
(2007) 09 BOM CK 0135
In the Bombay High Court
Case No : Writ Petition No. 6079 of 2006

Sultan Khan

APPELLANT

Vs

The Principal, B.N. College of Engineering

RESPONDENT

Date of Decision : 21-09-2007

Acts Referred:

Citation : (2008) 2 ALLMR 183 : (2008) 1 BomCR 291 : (2007) 109 BOMLR 2268 : (2008) 116 FLR 811 : (2008) 2 MhLj 305

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : B.M. Khan, for the Appellant; D.A. Sonawane, for the Respondent

Final Decision : Allowed

Judgement

A.H. Joshi, J.—By an order dated 14th February, 2007, this Court had directed to issue notice of final disposal of the petition at the stage of admission hearing. Accordingly, the respondent has appeared and filed reply. Pleadings are complete. Hence, Rule. Rule returnable forthwith. Heard finally by consent of parties. The facts, as emerged from the petition, and more precisely so from the Affidavit-in-Reply of the respondent, can be grasped and reproduced as follows:

2. The College run by the respondent has a Co operative Stores. The petitioner was on duty on 22nd May, 1996. While on duty, the petitioner noticed that student Amit Godbole was carrying away an empty carton from the Co operative Stores. The petitioner caught hold of said Amit Godbole, brought him to the room of Rector and forced him to sit there, and thereby, the petitioner has manhandled Amit Godbole. This had created tension amongst students and posed a threat of breach of peace in the college. The petitioner and another watchman involved in the incident were charge-sheeted.

3. An Enquiry Committee was constituted by a communication dated 23rd May, 1996 which is at Annexure-C. The petitioner was served with an intimation dated 24th May, 1996 [Annexure-B], by which he was suspended, and was asked to

appear before Enquiry Committee.

4. The Enquiry Committee conducted its meetings and gave a finding, text whereof being very short, can better be relied upon by reproduction, which reads as follows:

1) Mr. Amit Godbole 2nd Electronic tried to pick up empty cartoons from the shopping complex and was caught red handed by Mr. Sultan Khan, & was kicked inside.

2) Mr. Godbole jumped from top of shopping complex and ran towards rector's office. He got injuries in his hand and back because of jump.

3) Mr. Sultan Khan caught Mr. Amit Godbole in front of rectors office by holding his collar.

4) Mr. Sultan with the help of Mr. Dhawase took the boy inside the rectors office, and closed the door from inside because boy was trying to escape. The boy was forcefully made to seat on the chair by the two guards and they pushed the boy in the chair.

5) Students gathered in front of rectors office and tried to open the door by kicking it.

6) Because of this, guards opened the door. As it was opened by guards, Mr. Sultan was beaten up by the students.

7) After incidence took place, Mr. Dhawase was slapped by, Mr. Manish, Mittal in front of us and students.

[quoted from page 22 of the paper-book of Writ Petition].

5. The Principal, accepted the charge of manhandling, as proved, and ordered punishment of stoppage of two increments for a further period of three years, with a direction to execute a bond which was to be a condition precedent for revocation of suspension, and directed suspension period to be treated as suspension with half pay.

6. The petitioner approached the Industrial Court, Amravati, making a grievance about punishment. The Complaint was dismissed. The said dismissal has led to this petition.

7. On going through the facts, it is seen that though Management pleads that a charge-sheet was issued, except Annexure "B" - the order of suspension, no other document is filed on record to show that charge-sheet was prepared and served on the petitioner. The order appointing Enquiry Committee contains in its heading the following imputation:

Subject :-Enquiry into incidence of said treating of a student by a security Guard.

[quoted from page 21 of the Writ Petition Paper-book].

8. From the findings of the Enquiry Committee, following things are revealed:

- [a] that Amit Godbole was caught red handed while lifting the carton;
- [b] Amit Godbole jumped and ran towards the rector's office. Sultan Khan caught hold of Amit Godbole in front of Rector's Office by holding his collar;
- [c] Amit Godbole was trying to escape. Sultan Khan, therefore, forcibly made Amit Godbole to sit on the chair by pushing him, and
- [d] students gathered, opened the door and slapped and beat Sultan Khan as well as Mr. Dhawase.

