

Filed on - 04/02/2020

Order reserved on 31-07-2021.

Order pronounced/ 12/08/2021.  
issued on -

Duration-- 1 Year, 6 Months, 8 Days.



**Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur  
BEFORE THE GRIEVANCES COMMITTEE.**

(Presided over by Shri. Arvind J. Rohee, former District Judge.)

**Grievance Petition No. 07/2020**

**Applicant :** Dr. Dr. Anil N. Sarda,  
**Grievance** Associate Professor,  
**Petitioner** Resident of 3<sup>rd</sup> Floor  
Sarda Transport Building,  
Chhaprunagar Square,  
Bagadganj,  
NAGPUR-440008.

**- VARSUS -**

**Non-Applicant:** 1. The Principal,  
G.S. College of Commerce &  
Economics, Law College Square,  
Amravati Road, Nagpur.  
2. Shikshan Mandal,  
Jamnalal Bajaj Marg,  
Civil Lines, Wardha  
through its Chairman

**ORDER**

(Delivered on 12/08/2021)

1. The Applicant approached this forum under section 79 (1) of the Maharashtra Public Universities Act-2016 seeking the following reliefs:

(a) It is therefore prayed that this Hon'ble authority be pleased to set aside the communication dated 15.01.2019 (15.01.2020)

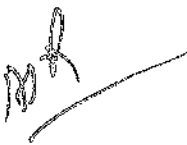
*MR*

reference No. SM/GSCN/SR/1240/348/2019-20 issued by Respondent No. 1 and declare it to be illegal.

2. It is undisputed that the Applicant was appointed as a Lecturer in G.S. College of Commerce & Economics, Nagpur run by the Non-Applciant No. 2 from 01.09.1990. Since the Applicant faced charges of misconduct, the Management put him under suspension w.e.f. 30.11.2017 and Departmental Inquiry was initiated against him. The Inquiry Officer was appointed who found that 5 out of 7 charges levelled against the Applicant are proved and accordingly submitted the report of Inquiry to the Principal, Non-Applciant No. 1, who put it before the Management of the Institute. Considering the reply of Applicant to the report, the Disciplinary Authority accepted the said report and the order of removal of the Applicant from service is passed on 15.07.2020 A.N. It is stated by the Non-Applciant that due procedure is followed while conducting the inquiry and passing the order of imposing major penalty of removal from services.

3. That prior to the commencement of the Departmental Inquiry, the Applicant approached this forum in Grievance Petition No. 5/2017 seeking certain reliefs and directions against the Non-Applciant. Vide order dated 17.10.2019, this forum partly allowed the aforesaid Grievance Petition and issued certain directions after recording certain observations. Aggrieved by it, the Non-Applciant assailed the said order before the Hon'ble High Court of Bombay Bench at Nagpur in Writ Petition No. 7769/2019. By the order dated 11.02.2020 the Hon'ble

High Court set aside the order dated 17.10.2019 passed by this forum in the aforesaid Grievance Petition, except direction regarding expeditious disposal of pending Departmental Inquiry against the Applicant within 4 months. In pursuance thereof, Inquiry was completed and report submitted, which was accepted by the Management resulting in the order of removal from service as stated earlier. It is stated that this order is challenged by the Applicant before the University & College Tribunal in appeal, which is pending consideration.

4. In the background of the aforesaid admitted facts, it is stated that the charge sheet dated 04.05.2018 contains as many as 7 charges, out of which two charges relate to the Applicant viz. accepted the membership and office of the Vice-President of Adarsha Vidya Mandir Society, another educational organization in the city which runs Commerce College without seeking permission of the Management and further that there is conflict of interest and Applicant refused to submit resignation when asked by the Management to do so. In the inquiry both the charges are stated to be proved and the Applicant stands removed from service. It is stated by the Applicant that in order to avoid conflict with the Society, after charge sheet dt. 26.12.2019 is served on the Applicant, he applied to the Management for grant of permission to work as a special invitee member on the Management of Adarsha Vidya Mandir Society for the years 2020 to 2022. It is stated that previously he worked on the said Society in different capacities and rendered social
- 

