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**(2002) 04 AHC CK 0128**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 34511 of 2001**

Neeraj Bharadwaj

APPELLANT

Vs

Marathwada Institute of Technology and Others

RESPONDENT

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**Date of Decision :** 12-04-2002

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2002) 2 AWC 1550

**Hon'ble Judges :** S.K. Singh, J

**Bench :** Single Bench

**Advocate :** Vinod Sinha and S.P. Singh, for the Appellant; Satish Chaturvedi, S.C., for the Respondent

**Final Decision :** Allowed

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## Judgement

S.K. Singh, J.—The challenge in this petition is the order dated 14.9.2001 (Annexure-7 to the writ petition) passed by respondent No. 3.

2. There is an institution known as Marathwada Institute of Technology (M.I.T.) Engineering College, Dhamcra Chola. Bulandshahr (hereinafter referred to as the Institute). It is imparting education to the students and awarding degree to B.E., B.Tech. and B.C.A. (Bachelor of Computer Application). The aforesaid Institute is affiliated to Chaudhary Charan Singh University, Meerut and U. P. Technical University in Lucknow. The aforesaid Institute is managed by a society known as Gramodyog Shiksha Mandal Dhamcra Chola which is duly registered under the Societies Registration Act, 1960. The society has its own by-laws which is also approved by the Deputy Registrar, Firms, Societies and Chits, U. P., Meerut. The petitioner claims to have been appointed as Assistant Librarian by the Chairman of the college by appointment letter dated 1.4.2002. It is said that he was appointed against the clear and substantive, vacancy initially on probation for a period of one year. On completion of the probation period satisfactorily, in the meeting of the governing body/committee of management of the college dated 27th June, 2001, by a resolution petitioner was confirmed. Petitioner states in

this petition that there is another society known as Gramodyog Shiksha Mandal, Aurangabad, Maharashtra which is registered at Aurangabad, which in no way is connected or related with the present society but there appears to be some dispute in this respect as Aurangabad society claims the present society to be its branch. It appears that the Secretary of the Aurangabad Society passed some resolution on 8.7.2001 cancelling the primary membership of the Chairman of the Institution but the same was not approved by the Vice-Chancellor of Chaudhary Charan Singh University vide its order dated 6.10.2001. U is said that on account of some rival dispute in respect of the affairs, petitioner has been unnecessarily taken to task and by the order impugned in this petition, petitioner's services have been terminated.

3. Heard Sri Vinod Sinha learned counsel for the petitioner and Sri Satish Chaturvedi who appears on behalf of the respondents.

4. Learned counsel for the petitioners submits that the order of the respondent terminating the petitioner's services is in gross violation of the principles of natural justice as neither the petitioner has been served with any charge-sheet nor any enquiry has proceeded and in most arbitrary manner the impugned order has been passed. Learned counsel submits that the petitioner is a confirmed employee of the Institute which is clear from the resolution of the committee dated 27th June, 2001, Annexure-4 to the writ petition and thus passing of the impugned order, in the manner in which it has been passed, cannot be said to be justified. Learned counsel for the petitioner has taken the Court to paras 23 to 26 of the writ petition in which it has been stated that the impugned order has been passed without giving any opportunity of hearing and without taking recourse of any disciplinary proceedings which includes the service of charge-sheet, process of enquiry, submission of enquiry officer's report and then an opportunity. It has been submitted that as no process was adopted it is clear that the impugned action is in gross violation of the principles of natural justice.

5. Learned counsel who appears for the respondents in response to the aforesaid submission takes up an objection to the maintainability of the writ petition on the ground that the Institution is admittedly run by the society and, therefore, writ against the respondents will not lie. It has been further argued that otherwise also petitioner is not entitled to get protection of Article 311 of the Constitution of India. On the basis of the fact so stated in the counter-affidavit learned counsel further submits that the petitioner was not validly appointed by the competent authority and there was serious charges against him for which the F.I.R. was also lodged. In view of this it has been argued that no exception can be taken to the order as has been passed by the respondent No. 3.

6. In the light of the aforesaid submission two questions require consideration by this Court that whether writ petition against the respondents is legally maintainable and whether on the facts of the present case, the order of termination of petitioner's services can be sustained.

