by the Tribunal in respect of the fairness of the enquiry. It is argued that having regard to the scope of the writ petition, the finding recorded by the Tribunal, not being perverse, cannot be interfered with.

5. On the point of recommendation of punishment by enquiry officer, reference is made to the Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Code (Terms and Conditions of Service of Non-Teaching Employees) Rules, 1984 (for short “the Standard Code Rules”) applicable to the petitioner and respondents, wherein Rule 46(16)(v) provides for recommendation of punishment by enquiry officer. It is submitted that since the Rule provides for recommendation of punishment, there is no substance in the contention of the petitioner about

any illegality being committed by the enquiry officer. In support of his submissions, he has placed reliance on the judgment of coordinate bench of this Court in ***Writ Petition No.9736 of 2021 (Coram : N. J. Jamadar, J.).***

6. There is no dispute about the fact that the petitioner was an employee of respondent No.4-college and that he was amenable to the disciplinary proceedings under the Standard Code Rules which describes riotous and disorderly behaviour and threatening and intimidating and coercing in connection with and relating to the duties and working of the college as misconduct. So also any act of inciting violence during the working hours creating obstacle to the students for using library etc is considered as employment misconduct. It is not case of petitioner that disciplinary action has not been taken under relevant Standard Code Rules applicable to him. There is no challenge to the right of employer to take such action.

7. Charge-sheet was issued on 24th August 2007 to the petitioner, which was responded to by letter dated 13th October 2007. Since the explanation was not found satisfactory, an enquiry was initiated against the petitioner, which was conducted during the period between 5th November 2007 and 3rd March 2008. There is no dispute made by the petitioner with regard to the fact that he has received intimation of the enquiry and that he participated therein. Though the proceedings of enquiry are sought to be challenged on account of its fairness, however,

there is no dispute made by the petitioner with regard to the fact that his defense representative was permitted to cross-examine witnesses examined by respondents. Similarly, the petitioner was given an opportunity to lead his evidence. The petitioner examined himself, however, no other witness was examined in his defense. Perusal of the enquiry proceedings indicate that there is no haste shown by the enquiry officer in conduct of enquiry. Fair opportunity was given to the petitioner to cross-examine the witnesses of the management and having regard to the enquiry proceeding, there is no reason to hold that the enquiry conducted against the petitioner is not fair and proper.

8. There cannot be dispute about the proposition of law, that proof of misconduct in a disciplinary proceedings is on preponderance of probabilities. Constitution Bench of Hon'ble Supreme Court in case of **M. Siddiq versus Mahant Suresh Das and Ors. (2020) 1 SCC 1**, has described the stand of preponderance of probabilities in following manner :

> **"720.** The court in a civil trial applies a standard of proof governed by a preponderance of probabilities. This standard is also described sometimes as a balance of probability or the preponderance of the evidence. Phipson on Evidence formulates the standard succinctly: If therefore, the evidence is such that the court can say "we think it more probable than not", the burden is discharged, but if the probabilities are equal, it is not. In *Miller v. Minister of Pensions,* Lord Denning, J. (as the Master of Rolls then was) defined the doctrine of the balance or preponderance of probabilities in the following terms (All ER p. 373 H):
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> "(1) ... *It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of*

> *justice.* If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence, "of course it is possible, but not in the least probable" the case is proved beyond reasonable doubt, but nothing short of that will suffice."
>
> (emphasis supplied)
>
> **721.** The law recognises that within the standard of preponderance of probabilities, there could be different degrees of probability. This was succinctly summarised by Denning, L.J. in *Bater v. Bater*, where he formulated the principle thus: (p. 37)"
> ".. So also in civil cases, the case must be proved by a preponderance of probabilities, but there may be degrees of probability within that standard. *The degree depends of the subject-matter."*

Similarly, Supreme Court in ***Moni Shankar versus Union of India, (2008) 3 SCC 484*** laid down scope of Tribunal of judicial review for overturning findings of departmental enquiry by re-appreciating evidence, to hold that :

> *17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality."*

Keeping in mind the law settled by Hon'ble Supreme Court, the evidence led in the disciplinary proceedings and its appreciation by Tribunal is considered, while deciding whether findings recorded by enquiry officer are perverse.

9. In this regard, the enquiry proceedings indicate that the respondents led evidence of Professor Kadam who had lodged a complaint in respect of the incident which occurred on 22nd August 2007. He specifically deposed about the said incident and the manner in which it had occurred. There is evidence in the form of photograph placed on record indicating the presence of the petitioner though his presence was never contemplated in the said programme. It is specifically stated by Professor Kadam that on 24th August 2007, when he was sitting in the Staff Room and was preparing himself for the next lecture, the petitioner, without permission, entered the Staff Room and started pointing out finger towards him and was also threatened by the petitioner. Even though Professor Kadam did not respond to the utterances hurled by the petitioner, he continued to show his tantrums in the Staff Room and was also moving his hands and making gestures towards Professor Kadam. The petitioner did not stop at this limit but also threatened him by saying that he would see him, so also, abused him. When Professor Kadam started going for the lecture, the petitioner asked him to sit and threatened that he would have finished him on that day and did not allow Professor Kadam to go for the lecture. This witness was duly cross-examined on behalf of petitioner but nothing has been brought on record to discard his testimony.