service, with the approval of the former Principal of G.S. College of Commerce & Economics, Nagpur. He also clarified that he took care that his work of teaching in his college will not affect, for rendering voluntary service to Adarsha Vidya Mandir. It is also stated that in spare time he desired to give his contribution towards educational and social work. This application was considered by the Management and by the impugned order dated 15.01.2019, the permission sought is refused by mentioning that the Applicant has informed that he was not being permitted by Shiksha Mandal or Principal, G.S. College of Commerce & Economics to associate with Adarsha Vidya Mandir and that there is a specific charge in a disciplinary inquiry that he has been associated with the said society in contravention of terms of his service.

5. The aforesaid order of refusal has been challenged by the Applicant in this Grievance Petition during pendency of the disciplinary proceeding, mainly on the following grounds as mentioned in para No. ... of the Petition:

- (a) That under the Ordinance No. 24 there is no prohibition. Therefore, the communication dated 15.01.2020 is illegal.
- (b) That the communication dated 15.01.2019 (15.01.2020) reference letter No. SM/GSCN/SR/1240/348/2019-20 is also illegal as there is no mention as to under which rule the permission can be rejected.
- (c) There are no terms of service allowing the management to refuse permission.
- (d) That since the service condition of the appellant are governed by Ordinance No. 24 by rejecting the application dated

26.12.2019, "The management is intending to apply Maharashtra Civil Services Rule (MCSR) as a service condition upon the appellant.

- (e) Even leveling the charge under Maharashtra Civil Services Rule (MCSR) when the field is covered by Ordinance No. 24 is illegal.
- (f) It is undisputed that the management has no right to travel beyond Ordinance No. 24.
- (g) Under Ordinance No. 24 Schedule A is an agreement between the governing body and a teacher. Whatever is not mentioned in the agreement cannot be enforced against the appellant.
- (h) The appellant has a fundamental right under Article 19 of the Constitution of India to join the charitable trust and association with Adarsha Vidya Mandir that right cannot be denied to him without any lawful reason."

6. It is also made clear by the Applicant that he will not receive any amount from the said organization Adarsha Vidya Mandir for rendering services and his work of teaching in G.S. College of Commerce & Economics will not thereby be affected and that there will not conflict of interest and his association with the said organization will not in any way affect the Non-Applicants.

7. On notice the Non-Applicants by a common reply dated 20/2/2021 resisted the claim on the ground that as per Ordinance No. 24 and the UGC's code of professional ethics and as per terms of service agreement, permission to accept the occupation in another organization is necessary which the Applicant failed to obtain. It is also stated that the Applicant has faced specific charges in this behalf and major



punishment is imposed upon him. It is also stated the application is after thought since filed after charge sheet was served on the Applicant containing two charges amongst others that he joined the organization Adarsha Vidya Mandir without prior permission of the Management and failed to resign there from when called upon to do so. As such, the permission sought is rightly rejected. It is also stated that appeal preferred by the Applicant against the order of removal is pending consideration before the Hon'ble University & College Tribunal, Nagpur and hence present petition is not tenable.

8. It is also stated that since the Applicant is now removed from service, there is no question of grant of any permission to him to join the said organization since he ceased to be employee of the Non-Applicants w.e.f. 15.07.2020. The application is, therefore, liable to be rejected. It is also stated that it is within the discretion of the Management to accept or reject any request made by the employee to join another organization, which cannot be a matter of grievance if the Management refuse the permission. It is also not within the jurisdiction of this Grievances Committee to direct the Management to grant such permission to the Applicant. The college also acquired status of minority institute and hence this forum cannot interfere with the Management decision, which will be in violation of the provisions of Article 300 of the Constitution.

9. Both the parties were heard on their rival contentions and the Grievances Committee has carefully gone through the entire case record

including the photo copies of documents produced alongwith their pleadings.

