

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9895 OF 2022

MANJARA CHARITABLE TRUST THR ... Petitioners
ITS CHAIRMAN AND ANR
Versus
VISHRAM B SAWANT AND ANR ... Respondents

Mr.Sudhir Talsania, Senior Advocate with Ms.Lancy D'Souza with Ms. V. M. Parkar, for the Petitioners.

Mr.Chetan Mali, for the Respondent No.1.

CORAM: G. S. KULKARNI, J.

DATED: FEBRUARY 06, 2023

PC.

1. Heard Mr.Talsania, learned Senior Counsel for the petitioners and Mr.Mali, learned Counsel for Respondent No.1.

2. This petition assails an order dated 6 May 2022 passed by the learned Presiding Officer, Mumbai University & College Tribunal. By the impugned order, the appeal filed by respondent No.1 who was in the employment of the petitioner as Assistant Professor has been allowed whereby the impugned order of termination of respondent No.1's services dated 31 January 2022 is set aside and he has been ordered to be reinstated on the same post with continuity in service, however, without any backwages. Mr.Talsania has several grievances in regard to the impugned order. He has drawn Court's attention to the chargesheet.

He has stated that both the charges against respondent No.1 were quite serious. Firstly of unauthorized entry in the dark room i.e. examination room with a mobile phone, where confidential examination stationary was kept; and secondly, in regard to the complaint made by Shri. D. K. Chakradev, Senior Supervisor, where he had complained of seriously abusing him as also he was threatened to be killed by respondent no.1. He states that the complaint of Shri. D. K. Chakradev is dated 19 December 2019 and immediately on the next day after the incident, respondent No.1 unauthorisedly entered the dark room. Shri. Chakradev was a signatory to the report alongwith other five persons, which was also signed by Dr.Kiran Chaudhari, the Chief Conductor. The complaint of Mr.Chakradev was one of the reasons for issuing charge-sheet, which was admittedly kept alive and was a relevant document. However, before Mr. Chakradev could enter the witness box which is after about two years of his complaint, he withdrew the said complaint on 1 February 2021.

3. Be that as it may, one of the management witness Dr. Kiran Chaudhary, Professor in Mechanical Engineering in her evidence has confirmed not only the incident report dated 18 December 2019 but also has confirmed her signatures and contents thereon to be correct. She also stated that the blank answer books were kept in the dark room and the same were confidential. She also stated that Exhibit 28 was the notice forbidding the use of cell phones by junior supervisors during examination. It appears that respondent no.1 on his own showing entered the dark room twice for keeping the mobile phone and for taking mobile phone, which was not permitted. It is also not clear as to what was the reason, the respondent entered the dark room. There is

no evidence led in that regard by the respondent. This apart, it appears from the observations made by the learned Presiding Officer of the Tribunal that the respondent went to the extent that he wanted a fishing inquiry into the affairs of the institution including of details of approval of the principal's appointment, details of selection committee and their approval by the University, which was totally alien to the subject matter of the inquiry. He also lodged a complaint against the enquiry officer who was an Advocate before the Bar Council of Maharashtra for cancellation of his Sanad. The observations of the Tribunal in this regard in paragraph 28 are required to be noted, which read thus:-

“28. The appellant claimed that by letter dated 07.07.2021 he demanded details of approval of the principal's appointment, details of selection committee and their approval by the University. The appellant has not claimed that the person taking action was not the principal and somebody else was the principal. Learned advocate Lancy D'Souza has rightly argued that during the enquiry the appellant did not file reply to the charge-sheet and still has taken various defences at difference stages. The appellant did not specifically say what was his challenge regarding the legality of the enquiry. The vague plea of challenge to the legality cannot be considered. Still the appellant repeatedly called for documents relating to the Board of Trustees the resolution to initiate enquiry and appointment of Enquiry Officer etc. He went to the extent of lodging complaint against the enquiry officer before the Bar Counsel for cancellation of his Sanad. The appellant was totally unjustified in lodging complaint against the Enquiry Officer to the Bar Counsel (page 226). He challenged the competence of the Enquiry Officer. The appellant took a stand that P.O. had no right to cross examine him. The appellant was entitled to demand documents but he should have done it by single application. The appellant went on filling applications for documents repeatedly. Those are at page no. 93, 95, 96, 97, 118, 126, 129, 139, 142, 150. The appellant repeatedly wrote letters to the managements and to Principal making allegations. Those are at page no. 85, 95, 96, 102, 115, 162, 169. Thus, the appellant substantially responsible for delay in completion of enquiry. Considering the conduct of the appellant during the enquiry I find that the parties should be left to bear their own costs.”

4. Mr. Talsania, learned Senior Counsel for the petitioners submits

that this was certainly not the case wherein respondent no.1's reinstatement could be awarded. He submits that there was sufficient material on record against reinstatement and more particularly, considering that the respondent No.1 was the Assistant Professor who was indulged in such conduct. He submits that considering the entire material on record certainly the reinstatement was not in the interest of either the academic atmosphere, the students and the other teaching staff of the petitioners.

5. Mr. Talsania has drawn Court's attention to Section 83 of the Maharashtra Public Universities Act, 2016 which pertains to powers of the tribunal to grant appropriate reliefs and directions, and more particularly sub-section 2(e) which provides that in a given case compensation can be awarded to the employees. He submits that such powers ought to have been exercised by the tribunal. He also submits that the petitioners are ready to provide not only emoluments of six months as provided under sub-section 2(e) of Section 83 of the Maharashtra Public Universities Act, but emoluments for twelve months. Such offer as made before the Court is not acceptable to respondent no.1.

6. Having perused the impugned judgment and order as also the materials on record and for the reasons aforesaid, in my opinion, the petition would certainly require an admission. Hence, **Rule.**

7. Respondents waive service.

8. A strong prima facie case has been made out for interim relief. Hence, the order dated 6 May 2022 passed by the Presiding Officer,

Mumbai University & College Tribunal, shall remain stayed during the pendency of the proceedings subject to the petitioners depositing fifty percent of the back-wages in this Court within eight weeks from today. For the future period, till disposal of the petition, the petitioners shall make quarterly deposits of 50% of the backwages payable to respondent No.1.

9. Let the pleadings on the proceedings be completed by 30 April, 2023. Liberty to the parties to mention the matter for final hearing after the pleadings are completed.

10. At this stage it is informed by the learned Counsel for the respondent no.1 that respondent No.1-Vishram Sawant has also filed writ petition (Writ Petition (st) No.20906 of 2022) assailing the impugned order in so far as denial of backwages. The said writ petition is also required to be heard alongwith this petition. Hence, Writ Petition (st) No.20906 of 2023 be heard alongwith this petition.

(G. S. KULKARNI, J)