10. There is further evidence of Mr. Dilip Ghadigaonkar, Library Attendant, who categorically deposed about the petitioner using

derogatory language with his superiors. This witness also claimed to have been treated in similar manner by the petitioner. There is further confirmation of the fact about complaint being lodged against the petitioner with the management. A female employee, working as sweeper with the respondent-institute also claimed that the petitioner always misbehaves and picks quarrel with any one. She also claimed that the petitioner always used abusive language towards her, so also, towards others. From the cross-examination of this witness, nothing has been elicited that had any reason to make false allegations against the petitioner. The oral evidence of this witness is also duly supported supported by complaints against the petitioner filed with respondent-institute. The evidence is led before the enquiry officer is sufficient to prove the guilt of the petitioner on preponderance of probabilities. On the other hand, there is no witness examined by the petitioner before the enquiry officer in order to rebut the evidence led by respondents, except examining himself. Having regard to the evidence led in the enquiry, this Court finds no reason or justification to take different view than the one taken by the Tribunal.

11. Section 134 of Evidence Act, states that no particular number of witnesses shall be required to prove any fact. Thus, in case when strict rules of evidence are applicable, examination of particular number of witnesses is necessary. As in the departmental enquiry where strict rules of evidence are not applicable, it cannot be said that the misconduct of

petitioner has not been proved for non-examination of other witnesses. This Court therefore finds no substance in the contention of petitioner about respondents having failed to examine all witnesses as provided in list before enquiry officer.

12. In so far as the contention of the petitioner that the enquiry officer has committed an error in recommending the punishment is concerned, it would be relevant to consider that Rule 46 (16) of the Standard Code Rules, which reads thus :

> *"**46. Procedure for imposing major penalty ----***
> *.....*
>
> *(16) (a) After the conclusion of the enquiry, a report shall be prepared by the Enquiring Authority. Such report shall contain-*
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> *(i) articles of charge and the statement of imputation of misconduct and misbehaviour;*
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> *(ii) the defence of the employee in respect of each article of charge;*
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> *(iii) an assessment of the evidence in respect of each article of charge; and*
> *(iv) the findings on each article of charge and the reasons therefor.*
>
> *(v) recommendation regarding quantum of punishment.*
> *(emphasis supplied)*

Clause (v) above clearly indicates that the enquiry officer was in fact duty bound to recommend the quantum of punishment against the employee. This Rule not only permits the enquiry officer to do but in fact it mandates him for recommendation of the punishment. In such circumstances, this Court finds no substance in the contention of the petitioner about error being committed by the enquiry officer in

recommending punishment against him and as such it cannot become a ground for setting aside order of removal of petitioner from service.

13. Learned Tribunal has considered the evidence led in enquiry keeping in mind scope and ambit of its reappreciation and held that the charges leveled against the petitioner stood proved. It has thereafter considered the issue of proportionality of the punishment imposed upon the petitioner. As recorded in the impugned order that no submissions were made with regard to the penalty of removal imposed against the petitioner. Pertinently, here in this petition too, no such submissions are made. It is, however, the responsibility of the Tribunal as well as this Court to ascertain as to whether the punishment imposed on the petitioner is shockingly disproportionate to the charges proved against him.

14. Learned Tribunal, after taking into consideration, the Standard Code Rules applicable to the petitioner and the riotous and disorderly behaviour conducted by him, has held that the petitioner has not only misbehaved during the Blood Donation Programme but also prevented Professor Kadam from going to lecture and went to the limit of threatening him to finish him through goons. The Tribunal, therefore, found that the punishment imposed upon the petitioner not shockingly disproportionate to the charges proved against him.

15. While deciding the issue, about proportionality of punishment, not only the act committed needs to be considered but the circumstances in which such act is done and the place/establishment, where it is

committed, also become relevant. Without doubt, distinction will have to be made in a factory and educational institution and different yardsticks would have to be applied for the maintenance of discipline. An educational institution is a place, which would expect high standard of discipline to set an example for the students. Similarly, such discipline is absolutely necessary to built and maintain reputation of any Educational Institution.

16. In the instant case, petitioner was an employee of a college. No disorderly behaviour could be tolerated from any employee in any establishment and in no circumstances in an educational institution. Unfortunately, nowadays disorderly, rowdy behaviour, seems to get encouragement. It is high time to send a clear message in the society that such a rude, unruly, violent behaviour cannot be allowed to become an accepted norm. If this is allowed to be accepted, then, it will not only give license to the employees to behave in such manner but that will also cause dent to the image of the educational institutions, which would have serious repercussions. Moreover for causing interference in punishment, the same should not only be disproportionate to the charge but shockingly disproportionate which in this case is not.

17. At this stage, it would be relevant to take note of the judgment of the Hon'ble Supreme Court in the case of ***Holy Spirit Hospital and others versus Benjamin Fernandes reported in 2013 (4) Bom.C.R.253.*** In this case, the Hon'ble Supreme Court was dealing with the act of workman of assaulting superior officer has maintained order of

dismissal of an employee whereas in the case of ***L.K. Verma versus H.M.T. Limited and anr. reported in 3 (2006) 2 SCC 269,*** verbal abuses were held to be sufficient for inflicting punishment of dismissal. If the conduct of the workman in factory is also not accepted in such manner, question of taking any lenient view in respect of conduct of petitioner, an employee of an educational institution does not arise. This Court therefore concurs with the view taken by learned Tribunal about punishment imposed upon petitioner being not shockingly disproportionate to the proved misconduct.

18. Upshot of above discussion is that no case is made out by the petitioner to cause interference in impugned judgment of Tribunal. Petition stands dismissed.

(R. M. JOSHI, J.)