
(2000) 07 BOM CK 0028
In the Bombay High Court
Case No : C.A.J. W.P. No. 581 of 2000

Navinkumar Tiwari

APPELLANT

Vs

Principal, Thadomal Shahani Engineering College and Another

RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Citation : (2000) 87 FLR 243 : (2002) 4 LLJ 699

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Judgement

D.Y. Chandrachud, J.—Rule, returnable forthwith. Respondents waive service. By consent petition is taken up for final hearing.

2. The services of the Petitioner were terminated by the 1st Respondent. Briefly put the charge is that the Petitioner who was working as Peon with the 1st Respondent, demanded and received an amount of Rs. 4,000/- from a student of the Institution for enhancing his marks from 7 to 17 in respect of one question on the answer paper during the course of the II Year Engineering Examination. A department enquiry was held in which the evidence of the student as well as the examiner was recorded. A finding of misconduct had been arrived at. The penalty of removal from service was imposed. The Petitioner challenged the order of the removal before the College Tribunal. The College Tribunal, by the impugned order dated October 28, 1999 has upheld the order of removal.

3. Two submissions were urged on behalf of the Petitioner:

(i) In the present case the Enquiry Officer had signed the charge-sheet and it is submitted that this was done without any authority because under the provisions of the Standard Code, the charge-sheet could have been issued only by the Competent Authority as defined.

(ii) The Disciplinary Authority in the present case, it is submitted, was the Principal, the 1st Respondent to the petition. During the course of the enquiry,

the 1st Respondent, it is an admitted position, appeared as a witness in the enquiry. The submission is that this would constitute a violation of the principles of natural justice since a witness to the enquiry would also be a Disciplinary Authority.

In so far as the first point is concerned, I am of the view that there is no substance therein. Form No. 10 of the Forms annexed to the Standard Code expressly contemplates that the actual charge-sheet will be issued by the Enquiry Officer who is appointed by the Management to conduct the enquiry. Form No. 10 is to be read with Rule 46. Under Rule 46(1), the Competent Authority may enquire into the misconduct itself or may appoint an Enquiry Officer to hold an enquiry. Sub-rule (2) provides that the Disciplinary Authority shall draw up or cause to be drawn up the articles of charge. The Disciplinary Authority is required under Rule 3 to deliver or cause to be delivered to the employee in Form 10 of Appendix I appended to the Rules a copy of the articles of charge. In the premises, I do not find any substance in this submission. Rule 46(4)(a) provides that on receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charges as are not admitted, or, if it considers it necessary to do so, appoint an Enquiring Authority. In my view, the Articles of charge which have been issued in pursuance of Form 10 cannot be found fault with.

4. On the second point, I find substance in the grievance of the Petitioner. The admitted position is that the principal of the College was a witness in the enquiry and functioned as Disciplinary Authority also. In a case such as the present, the Disciplinary Authority is vested with the ultimate control over the disciplinary proceedings. The Disciplinary Authority has to arrive at a finding of misconduct and decide upon a penalty which is to be imposed on the employee. That being the position, it would be contrary to the principles of justice if a witness to the enquiry who deposes in respect of the misconduct of the employee, thereafter acts Disciplinary Authority. This being the position, on the suggestion of the Court, the learned counsel for the parties are agreed that the impugned order of the College Tribunal may be quashed and set aside and the matter may be sent back for reconsideration by another authority other than the Principal of the College who served as a Disciplinary Authority on the previous occasion. The same Principal who acted as Disciplinary authority on the previous occasion still holds the post of principal in the college and it would be therefore in the interest of justice if the final decision on the issue of misconduct and the imposition of the penalty is arrived at by some other authority. The learned counsel for the 1st Respondent states that the matter will be placed before the Secretary of the Board which conducts the 1st Respondent Institution. In the premises, the impugned order of the College Tribunal is quashed and set aside. The order of the Disciplinary Authority and the termination order dated May 5, 1999 issued by the Disciplinary Authority are also quashed and set aside. Until the Disciplinary Authority arrives at its decision, the Petitioner will continue to be treated to be (sic) on suspension and will receive subsistence allowance in accordance with the

rules. The learned counsel for the Petitioner states that his client will be entitled to 75% of the wages as and by way of subsistence allowance. The 1st Respondent shall pay subsistence allowance in accordance with the applicable Rules.

5. The petition is disposed of in the aforesaid terms with no order as to costs.

6. Parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary of this Court.