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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (LODGING) NO.11244 OF 2024

Dr. Marufa Mazhar Faruqi,
R/of Gurugram – 122003

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].. **Petitioner**

Versus

1. Tata Institute of Social Sciences,
Deonar, Mumbai – 400088

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2. Officiating Registrar,
Tata Institute of Social Sciences,
Deonar, Mumbai – 400088

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].. **Respondents**

Ms. Gauri R. Raghuwanshi, Advocate for the Petitioner.

Mr. Rajeev Kumar Panday with Mr. Sachin Kanse, Advocates, i/by
PRS Legal, for the Respondents.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 8TH JULY, 2024.

ORAL JUDGMENT : { Per A.S. Chandurkar, J. }

1. RULE. Rule made returnable forthwith and heard learned
counsel for the parties.

2. The petitioner is aggrieved by the order dated 23rd December
2023 passed by the Appellate Authority constituted by the 1st
respondent – Tata Institute of Social Sciences (“TISS”), which
considered the petitioner’s Appeal that was filed for challenging

the communication dated 3rd November 2022 issued by the Officiating Registrar, TISS rusticating the petitioner from the Institute.

3. Facts relevant for considering the challenge as raised are that the petitioner enrolled herself with TISS for pursuing two years Hospital Management Course being conducted by it. While pursuing that Course, it is alleged that she and her husband were responsible for a social media post that intended to target the Dean as well as the Internship Coordinator. With a view to enquire into the complaint received in that regard, Notification dated 11th October 2022 was issued by TISS constituting a Three Member Enquiry Committee. The said Three Member Enquiry Committee submitted its report on 25th October 2022 and recommended that the petitioner be rusticated from the Institute. The Competent Authority of TISS accepted the aforesaid report. On 3rd November 2022, the Officiating Registrar, TISS communicated that decision to the petitioner.

. Being aggrieved by the aforesaid order, the petitioner approached this Court by filing Writ Petition (Lodging) No.35412 of 2022 (*Dr. Marufa Mazhar Faruqi Vs. TATA Institute of Social Sciences & Anr.*) raising a challenge to the said communication

dated 3rd November 2022. Since it was noticed that an alternate remedy by way of an appeal before the Appellate Authority could be filed, the Writ Petition was disposed of on 13th December 2022 by permitting the petitioner to avail that alternate remedy. The Writ Petition was treated as an appeal and the Appellate Authority was directed to decide the same. It was further observed that an undertaking-cum-apology submitted by the petitioner be also considered by the Appellate Authority.

4. It appears that pursuant to the aforesaid order, the Three Member Committee sought to review its earlier report. On 16th December 2022, the Officiating Registrar, TISS informed the petitioner that the said Committee found the matter to be very grave and serious and hence was not inclined to alter the petitioner's rustication from the Institute. The petitioner again approached this Court raising a challenge to the said communication by filing Writ Petition (Lodging) No.39728 of 2022 (*Dr. Marufa Mazhar Faruqi Vs. Tata Institute of Social Sciences & Anr.*). This Writ Petition was disposed of on 18th October 2023 by directing the Competent Authority to constitute the Appellate Authority and decide the appeal in accordance with law. It was expected that the Appellate Authority would consider finding a solution to put an end to the issue. Thereafter the Appellate

Authority submitted its report on 23rd December 2023 and found that the petitioner had filed a frivolous sexual harassment case against the Dean. Notwithstanding the apology letter submitted by the petitioner in the context of the social media post, it was observed that the petitioner had contravened the rules and regulations of TISS and had willfully committed offences against the Dean. The petitioner was called upon to submit a comprehensive notarized document expressing remorse for her action of lodging the frivolous sexual harassment case. It is in this context that the petitioner has sought to challenge the aforesaid order dated 23rd December 2023 (*wrongly mentioned as an order dated 16th January 2024 in the Writ Petition*).

