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**(2000) 07 BOM CK 0097**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 3121 of 1989**

Vinod Deshmukh

APPELLANT

Vs

The Presiding Officer and Another

RESPONDENT

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**Date of Decision :** 28-07-2000

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 226

**Citation :** (2000) 4 ALLMR 327 : (2001) 1 BomCR 500

**Hon'ble Judges :** A.M. Khanwilkar, J

**Bench :** Single Bench

**Advocate :** Uday Dastane, for the Appellant; A.M. Bapat, for the respondent No. 2, for the Respondent

**Final Decision :** Dismissed

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## Judgement

A.M. Khanwilkar, J.—This writ petition under Article 226 of the Constitution of India, is directed against the order passed by the College Tribunal for Marathwada, Nagpur and Amravati Universities, dated August 18, 1989 in Appeal No. A-1/88.

2. The petitioner was appointed as Peon on temporary basis on 1st July, 1981. He was later on promoted as Junior Clerk vide order dated 10th December, 1984 with effect from 1st December, 1984. He worked in this capacity upto 14th February, 1987. While he was in service, it came to the notice of the Management that the petitioner had produced false Caste Certificate for getting service in the respondent-institution and also had filed false certificate and affidavit to get the promotion to the post of Junior Clerk. Immediately after receipt of the said information, the Management took remedial action and in the first place reverted the petitioner to the post of Peon from 11th February, 1987. This was followed by the show cause notice issued by the respondent-Management calling upon the petitioner to show cause why his services should not be terminated on the ground that he has used false certificate and filed false affidavit for getting service in the institution run by the respondent-Management.

This notice was sought to be served through one of the Peons of the respondent, on the petitioner, however, it is stated that the petitioner refused to accept the said notice. The concerned notice server had made endorsement in this behalf and reported the same. It is the case of the respondents that inspite of the service, the petitioner did not appear in the enquiry which was conducted pursuant to the aforesaid show cause notice. Consequently, the enquiry proceeded ex parte against the petitioner. The enquiry was conducted by the retired District and Sessions Judge Shri Nilajkar who was appointed as the Enquiry Officer. The Enquiry Officer, on the basis of the material on record, prepared a report dated 9th July, 1987 and submitted the same to the Disciplinary Authority for its consideration. The Disciplinary Authority, before passing a final order, issued show cause notice to the petitioner dated 17th August, 1987, calling upon the petitioner to show cause as to why his services should not be terminated for the misconduct committed by him of having submitted false certificate and affidavit for getting service. On receipt of the said show cause notice, the petitioner seems to have submitted a written reply in which he had disputed that at no point of time the service has been effected on him with regard to the enquiry which was conducted by the Enquiry Officer. This plea, however, did not find favour with the Disciplinary Authority and the Disciplinary Authority passed the order terminating the services of the petitioner on 16-1-1988.

3. The petitioner filed appeal before the College Tribunal for Marathwada, Nagpur and Amravati Universities, being Appeal No. A-1 of 1988. The main question which was argued before the Tribunal was that no service was effected on the petitioner and as such the proceedings were vitiated. On the other hand, the respondents contended that service was sought to be effected through notice server, but the same was refused and as such it was sufficient service to proceed with the enquiry against the petitioner. The Tribunal accepted the plea taken by the respondents which was supported by the evidence of the Notice Server. Accordingly, the Tribunal dismissed the appeal preferred by the petitioner on the ground that no illegality was committed by the respondents in terminating the services of the petitioner for the grave misconduct committed by him. It is this decision which is subject matter of challenge in the present petition.

4. The learned Counsel for the petitioner has argued only two points. According to him, the evidence regarding service of notice should be discarded for the reason that the petitioner was very much in service of the respondent and was always available for the service of the notice and it would, therefore, be wholly imaginary that the notice was sought to be served on the petitioner through the notice server at his address. Another circumstance for disbelieving the theory of service of notice relied upon by the petitioner is that initially no particulars were furnished by the respondents regarding the mode of service inasmuch as neither the name of the notice server nor any such details were mentioned and it is only at the subsequent stage of the proceedings that the name of Shri Onkar, the Notice Server, was mentioned, which, according to the petitioner, is an

afterthought. It is further contended that the respondents ought to have made another attempt to serve the petitioner and at least before the Enquiry Officer decided to proceed ex parte against the petitioner and examining the witnesses who deposed regarding the manner of service on the petitioner. In this connection reference has been made to Rule 46 sub-rule (3) to contend that it is mandatory to cause service on the employee before the enquiry is proceeded. Reliance is also placed on the decision in the case of Union of India and Others Vs. Dinanath Shantaram Karekar and Others, in support of aforesaid submissions.

