

**Shivsingh S/O Kalusingh Jonwal Vs. Marathwada University**

**Shivsingh S/O Kalusingh Jonwal Vs. Marathwada University**

**SooperKanoon Citation :** [sooperkanoon.com/354186](http://sooperkanoon.com/354186)

**Court :** Mumbai

**Decided On :** Nov-07-1985

**Reported in :** 1986(2)BomCR17; (1986)88BOMLR58

**Judge :** V.P. Salve, J.

**Acts :** [Constitution of India](#) - Article 20(2)

**Appeal No. :** Second Appeal No. 593 of 1979

**Appellant :** Shivsingh S/O Kalusingh Jonwal

**Respondent :** Marathwada University

**Advocate for Def. :** S.L. Kulkarni, Adv.

**Advocate for Pet/Ap. :** S.C. Bora, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**V.P. Salve, J.**

1. The second appeal raises a substantial question of law inasmuch as the appellant having been reinstated on 25th February, 1972, could an enquiry be instituted, continued and decided against him terminating his services? The question raised is based on the appellant being faced in double jeopardy which is

prohibited in law.

2. The facts of the case are that on 20th April, 1964 the plaintiff was appointed as Clerk-cum-typist to work in the General Branch of Marathwada University, Aurangabad. On 22nd February, 1965 he was confirmed in that post. On 30th October, 1969 he was promoted as Senior Assistant, on probation for two years, and posted to work in the Department of Zoology. Before he completed the period of probation, he chose to officiate as the President of the Marathwada University Non-teaching Employees Union. It was a body which was neither registered either under the Bombay Public Trusts Act or Societies Registration Act, nor was recognised by the defendant-respondent. On 20th September, 1971 the appellant under his own signature, acting as the President of such Union, published the 28 page representation containing about 71 items. This representation is essentially against the then Registrar Shri Dhamankar, and also against some of the officers of the respondent. It contained matter casting aspersion on the integrity, efficiency and utility of the administration of the respondent from top to bottom. The respondent was offended by the representation and was of the view that the act of the appellant in publishing such representation amounted to gross indiscipline and misconduct on the part of the appellant polluting the atmosphere. Owing to that the appellant on 22nd September, 1971 was placed under suspension. On that day he was working as a Senior Assistant in the Welfare Activities Section of the respondent. On 17th February, 1972 the F. & E.A.C. recommended the Executive Council of the respondent to appoint a Committee to report on the acts of the appellants envisaging gross indiscipline and misconduct on his part. Accordingly a three-men Committee was appointed to enquire into the matter. Sarvashri K.V. Gadia, Ramrao Janib and Randive were the members of the Enquiry Committee, which was appointed on 22nd February, 1972. It was the specific case of the plaintiff appellant that after he was placed under suspension on 22nd September, 1971, he made representations to the authorities to reconsider the decision of suspension and to reinstate him, which was not done. He, therefore, went on fast on 22nd February, 1972. During his fast the then Vice Chancellor assured him that if he tendered an apology, he would be reinstated. He, therefore, submitted a written apology on 25th February, 1972 and he was allowed to join his duties the very same day in the same post. He was transferred on 22nd March, 1972 to the

Board and Sports Section headed by the Director of Physical Education and was re-transferred to the same post in April 1973.

3. In the meanwhile on 17th February, 1972, a resolution was passed by the Executive Council to appoint a committee to report on the case of misconduct committed by the appellant, the allegation being that he had submitted a cyclostyled representation to the Vice-Chancellor of the University demanding the removal of the then Registrar Shri V.K. Dhamankar. The representation was signed by him as President of the Union. The representation was dated 20th September, 1971. It was the case of the appellant that the representation was made in accordance with the decision of the Union of the Non-teaching Employees of the University, which Union is admittedly neither a registered union nor recognised by the University.

4. The three-man committee continued its enquiry and on 20th April, 1972 the appellant filed his written statement admitting that he had forwarded such a representation, but the same was done in the capacity as the President of the Union and not in his official capacity as the employee of the University. The Committee proceeded with the enquiry and ultimately held that the representation to the Vice-Chancellor amounted to a serious misconduct on the part of the appellant and submitted a report accordingly to the University, who terminated the services of the plaintiff-appellant. The appellant filed the suit for a declaration that the order of termination dated 2nd/3rd May, 1973 is null and void and that the appellant still continues to be in service of the defendant. By a judgement dated 31st December, 1976 the Second Joint Civil Judge, (Junior Division), Aurangabad decreed the suit and declared that the order of termination of the appellant was null and void and that he continued to be in service of the defendant-University.

5. On appeal the Extra Assistant Judge, Aurangabad reversed the finding and judgment of the lower Court, allowed the appeal and hence the plaintiff filled the present second appeal.

6. Mr. Bora argued the appeal on behalf of the applicant mainly contending that the plaintiff-appellant was ordered to be reinstated which fact is admitted in the written statement by the University, on the appellant tendering his written apology.

Once he is reinstated, the matter should be treated as closed and could not have been reopened by the Committee. He relied on a decision of the Supreme Court reported in *State of Assam v. J.N. Roy Biswas*, : (1976)11LLJ17SC especially para 4 which reads as under:

'We may however make it clear that no Government servant can urge that if for some technical or other good ground, procedural or other, the first enquiry or punishment or exoneration is found bad in law that a second enquiry cannot be launched. It can be but once a disciplinary case has closed and the official reinstated, presumably on full exoneration, a chagrined Government cannot re-start the exercise in the absence of specific power to review or revive, vested by the rules in some authority. The basis of the rule of law cannot be breached without legal provision or other vitiating factor invalidating the earlier enquiry. For the present this is theoretical because no such deadly defect is apparent on the record.'

7. It is clear that once a matter has been decided by the highest authority viz. the Vice-Chancellor that the appellant be reinstated on tendering an apology of which there is no dispute, then it is difficult to hold that the enquiry conducted against the appellant after his reinstatement would be a legal action. On this ground alone the appellant is entitled to succeed and the appeal will have to be allowed. It is not necessary to traverse the other grounds which were argued before me about granting a fair opportunity to the appellant during the enquiry since according to the appellant the enquiry itself is vitiated as it violates the bar of double jeopardy granted to every citizen of India by virtue of Article 20(2) of the Constitution.

8. In the result, the appeal is allowed. The order of the 2nd Joint Civil Judge, (Junior Division), Aurangabad is revived and the order of the lower Appellate Court is set aside. The plaintiff-appellant is ordered to be reinstated in his post with back wages. The plaintiff appellant shall get his costs throughout from the respondent.