
(2017) 08 BOM CK 0215
In the Bombay High Court
Case No : 2200 of 2016

Ashish M. Sathye

APPELLANT

Vs

Institute of Chemical Technology, & Ors.

RESPONDENT

Date of Decision : 14-08-2017

Acts Referred:

University Grants Commission Act, 1956, Section 3 - Application of Act to institutions for higher studies other than Univer- sities

Citation : (2017) 08 BOM CK 0215

Hon'ble Judges : Naresh H. Patil, Z. A. Haq

Bench : DIVISON BENCH

Advocate : Atharva Dandekar, Abhishek Tripathi, S. K. Mogili, Aashish Bha
@APPELLANT @hash ar, Devmani Shukla, Vijay Prakash Yadav, Rui Rodriques, M.
A. Sayyed

Judgement

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.
2. The petitioner was appointed as Assistant Registrar (Administration), on probation, for a period of 24 months on 4/8/2008 by the respondent no.1. It is petitioner's case that by orders dated 11/5/2010 and 21/8/2010 he was confirmed in the service. On 28/8/2014, the petitioner was transferred and assigned additional charge as an Assistant Registrar (Academics). The petitioner states that on 11/7/2014 an unsigned and undated memo was handed over to him on certain allegations and charges. On the same day, the petitioner replied to the said memo. In the year 2014, the petitioner suffered some ailment and he had to take leave for treatment. The petitioner's case is that in the year 2015 a fact finding committee was set up for dealing with the issues relating to the allegations made against the petitioner based on certain complaints. On 30/7/2015, the impugned order of termination was passed by the respondent no.1 by which the petitioner's services were terminated with effect from 1/8/2015. The petitioner challenges the said order by way of this petition.

3. Consequent to the notice, the respondent no.1 filed affidavit in- reply through Dr. Smita Satish Lele, the Registrar of respondent no.1. In para 4, the deponent states as under :-

"4. I say that the impugned order of termination dated 30.7.2015 was passed against the Petitioner after following the principles of natural justice and due process of law which is self evident from the impugned order itself. I say that the impugned order indicates that it was a consequence of the instructions of the Government to verify the appointment of petitioner and submit detailed report in response to the complaint received at Government level against the appointment of petitioner. I say that in the Petition the Petitioner has only referred and relied upon certain documents which are not dated and not signed and are not on the letterhead of the Respondent No.1 making it difficult for the Respondent No.1 to deal with the same. I say that I crave leave and liberty to refer and rely upon fact finding committee reports, instructions of the Government and decision of the Board of Management of the Respondent No.1 in their meeting dated 22.7.2015 resulting into issuance of the impugned order of termination dated 30.7.2015 as and when required. I say that the Petitioner as annexed his own letter dated 11.7.2014 which is prima facie evident that the Petitioner was admitting to his own wrongs and illegalities while apologizing for the same. The letter dated 11.7.2014 is annexed at page 24 and 25 of the Petition. The letter dated 11.7.2014 also indicates that the Petitioner had appeared before the fact finding committee to show cause and explain the various wrongs and illegalities committed by the Petitioner and that the letter dated 11.7.2014 was the explanation-cumapology letter issued by the Petitioner to the Respondent No.1. In such circumstances the Petitioner ought to and should not be allowed to argue before this Hon"ble Court that there was violation of principles of natural justice and due process of law.

4. The learned counsel appearing for the petitioner submitted that without following basic principles of natural justice and in complete violation of the mandatory provisions, statutes and Maharashtra Civil Service (Discipline and Appeal) Rules, 1979 (for short MCSR), the impugned order of termination came to be passed. Learned counsel submitted that reference made to a communication received from Technical Department does not have any relevance to the order of termination passed by the respondent no.1.

5. The learned counsel appearing for the respondent no.1 has referred to certain provisions of the statute of respondent no.1 which is a deemed University under Section 3 of the University Grants Commission Act, 1956. One of the provisions, referred to, relates to power of the Board of Governors. The learned counsel further submitted that in the fact situation, the Board of Governors has power to look into the issue and decide further course of action wherever proper inquiry is required, such an inquiry could be ordered.

6. We have heard the learned counsel appearing for respondent no. 2 - UGC as well as other respondents.

7. The last page of the Statute Book refers to a Clause in terms of "B", which reads as under:-

"B. FOR THE NON-TEACHING STAFF MEMBERS

The non-teaching employees of the Institute shall be governed by the rules and regulations prescribed in the existing Maharashtra Civil Services Rules [Maharashtra Civil Service (Conduct) Rules, 1979; and Maharashtra Civil Services (Discipline and Appeal) Rules, 1979] and will remain applicable with amendments, if any, done from time to time."

The provisions of MCSR prescribed procedure for holding inquiry. We have perused the provisions of MCSR too and the statute placed before us. In the fact we find that the order of termination was passed contrary to the provisions of law and principles of natural justice.

8. The petitioner also claims that he be reinstated with full backwages from the date of his termination till the date of reinstatement. We find that petitioner has made out a case for claiming such a relief. Learned counsel appearing for respondent no.1, in respect of prayer clause (b), submitted that after the termination order, the petitioner has been paid entire service dues / termination dues to the tune of Rs.4,00,329/-. The counsel submits that in case this court allows the petition, then the petitioner shall deposit the said dues with the Management. At this stage learned counsel appearing for the petitioner submits that Management is free to adjust the said amount while calculating the arrears of salary etc.

9. In the facts, we find that the basic principles of natural justice were not followed for terminating services of the petitioner. On this count itself, the impugned order gets vitiated as unreasonable and arbitrary one. We are, therefore, inclined to quash and set aside the impugned order.

10. We observe that in case the respondent no.1 desires to proceed against the petitioner in respect of certain complaints or allegations, if any, then respondent no.1 shall have to follow appropriate procedure enunciated under law. The principles of natural justice must be adhered to in all respect so that employee is provided with an appropriate opportunity to put up his case and defend himself before the authority.

11. We pass following order:- O R D E R

(a) Impugned order of termination dated 30/7/2015 (Exhibit "G") is quashed and set aside.

(b) We direct the respondent no.1 to reinstate the petitioner in service and pay arrears of salary to the petitioner along with other consequential service benefit calculated from the date of termination till the date of reinstatement, after adjusting the amount/dues already paid to the petitioner.

(c) The respondent no.1 - Management is at liberty to resort to appropriate

procedure in case the Management decides to hold enquiry against the petitioner.

12. Rule is made absolute in the above terms. No costs.