10. The Members of the Grievances Committee present have given thoughtful consideration to the submissions made by the Applicant and the reply argument of Dr. Shri N.Y. Khandait, Principal of the college for and on behalf of the Non-Applicant.

11. On the basis of the submissions made and the material produced on record, the following points arise for consideration of this forum and finding recorded thereon are as under:

| <u>Points</u>                                                                                                                                  | <u>Findings</u>                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| (1) Whether the impugned order refusing permission to join the organization Adarsha Vidya Mandir is illegal?                                   | Redundant in view of finding of Inquiry Officer. |
| (2) Whether on account of subsequent development of imposition of punishment of removal from service, the Applicant is entitled to any relief? | No                                               |
| (3) What Order?                                                                                                                                | As per concluding para.                          |

### REASONS

12. As to point No. 1:

It is obvious from record that Adarsha Vidya Mandir is reputed Educational Institution which runs 10 different institutions including Balak Madir (Montesary), Primary School, Semi English Primary School, Higher English Schools, Junior College, High Schools,

*DR*

and Mahila Mahavidyalaya, etc. It is stated that the Applicant's father was actively associated with the said Adarsha Vidya Mandir Society, Gandhibagh, Nagpur. The Applicant also from beginning and even after joining the service in the year 1990 worked as Honorary President and Joint Secretary, Secretary, Member Executive Committee and lastly Vice President of said institute, for a different period from 11.03.1995 to 20.12.2019. It appears that on completion of his last term of Vice President on 20.12.2019, he submitted Application to the Non-Applicants on 26.12.2019 seeking permission to join said institute again as Special Invitee Member, which request is rejected by the impugned order which is under challenge in this Grievance Petition.

13. During the course of arguments, the Non-Applicant No. 1 referred the provisions of Direction No. 7 dated 28.12.1999 vide Annexure-VII and clause 17 thereof entitled as "code of professional ethics" in which teachers and their responsibilities are prescribed. Under Sub-Clause-IV styled as "teachers and authorities", it is stated that "teachers are refrained from undertaking any other employment and commitment including private tuition classes which are likely to interfere with their professional responsibilities and should adhere to the conditions of contract." The same provisions are incorporated in Clause 22 of Direction No. 20 of 2019 dated 10.4.2019 issued by Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur, based on the G.R. dated 08.03.2019 issued by the Higher and Technical Education Department, Mantralaya, Mumbai for implementation of the recommendations of 7<sup>th</sup>

Pay Commission to the teachers in Non-Agricultural Universities and Affiliated Colleges, etc.

14. Similar conditions are mentioned in the service agreement of the Applicant dated 09.04.2015 in Clause No. 7 thereof in the effect, "that the party of the first part shall devote his/her whole time to the duties of his/her appointment and shall not engage directly or indirectly in any trade or business or without sanction of the Chairman of the Governing Body take up any occupation which in his/her opinion is likely to interfere with the duties of his/her appointment." Further in Clause No. 9 of the service agreement, it is also mentioned that after confirmation, the services of the party of the first part can be terminated only on the following grounds viz. (a) willful and persistent neglect of duties (b) misconduct (c) breach of any term of contract (d) physical or mental unfitness (e) incompetence (f) abolition of post.
15. On the basis of above provisions of clause 7 & 22 of the Directions referred above, which are also included in service agreement of member of staff in affiliated colleges in Ordinance No. 24 College Code dated 31.08.2012, the Applicant also referred and placed reliance on the same Clause No. 6 in the service agreement to substantiate his claim and it is stated by the Non-Applicant No. 1 that the teaching staff is not expected to join or render service to any other educational organization without permission of the Management. However, so far as this aspect of the case is concerned, it is obvious that as per Clause No. 6 of Ordinance No. 24, service agreement and Direction No. 20 of 2019 there

*MR*

is prohibition for engagement directly or indirectly in any trade or business or to take up any occupation without sanction of the Chairman, which in his opinion is likely to interfere with the duties of his appointment.

