IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

933 WRIT PETITION NO. 7681 OF 2023
WITH CIVIL APPLICATION NO. 10326 OF 2024

KHANDESH EDUCATION SOCIETY THROUGH ITS SECRETARY AND ANOTHER
VERSUS
MAHAVEER PRAVIN JAIN AND ANOTHER

AND

WRIT PETITION NO. 7679 OF 2023
WITH CIVIL APPLICATION NO. 10329 OF 2024

KHANDESH EDUCATION SOCIETY THROUGH ITS SECRETARY AND ANOTHER
VERSUS
RAVINDRA PRABHULAL MUNDANKAR AND ANOTHER

Mr. V. D. Sapkal, Senior Advocate i/b Mr. Manish Navandar a/w Mr. Amit Gadekar, Advocate for the petitioners
Mr. S. N. Kendre, AGP for the respondent/State
Mr. B. R. Warmaa, Advocate for respondent No.1.

CORAM : R. M. JOSHI, J.
DATE : 19th MARCH, 2025

PER COURT :-

1. By consent of both sides, these petitions are heard finally at the stage of admission and decided by common judgment, since both petitions involve similar questions of fact and law.

2. These petitions take exception to the order dated 13/06/2023 passed in Appeal Nos. NMU-2 of 2022 and 1 of 2022 preferred by the respondent No.1, whereby the Tribunal has allowed the said appeals by

passing following order;

> *"(i) Appeal is allowed.*
> *(ii) Impugned termination order, dated 6.12.2021 made effective from 8.12.2021 passed by respondent Nos.1 and 2 is set aside.*
> *(iii) Respondent Nos. 1 and 2 are directed to reinstatement appellant with continuity of service and back wages as directed by Hon'ble High Court vide interim order, dated 24.2.2020 passed in Writ Petition No.1738 of 2018 from their own pocket.*
> *(iv) The order of reinstatement with continuity of service and back wages will be subject to final decision of pending Writ Petition No. 1738 of 2018.*
> *(v) Parties to bear their own costs."*

3. The facts which led to the filing of these petitions can be narrated in brief as under:

(i) The respondents employees were employed by the petitioner- divisional institution as 'Clerk' and 'Peon' some time around 2003. On 01/06/2011 their services were claimed to have been terminated orally and hence, Appeal bearing No. 2/2011 came to be preferred before the University Appellate Tribunal under Section 81 of the Maharashtra Public Universities Act (for short 'the Act'). In the said appeal compromise took place between the parties. The appeal came to be allowed in terms of the compromise by order dated 20/04/2017. The order passed by the University and College Tribunal and the terms of the settlement between the parties are reproduced herein below;

> ***"ORDER***
> *Appellant is present. Counsels for both sides are present. Appellant and respondents have entered into compromise. The terms of compromise read over and*

explained. Appellant admits that the said terms are true and correct to the best of his knowledge and admits the signature of compromise purshis. Respondents no.1 and 2 whose signatures are attested and identified by Shri. Vinod Patil Advocate. The appellant is identified by Smt. Ujjwal Agrawal Advocate. So, the compromise purshis is verified, read and recorded. The compromise pursis shall be the part and parcel of appeal bearing No. NMU-02/2011."

"तडजोड पुरसीस

वरील प्रकरणात अपीलार्थी व सामनेवाला क्र. १ व २ यांच्यामध्ये खालीलप्रमाणे तडजोड आहे. खाली नमूद केलेल्या अटीचे पालन दोन्ही पक्षांवर बंधनकारक असुन मे. न्यायालयाने वरील प्रकरण तडजोडीच्या अटीनुसार निकाली काढावे ही विनंती.

१) व्यवस्थापनाने (सामनेवाला क्र.१ व २) अपीलार्थीचा बडतर्फीचा तोंडी दिलेला आदेश आज रोजी रद्द केलार आहे.

२) अपीलार्थीच्या व्यवस्थापनाने प्रथम नेमणूकी पासुन सेवा सातत्य देण्याचे मान्य केले आहे व त्याची पुन:स्थापनाही मंजुर रिकाम्या पुर्णवेळ जागेवर केली आहे.

३) व्यवस्थानाने अपीलार्थीचे प्रथम नेमणुकी पासुन सेवा सातत्य देण्याचे मान्य केले.

४) अपीलार्थीने दिनांक १/८/२०१० पासून ते ही तडजोड पत्रकावर करे पर्यंतच्या दिनाकांकपर्यंतच्या सर्व पगाराची आर्थिक मागणी सोडून दिली आहे. अपीलार्थी सदरच्या काळातील वेतन भविष्यात कधीही मागणी करणारनाही.

५) अपीलार्थीने दिनांक १०/१/२०१७ पासुन पुर्ववत पदस्थापना करून कामावर रूज करून घेण्याचे सामनेवाला क्र. १ व २ यांनी मान्य केले आहे.

६) अपीलार्थी कामावर रूजू झाल्यापासुन शासनाकडुन नियमित वेतनश्रेणी मिळण्यास पात्र राहिल असे व्यवस्थापनाने मान्य केले आहे. परंतु शासनाकडुन नियमित वेतनश्रेणी न मिळाल्यास तयास व्यवस्थापन जबाबदार राहणार नाही.