9. In the findings, the charge, which is said to have been proved, reads as follows:

...Actually you have not reported the above matter to the superiors. You yourself has handled the law and therefore for the above act of serious nature....

[quoted from page 23 of the Writ Petition Paper-book].

Thus, the petitioner, who was a Watchman probably was expected by the Management to simply watch a theft being committed and then to report the matter to the Principal, instead of catching hold the person carrying the goods or stealing the goods without any authority.

10. This Court finds that if the penalty, in question, is considered to be a minor penalty and a full fledged Departmental Enquiry [rather formal Enquiry] may not be contemplated, yet, at least, serving of a Show-cause-Notice [or a charge-sheet] on the employee containing imputations, giving him a chance to reply and dealing with the contents of the reply in defence raised by him was imperative. It would imply conducting at least a summary enquiry in contrast with the formal full-fledged enquiry.

11. In the present case, though enquiry is held, imputations are not served on the petitioner. His reply has not been sought and it seems that simply because the Management was scared about the organized agitation of the students, they have preferred an action against the petitioner, a scape-goat and soft target, and punished him for not reporting the matter to higher authority and taking the law in his own hands."

12. Learned Advocate Mr. Khan for the petitioner pressed into service the following precedents to substantiate his contention in support of the petition:

- [a] R.S. Yadav Vs. Indian Institute of Technology, ,
- [b] Hubert Lobo v. The Presiding Officer, Labour Court, Mangalore and Ors. 1998 1 CLR 381,
- [c] K. Govindaswamy v. Tamil Nadu Civil Supplies Corporation Ltd. 1998 2 CLR 177,

[d] Food Corporation of India v. K. Chamy, Calicut 1998 2 L.L.J. 530,

[e] Oriental Insurance Co. Ltd. and Anr. v. Gokulprasad Maniklal Agarwal and Anr. 1999 2 LLJ 1413, and

[f] Anand Regional Co-op Oil S. Union Ltd. v. Shaileshkumar Harshadbhai Shah 2006 3 CLR 512.

13. On the other hand, learned Advocate Mr. Sonwane for the respondent relied upon the following reported case laws to oppose the petition and to justify the punishment inflicted by the Management:

[a] Gujarat State Road Transport Corporation v. Kasam Ismail 2003 2 CLR 717,

[b] G. Babu v. Director General, Railway Protection Force and Ors. 2006 1 CLR 523, and

[c] Prasan Kumar Nayak and Ors. v. State of Jharkhand and Ors. 2006 L. I.C. 476.

14. It is not necessary to deal with these judgments, the facts being obvious.

15. This Court finds that there is a very little and subtle margin between the two punishments, namely, stoppage of increment as provided by Rule 43[1] [a] (iii) of the Maharashtra Non-Agricultural Universities & Affiliated Colleges Standard Code [Terms and Conditions of Service of Non-Teaching Employees] Rules, 1984, which reads as follows:

43. Penalties.- [1] ...

[a] Minor Penalties

[i] ...

[ii] ...

[iii] withholding of increment of pay," and the major penalty, as defined in Clause [b] (i), reads as below:

[b] Major Penalties

[i] Reduction to a lower stage in the time-scale of pay, for a specified period with further direction as to whether or not the employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction shall or shall not have the effect of postponing the future increments of his pay,

Reduction to a lower stage in time-scale could be forfeiture of a stage which is corresponding to an increment or to be more, while withholding of a single increment would have much resemblance, whereas withholding of a larger number of increments for a longer duration can, in no case, be considered to be a punishment of lesser severity than what is defined as a major penalty under

Clause [b] (i) of Rule 43 of the said Rules.

16. In these premises, the punishment of stoppage of three increments has a semblance of a major penalty requiring holding of full-fledged formal enquiry.

17. On the finding of fact that the petitioner was not served with the charge-sheet and was not given a reasonable and fair opportunity of defence alone, the petition deserves to be allowed, and is accordingly allowed. Rule is made absolute in terms of Prayer Clauses [b] and [c].

18. In the circumstances, there shall be no order as to costs.