7. There appears to be no dispute about the fact that society which is running the Institution is duly registered under the provisions of Societies Registration Act, 1960, by the Deputy Registrar, Societies, Meerut, U. P., in the year 1997. Its by-laws has also been approved by the Deputy Registrar, Firm, Societies and Chits. U. P., Meerut. The Institute is also affiliated to Chaudhary Charan Singh University, Meerut and U. P. Technical University, Lucknow. It also appears from the record that the Institution is imparting education to the students and is awarding degree in B.E., B. Tech and B.C.A. (Bachelor of Computer Application). In view of this, it can be safely said that the Institute is exercising public function and is taking care of the need of the society. The prime need of people in society is to get better education as the children are the future of the country. It is the concern of everybody that best possible efforts should be made to extend the educational facility to all the persons concerned because it is only education which could make the man perfect in his behaviour, understanding and in getting him to compete amongst others. Technical knowledge/education is the more concern of present days as we are running in the age of advanced systems and, therefore, extending the education on the technical subjects is to be more and more appreciated. The State has an obligation to provide facility and opportunity to people to avail all the avenues to education. On account of explosion of population, it appears that the State is not in a position to give adequate opportunity in this regard and therefore, private Institutions who are catering the need of the educational opportunity are to be expected to be cautious in their action regulating condition of service of its employees. The teachers and other employees working in such Institutions get an element of public interest in performing their duties and therefore, they are entitled to get protection against arbitrary actions of the employer. The question that whether the teachers and other employees of such educational Institution which has element of public interest are entitled to approach In the writ jurisdiction under Article 226 of the Constitution has been dealt in the decision of the Hon"ble Apex Court In case of K. Krishnamacharyulu. v. S. V. Hindu College AIR 1998 SC 295. The observation of the Apex Court In the aforesaid judgment can be quoted :

"In view of the long line of decisions of this Court holding that when there is an interest created by the Government in an Institution to Impart education, which is a fundamental right of the citizens, the teachers who teach the education gets an element of public interest in the performance of their duties. As a consequence, the element of public Interest requires to regulate the condition of service of those employees on par with Government employees.

We are of the view that the State has obligation to provide facilities and opportunities to the people to avail of the right to education. The private Institutions cater to the needs of the educational opportunities. The teacher duly appointed to a post in the private Institution also is entitled to seek enforcement of the orders issued by the Government. The question is as to which forum one should approach. The High Court has held that the remedy is available under the Industrial Disputes Act. When an element of public interest is created and the

Institution is catering to that element, the teacher, the arm of the Institution is also entitled to avail of the remedy provided under Article 226 ; the Jurisdiction part is very wide. It would be different position, if the remedy is a private law remedy. So, they cannot be denied the same benefit which is available to others. Accordingly we hold that the writ petition is maintainable."

8. Similar controversy arose before this Court in Special Appeal which was filed against the order of learned single Judge dismissing the writ petition on the ground of maintainability. The writ petition was against a college run by the society. This Court in the Special appeal filed by Sandeep Chauhan and others v. State of U. P. and Ors. 2000 (3) ESC 1231, after following the decision of the Apex Court given in K . Krishnamacharyulu (supra) has thus observed :

"Following the principles laid down by the Supreme Court in the aforesaid decision, we are of the view that the writ petition against Central Board of Secondary Education Shiksha Kendra Preet Vihar, New Delhi. is maintainable."

9. The decision as has been referred by the learned standing counsel as in Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, ; Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others, and Integrated Rural Development Agency v. Ram Pyare Pandey 1995 (2) AWC 806 (SC) : 1993 (3) SCC 119, appears to have no application to the facts of the present case in view of the recent pronouncement on the point. In the cases as have been referred by the learned standing counsel for respondent also guidelines have been provided in respect to the maintainability of the writ petition against authorities and to my mind, the view as is being taken, in the given set of facts about the maintainability of the writ petition in no way runs contrary to the decision cited by the learned counsel for the petitioner. In view of this, it is held that the writ petition as filed by the petitioner is legally maintainable.