16. It is needless to say that joining any educational institution/ society as office bearer or member of Executive Body does not amount to engaging in any trade or business or doing occupation. Further, it is obvious that the office bearers render voluntary service for development of the society and they do no work for gain or profit. As such by no stretch of imagination, it can be said that they are engaged in a trade or business. It is obvious that sanction of the Chairman is required to take up any occupation which should not interfere with duties of his appointment. It is stated by the Non-Applicant No. 1 that the Applicant desired to take up occupation by joining the institute as Special Invitee Member and hence permission is refused since it is likely to interfere with his duties.

17. Firstly, it is to be considered that to become Special Invitee Member can it be said to take up occupation. Dictionary meaning of the term occupation is twofold viz. act of occupying house or site and secondly any industry or service. Adarsha Vidya Mandir Society is obviously not an industry or joining it as Special Invitee Member or in the Executive Body cannot be term as joining any service. This being so, it cannot be said by any stretch of imagination that any permission as such is required to join another professional/educational institution

as its office bearer or Member of the Executive Body. On the contrary, Clause No. 22 of code of professional ethics incorporated in Direction No.20 of 2019 clearly states that, "teacher should maintain active membership of professional organization and strive to improve education and profession through them." It is, therefore, obvious that joining the other professional organization is encouraged and there is nothing in any Direction, Ordinance, Statute or Act to indicate that for a teaching staff to join any other educational institution as its office bearer or member any permission of the management is required. The only care to be taken that the work of the teaching undertake by him in parent institute should not be affected on account of acceptance of such position in another organization. Further, it cannot be said that there will be breach of professional ethics in the event the teaching staff accepts such position, since it does not amount to acceptance of any other employment or commitment. Admittedly, the Applicant was not taking private tuition or coaching class which are likely to interfere with his professional responsibilities. This being so, it appears that there is no bar for joining any other educational institution by teaching staff with the only care to be taken that it should not affect the teaching job and there should not be conflict of interest. However, it is expected that the teaching staff should give written intimation to the Chairman of Society and Principal of College, in the event he accepts such position in another educational organization. The Applicant stated that initially he orally informed the former Principal and Chairman of the Society



about his joining Adarsha Vidya Mandir as office bearer who do not take any objection. In this respect, he also placed reliance on the letter dated 10.11.2017 of the former Principal of the college to the effect that he orally informed about joining Adarsha Vidya Mandir as member of Executive Body and that the then Joint Secretary of Shiksha Mandal Wardha was also made aware about it and the former clarified that teaching staff while doing their job should get himself associated with other educational and social organizations for rendering social service and for that there was no need to seek written permission from the college.

18. The law requires that even if permission is not required to join any educational or social organization by the serving teaching staff, without affecting his usual job and avoiding any conflict of interest, still if it is noticed by the Management or college that such teaching staff indulged in affecting his routine job due to taking part in activities of other organization or there are conflict of interest, he can be made answerable by initiating a regulars departmental inquiry against him for misconduct and he can be removed, terminated or dismissed from service on proof of the charge. The Applicant is charged for joining without permission and it adversely affected his job. Further although it appears that permission is not necessary, the Non-Applicant No.1 is justified in saying that it is in discretion of Management to allow its employee to join another educational institution with usual conditions,

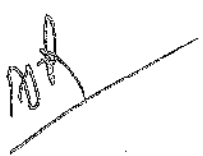
for doing social work without any gain or profit and purely on voluntary basis.

19. Secondly, the provisions of Maharashtra Civil Services (conduct) Rules are not applicable to the teaching staff of University and affiliated colleges like the one applicable to the non-teaching staff, in accordance with G.R. No. dated 20.05.2010 issued by Higher & Technical Education, Delhi., in which there is prohibition for joining any organization, while in service. We reject the contentions of Non-Applicants in this behalf and on the contrary so far as such teaching staff is concerned, joining other educational or social organization is encouraged, which factor is taken into consideration while considering them for promotion/placement. Hence, no adverse interference can be drawn against Applicant.
20. In spite of above stated position, in this case specific charge is framed against Applicant, which is proved during inquiry for the reasons recorded by the Inquiry Officer and since Appeal against order of removal passed by the Management is pending consideration before the Tribunal, it will not be just and proper to take a different view in this behalf and to interfere with order, which if taken would practically lead to setting aside the order in inquiry, which is beyond the competence of this forum. Hence, it is held that Point No. 1 becomes redundant in view of specific finding of Inquiry Officer.