७) सेवा जेष्ठता या कारणासाठी दिनांक ९/८/२०१० हा मानक दिनांक ठरविला आहे

८) व्यवस्थापनाने ही तडजोड झाल्यापासुन ३० दिवसाचे आत मे. सहसंचालक, उच्च शिक्षण, जळगांव यांच्याकडे अपीलार्थीचा मान्यता प्रस्ताव सादर करतील. कोणत्याही कारणास्तव अथवा सबबीवर प्रस्ताव सादर करण्यास विलंब करणार नाही.

करीता अपीलार्थी न सामनेवाला क्र. १ व २ तर्फे ही तडजोड

पुरसीस''

(ii) Pursuant to the said compromise, the petitioner Management is said to have forwarded the proposal for the approval of the employment of the respondents. Since the approval is negatived by the Competent Authority, Writ Petition bearing No. 1738 of 2018 came to be preferred. The said petition is pending before Division Bench of this Court.

(iii) In the meantime petitioner Management issued order dated 01/11/2021 terminating the services of the respondents from 30/11/2021. However, subsequently the said order was withdrawn. A fresh order came to be issued on 06/12/2021 terminating their services w.e.f. 08/12/2021. Even before this order could be passed, certain civil applications were moved for the purpose of seeking review, a review of the orders passed by this Court in Writ Petition No. 1738/2018.

(iv) Since the services of the respondents were terminated by order dated 06/12/2021, appeal came to be preferred under Section 81 of the Act in Appeal No. 02/2022. After hearing both sides and considering the material evidence on record the learned Presiding Officer of the University and College Tribunal passed impugned order, whereby the appeal came to be allowed with the order as indicated herein above.

4. Learned senior counsel for the petitioner has made elaborate

submissions on the issues involved herein. At the outset it is his contention that the Tribunal has committed error in relying upon the orders passed by this Court at interim stage rather than deciding the issue on merit of the case. He has further grievance to make in respect of the impugned order to the effect that the Tribunal has considered the compromise terms only in part which were favourable to the respondents and in fact the the Court ought to have taken into account the compromise as a whole. This according to him has resulted into recording of the erroneous finding which needs interference at the hands of this Court. He further drew attention of the Court to the various orders passed by this Court in Writ Petition No. 1738/2018 to contend that those orders were passed at interim stage and could not have been made on the basis or passing the impugned order by the Tribunal. In any case it is his grievance that the Tribunal has not applied its mind and has passed order of reinstatement with continuity of service and back wages subject to the final decision of pending Writ Petition No. 1738/2018. This according to him is wholly impermissible in law.

5. Learned counsel for the respondents supported the impugned orders.

6. At the outset it needs to be recorded that the issue before the Tribunal was with regard to the legality of the termination of the

respondents effected by letter dated 06/12/2021. There is no dispute about the fact that before the Tribunal, the previous proceedings more particularly the terms of compromise filed in Appeal No. 02/2011 were placed on record. Though now it is sought to be contended by the petitioner Management that the services of the respondents were terminated for the reason that they were not regularly employed against the permanent vacant post. This however, runs contrary to the terms of compromise where in clause No.2 clearly indicates that respondents were employed on approved vacant full time post. This aspect has been rightly taken into consideration by the Tribunal while passing impugned order. The question arises as to whether a fault can be found in the impugned order that the learned Tribunal has not recorded all the terms of compromise in the order impugned. Though the order impugned indicates that the terms of compromise up to clause No.3 were not reproduced, however for all practical purposes entire compromise terms are taken into consideration by the Tribunal which is reflected from the observations made from paragraph 60 onwards of the said judgment. Those observations clearly indicate that the Tribunal was conscious of the fact that issue with regard to the payment of back wages and salary etc. would be dependent upon the terms of compromise so also outcome of the Writ Petition No. 1738/2018. When it was brought to the notice of the Tribunal that the petition is pending before the High Court and the

issue which has a direct bearing on the back wages and salary payable to the respondents in subjudice, it was not open for the Tribunal to ignore the said fact and to pass any independent order and any order so passed would always be subject to outcome of petitions. In the circumstances, the order passed by the Tribunal making the payment of back wages, salary etc. subject to outcome of the Writ Petition No. 1738/2018 is perfectly justified. Had it been done otherwise it was said to have been a error committed by the Tribunal.

7. In so far as the legality of termination is concerned, once the compromise terms have become final wherein the Management has candidly accepted the facts about the employment of the respondents of sanctioned vacant full time post, it was not open for the Management to take the stand that therein employment is not against the sanction post as indicated in the order of termination dated 06/12/2021.

8. Having regard to the facts of the case, observations made by Tribunal with regard to the malafide intention on the part of the Management to terminate the services cannot be faulted with. As a result of which, this Courts finds no merit in the petitions, petitions stand dismissed. Pending civil applications, if any, stand disposed of.

(R. M. JOSHI, J.)

ssp