10. So far the second question that whether on the facts of the present case, action of the respondent No. 3 can be sustained suffice it to say that the action of the respondent No. 3 appears to be in gross violation of the principles of natural justice. In paras 23 to 26 of the writ petition, clear averments have been made that petitioner has not been served with any charge-sheet, no enquiry has proceeded, there is no enquiry report and at no stage petitioner received any opportunity. The reply to the averments as made in the aforesaid paragraph are contained in paras 30 to 34 of the counter-affidavit. There appears to be Just vague denial on the part of the respondent with the statement of fact that action has been taken after affording opportunity to the petitioner. In para 36 of the counter-affidavit, it has been stated that copy of the charge sheet is being tried to be made available which shall be shortly filed before this Court, which has not been filed till the date of the arguments. The material as exists before this Court demonstrate that on 10th August, 2001, a show cause notice was given to the petitioner in which it was vaguely mentioned that serious irregularities have been committed by him and further that F.I.R. was lodged against him. It was also

mentioned that petitioner without any information is not attending his duties. Even this show cause notice is said to have been served on the petitioner by sending the same by U.P.C. There appears to be no reason on the part of the respondents not to send the notice to the petitioner even by registered post, if the petitioner has avoided to receive the same. Sending of the notice by U.P.C. is admitted by the respondents which speaks about lack of their bona fide of giving opportunity to the petitioner.

11. On the facts and material as exists before this Court, it is clear that neither any charge-sheet was served on the petitioner nor any enquiry has proceeded into the charges nor any enquiry report has been submitted and it is straightway after sending the alleged show cause notice, the impugned order came to be passed. In the event, there was any charge-sheet and the enquiry officer has proceeded with the enquiry by fixing a date and enquiry report has been submitted then all these averments should have been made in the counter-affidavit in a specific and firm language, annexing documents in support thereof before this Court and, therefore, it appears to be a case where there is complete go-bye to the enquiry process which is a condition precedent for taking any action against a confirmed employee. It has been repeatedly said that irrespective of the fact that the employee submits a reply to the show cause notice or the charge sheet or not. it is obligatory on the part of the disciplinary authority to complete the enquiry process as the enquiry officer is free to proceed in ex parte manner and it is thereafter that punishment can be awarded. The view as has been taken by the respondents that as the petitioner failed to submit his reply, it is to be accepted as acceptance and approval of the charges against him cannot be approved by this Court. The employer in disciplinary proceeding is just like the plaintiff of a civil suit, where the principle is that the plaintiff has to prove his own case and thus in the same manner, the charges against the concerned employee has to be established even though by ex parte evidence. If no enquiry whatsoever has proceeded, this Court in clear terms has disapproved taking of the action against the employee being in gross violation of principles of natural justice. Reference in this respect can be made to a decision given in case of K. P. Girt v. State of V. P.. 2000 (1) UPLBEC 908 and in 2000 (2) UPLBEC 541.

12. Learned counsel for the respondents has tried to submit that even though the procedure may be said to be faulty but petitioner cannot be permitted to be reinstated with all benefits rather a direction is to be given to proceed with enquiry from the stage, at which process was found to be faulty. Reliance has been placed by the learned counsel on the decision in Board of Management of S.V.T. Educational Institution and another Vs. A. Raghupathy Bhat and others, and State of Haryana and another Vs. Jagdish Chander, In the present case, as has been held, no enquiry whatsoever has proceeded, i.e.. right from the stage of submission of the charge-sheet, there remains nothing for giving direction to start proceeding against the petitioner from a particular stage as it is the very first stage from where if so desired by the respondent, proceedings will have to

be started. On the facts and circumstances, it is clear that the order of termination is in gross violation of principles of natural justice and. therefore, that has to be quashed by this Court.

13. In view of the aforesaid analysis, it is held that writ petition as filed by the petitioner is legally maintainable and in the given set of facts, it is clear that the impugned action is in gross violation of principles of natural justice and, therefore, this writ petition deserves to succeed.

14. Accordingly, this writ petition is allowed. The impugned order as passed by the respondent No. 3 dated 14.9,2001 (Annexure-3 to the writ petition) is hereby quashed. Petitioner will be entitled to all consequential benefits.

15. Parties are directed to bear their own costs.