5. Ms. Gauri R. Raghuwanshi, learned counsel appearing for the petitioner submitted that the Appellate Authority was not justified in expanding the scope of the appeal by taking into consideration the petitioner's complaint as filed against the Dean that resulted in her sexual harassment. The proceedings had been initiated by TISS in view of the alleged social media post made by the petitioner as against the Dean and the Internship Coordinator. The Three Member Enquiry Committee as constituted considered only that issue related to the social media post and thereafter proposed rustication of the petitioner. The petitioner had

submitted her apology letter expressing regret for the said action and had further stated that she would not repeat such acts in the future. An unconditional apology having been tendered, the same ought to have been taken into consideration in the light of the observations made by this Court in the earlier round of litigation. However, the Appellate Authority misdirected itself by taking into consideration the petitioner's complaint made in the sexual harassment case. Those proceedings were independent and separate and they could not have been taken into consideration by the Appellate Authority. By expanding the scope of the petitioner's Appeal, grave prejudice was caused and the petitioner was directed to seek apology for making such complaint. It was thus submitted that the Appellate Authority having exceeded jurisdiction in taking into consideration the petitioner's subsequent complaint, the order dated 23rd December 2023 was liable to be set aside.

6. On the other hand Mr. Rajeev Kumar Panday, learned counsel appearing for the 1st respondent supported the impugned action. Referring to the affidavit-in-reply it was submitted that the petitioner had in clear terms admitted that her complaint alleging sexual harassment was false and frivolous. Having made unfounded allegations against the Dean, the Appellate Authority

was justified in directing the petitioner to submit a comprehensive apology letter. The conduct of the petitioner left much to be desired and it was clear that she was bent upon tarnishing the image of the Institution. As a result of such complaint, the Dean was required to approach the Court of law for seeking anticipatory bail. It was thus submitted that taking an overall view of the matter, the Appellate Authority directed the petitioner to tender an apology and put an end to the entire dispute. Hence, there was no reason to interfere with the impugned order.

7. We have heard the learned counsel for the parties at length and we have also perused the documents on record. In our view, the order passed by the Appellate Authority on 23rd December 2023 is liable to be quashed for the reason that the said Authority has travelled beyond the scope of the appeal and has sought to delve into matters that were not the subject matter of the appeal. Undisputedly, the Competent Authority issued Notification dated 11th October 2022 by which a Three Member Enquiry Committee was constituted to look into the complaint made by the Dean and Internship Coordinator with regard to the social media post attributed to the petitioner. The Three Member Committee in its report dated 25th October 2022 rightly restricted itself to the said social media post and thereafter proceeded to recommend

rustication of the petitioner. The report of the Three Member Enquiry Committee culminated in the communication dated 3rd November 2022 issued by the Officiating Registrar, TISS informing the petitioner that she had been rusticated from the Institute.

. It may be noted that till the said date the petitioner had not filed her complaint alleging sexual harassment against the Dean. That complaint was made by the petitioner only on 18th October 2022 which is after issuance of Notification dated 11th October 2022 constituting the Enquiry Committee. It thus becomes clear from the record that the enquiry conducted by the Three Member Enquiry Committee was pursuant to the Notification dated 11th October 2022 in the matter of alleged social media post attributed to the petitioner. Thus, a matter that was not the subject matter of enquiry could not have been gone into by the Appellate Authority.

8. It is pertinent to note that when the petitioner first approached this Court by filing Writ Petition (Lodging) No.35412 of 2022 (*supra*), she had tendered an affidavit-cum-undertaking expressing remorse for the entire incident. The same has been noted in the order dated 13th December 2022. This Court expected the Appellate Authority to take into consideration the said undertaking-cum-apology while deciding the appeal. Yet again, in

the subsequent Writ Petition being Writ Petition (Lodging) No.39728 of 2022 (*supra*), this Court observed that TISS was expected to show magnanimity to its students and not focus only on imposing punishments. In paragraph 9 of the said order dated 18th October 2023, it has been observed as under :-

“9. Without intending to influence the Appellate Authority, we do observe that while need to maintain discipline is acknowledged, the respondent – Institution should also show magnanimity commensurate to its status to its students and should not only focus on imposing punishments or retribution for faculty members. Those faculty members, who seem to be more aggrieved, would have their personal remedies in law, if they intend to pursue them. The petitioner now seeks only a degree. Therefore, we have no doubt that the Appellate Authority will take a dispassionate view as an Institution to find a solution to put a quietus to the issue, leaving it to those feel defamed to pursue their own remedies, if so inclined.”