5. After going through the judgment of the Tribunal, I find no reason to take a different view because there is clear evidence regarding service of notice through the notice server Shri Onkar who was working as one of the Peons in the respondent-institution. This evidence has remained unchallenged on record. Once it is held that the notice was duly served on the petitioner, then no exception can be taken to the decision arrived at by the authorities.

6. In any case, the action against the petitioner was based on the recommendation of the Social Welfare Department which has taken a view that the petitioner does not belong to the caste in respect of which the Caste Certificate was submitted for getting the service. Undisputedly, the petitioner has not chosen to challenge the said recommendation of the Social Welfare Department.

7. Insofar as the circumstances relied upon by the petitioner, I am of the view that they are devoid of merits. The first circumstance relied upon by the petitioner is that he was in service and the show cause notice could have been served on him as he was always available on duty. In my view, rules do not prescribe for the mode of service. Although it was possible for the respondents to effect service on the petitioner at the place of working, however, the respondents having chosen to serve the petitioner at his residential address, cannot be faulted with-so long as the evidence of the Notice Server is found to be reliable and admissible. This circumstance, therefore, would be of no avail to the petitioner. Another circumstance relied upon by the petitioner is that at no point of time the particulars with regard to the manner of service of notice were disclosed and that only at the belated stage the name of the notice server came to be mentioned at the final stage. Even this submission is devoid of merits for the simple reason that along with the notice, the grounds and material supplied to the petitioner clearly mentioned the name of Shri Onkar as one of the witnesses to be examined for having attempted to effect the service on the petitioner. The petitioner having refused to accept the service, cannot now be permitted to contend that the name was not disclosed at the appropriate stage and was an afterthought as contended. Another argument, for discarding the service, advanced by the petitioner was by referring to Rule 46(3) of the Rules and the decision of the Apex Court reported in Union of India and Others Vs. Dinanath Shantaram Karekar and Others, . I am of the view that none of the aforesaid would be of any assistance to the petitioner. Insofar as the rules are

concerned, they are silent about the procedure to be adopted for service of a show cause notice to be served on the employee. The respondents have adopted particular mode of service, cannot be a ground to challenge that the notice was not duly served. The fact that notice was duly served or not is established from the evidence of the notice server, which remained unchallenged on the record. Insofar as the decision of the Apex Court relied upon by the petitioner, is concerned, para 3 of the said judgment would indicate that in the said case the charge-sheet sent to the respondent in that case was returned with the postal endorsement "not found". It is in this circumstance that the Apex Court observed that only one attempt of service was not enough and that the service through newspaper publication was also inadequate. In the present case, however, there is clear evidence that the notice was attempted to be served on the petitioner, but the petitioner refused to accept. There is clear distinction between refusal of service and no service due to incorrect address of the notice or the notice was not found at the given address. Insofar as the refusal of service is concerned, it is well settled that the refusal of service is deemed to be a good service and the matter can proceed against the notice. Insofar as the contention raised by the petitioner that more than one notice ought to have been given and in any case before the notice server was to be examined. However, I am afraid, this contention cannot be entertained for the simple reason that the Enquiry Officer had set the enquiry in motion only after the petitioner having refused to accept the notice. In other words, the enquiry was ordered to proceed ex parte and once it was set in motion ex parte, there was no question of giving further notice to the petitioner. Taking any view of the matter, it is not possible to accept the stand taken by the petitioner that the notice attempted to be served on the petitioner, should be ignored. In my view, the Tribunal was right in concluding that the notice has been duly served and there was no irregularity or illegality in the enquiry proceedings and that no prejudice has been caused to the petitioner.

8. With regard to the second point raised by the petitioner that termination order has been passed by the Governing Council which was not the appointing authority, even this contention deserves to be rejected for the simple reason that the Governing Council is the Apex Body and the superior authority can surely be said to be competent to pass order terminating the services of the employee which order could have been made by its subordinate, namely, the Local Body.

9. In the circumstances, there is no merits in this petition. The writ petition, therefore, deserves to be dismissed.

10. For the aforesaid reasons, the writ petition is dismissed with no order as to costs. Rule stands discharged.