*APR*

21. As to point No. 2:

The only reason given by the Non-Applicants for refusal of permission is that the Applicant faced a departmental inquiry with specific charges of joining Adarsha Vidya Mandir without permission of Management and declined to submit his resignation there from, when asked to do so. Both the charges are proved in inquiry, resulting in imposition of major punishment of removal from service. It is not known on what basis and material, the Inquiry Officer came to the conclusion that permission of the Society /college is necessary to join any other educational institution as office bearer, without affecting usual teaching job by the Applicant. Since the charges levelled stand proved and punishment of removal is imposed, which matter is sub-judice before the University & College Tribunal, it may be stated that the Non-Applicants are justified in refusing the permission. This is so because the period during which the Applicant joined Adarsha Vidya Mandir is already over and by way of caution, he seeks permission since he again desires to join the aforesaid institution as Special Invitee Member, on account of his large experience and the work in the field in the said organization from 1995 to 2019 in different capacities as stated earlier. In fact, there was no need for him to make any such application seeking permission, in absence of any specific provision in this behalf, and written intimation by him would have been sufficient, for the reasons stated earlier.

22. In this respect the Non-Applicant No. 1 submitted that granting permission is within the discretion of the Chairman of the Society and permission is refused mainly on account of two specific charges levelled against the Applicant and imposition of penalty as stated earlier. Considering the subsequent event that the Applicant is removed from service w.e.f. 15.07.2020 during pendency of this petition and since then he ceased to be employee of the Non-Applicants, he is now free bird and now is not connected with the Non-Applicant's institution, which matter is subjudice before the Tribunal. As such he is at liberty to accept the membership of Adarsha Vidya Mandir offered to him even without informing the Non-Applicants, if he so desires. In view of above, considering the peculiar facts of the case, it is not feasible to grant any relief to the Applicant, since the Grievance became purely academic.
23. Before concluding, it may be mentioned that the Grievances Committee does not find any force in the contentions of the Non-Applicants that the present Grievance Petition is untenable on the ground that Appeal against the order of removal is pending consideration before the Tribunal, so also the Writ Petition filed by the Non-Applicants against the order passed by the University on representation made by the Applicant challenging the said order of removal on the ground that prior approval of the University is not obtained before issuing the said order. Similarly, only because the college has acquired the status of Minority Institution, on this sole ground, it cannot be said that there will be any interference by this
- 

Forum in the Management of the said institute, by entertaining the present Grievance Petition for giving directions. The Point No. 2 is, therefore, answered in the negative.

24. In the result, the following operative order is passed.

- (1) The impugned order dated 15.01.2020 (wrongly mentioned as 15.01.2019 by the non-Applicants) becomes redundant, in view of finding of Inquiry Officer, and no finding can be recorded on it.
- (2) Further on account of subsequent development during pendency of this Grievance Petition viz imposition of punishment of removal from service ~~on~~ the Applicant, it is not necessary to grant any relief to the Applicant, since he ceased to be employee of Non-Applicants, and he is now free to join any institution of his choice, if so desires, even without informing the Non-Applicants.
- (3) In the facts and circumstances of the case, the parties are directed to bear their respective costs of this petition.
- (4) The office is directed to forward authenticate photocopy of this order to both the parties at the earliest.
- (5) Order pronounced in presence of the parties and Hon'ble Members of the Grievances Committee present.

Nagpur.

Dated: 12-08-2021.

  
 (Arvind J. Rohee)  
 Chairman, Grievances Committee,  
 RTM Nagpur University, Nagpur.