9. It was thus expected from the Appellate Authority that it would take into consideration the undertaking-cum-apology submitted by the petitioner with a view to put an end to the entire episode. However instead of doing so, the Appellate Authority has

proceeded to take into consideration the complaint for sexual harassment made subsequently by the petitioner and has opined that the petitioner had admitted that it was a false and frivolous complaint. The action of expulsion was thus held to be justified on the premise that the petitioner had wilfully committed a series of offences against the Dean. The Appellate Authority proceeded to record a finding that no sexual harassment was perpetrated by the Dean. After recording this finding, the Appellate Authority observed that the said finding could be taken into consideration by the Internal Complaints Committee on Sexual Harassment – ICC-SH. We find this approach to be totally contrary to the scope of the appeal as well as to the settled principles of natural justice. The scope of the appeal preferred by the petitioner could not have been enlarged in such a manner at her detriment.

10. Yet another reason as to why the Appellate Authority was not justified in clubbing the petitioner's grievance alleging sexual harassment as made on 18th October 2022 with the complaint based on the social media posts is that her complaint dated 18th October, 2022 was considered by the ICC-SH. The said proceedings were independent in nature having no connection with the complaint of the Dean and Internship Coordinator. The ICC-SH after referring to testimonies of the petitioner and

witnesses concluded that the Dean and the Internship Coordinator ought to be mindful of their position, language, demeanor and multiple sensitivities while interacting with students and faculty colleagues. It also observed that the performance of the petitioner ought not to be evaluated by the said Dean and Internship Coordinator for the relevant semester. The entire exercise was conducted by TISS under the UGC Regulations, 2015. A remedy of appeal has been provided against the observations/ recommendations of the ICC-SH.

11. Despite aforesaid, the Appellate Authority proceeded to club the issue of the petitioner's complaint dated 18th October 2022 with her grievance as raised against the action of rustication. In our view, such course was not permissible and the Appellate Authority ought to have independently dealt with the petitioner's appeal preferred against the action of rustication as communicated on 3rd November 2022. The petitioner could not have been put in a worse situation from the one in which she was placed after the initial order of rustication passed by the Competent Authority. Reference in this regard can be made to the decision in *Pradeep Kumar Vs. Union of India and Ors.*, (2005) 12 SCC 219.

. For all these reasons, we find that the Appellate Authority erred in requiring the petitioner to issue a public apology as well as a comprehensive notarized document related to the grievance raised in the complaint dated 18th October 2022. Its report therefore is unsustainable and is liable to be set aside.

12. Having found that the report submitted by the Appellate Authority is contrary to law, the question that arises is as regards the relief that could be granted to the petitioner. We are mindful of the fact that on an earlier occasion, this Court was required to remand the proceedings to the Appellate Authority to enable it to reconsider the appeal with an observation that the said Authority ought to take into consideration the apology tendered by the petitioner so as to find a solution and put an end to the entire issue. The Appellate Authority however has failed to do so. Despite this, it has to be kept in mind that the writ Court after setting aside an impugned action would not substitute its decision in place of the decision that the concerned authority is expected to take. Hence, while setting aside the impugned action, we are inclined to remand the proceedings to the Appellate Authority to decide the appeal in accordance with law. Accordingly, the following order is passed :-

(a). The report of the Appellate Authority dated 23rd

December 2023 is quashed and set aside.

- (b). The Appellate Authority is directed to reconsider the appeal preferred by the petitioner raising a challenge to the action of rustication of the petitioner as communicated by the Officiating Registrar to the petitioner on 3rd November 2022.
- (c). The Appellate Authority shall confine itself to such challenge and shall not travel beyond the grounds raised by the petitioner in the appeal.
- (d). Since the petitioner is desirous of prosecuting further studies, the appeal shall be decided within a period of six weeks of receiving copy of this judgment.
- (e). It is clarified that the proceedings arising out of the petitioner's complaint dated 18th October 2022 that has culminated into the report submitted by the Internal Complaints Committee on Sexual Harassment shall be independently decided. The issues that arise from the enquiry held pursuant to the Notification dated 11th October 2022 shall not be mixed with the issues arising out of the petitioner's complaint dated 18th October 2022.

(f). The Appellate Authority shall take into consideration the observations made in paragraph 9 of the order dated 18th October 2023 made by this Court in Writ Petition (Lodging) No.39728 of 2022, which paragraph has been reproduced in paragraph 8 of this judgment.

(g). We hope and trust that the Appellate Authority would decide the appeal dispassionately in accordance with law.

13. Rule is made absolute in aforesaid terms with costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]