

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10915 OF 2024

Secretary, Dr. J. J. Magdum Trust and another*Petitioners*

: *Versus* :

Vijay Jaysingrao Khot and others*Respondents*

WITH

WRIT PETITION NO. 10916 OF 2024

Secretary, Dr. J. J. Magdum Trust and another*Petitioners*

: *Versus* :

Pooja Prasad Belagali and others*Respondents*

WITH

WRIT PETITION NO. 10920 OF 2024

Secretary, Dr. J. J. Magdum Trust and another*Petitioners*

: *Versus* :

Prasad Ramchandra Kulkarni and others*Respondents*

WITH

WRIT PETITION NO. 10922 OF 2024

Secretary, Dr. J. J. Magdum Trust and another*Petitioners*

: *Versus* :

Ravindra Shivram Chougule and others*Respondents*

WITH
WRIT PETITION NO. 10950 OF 2024

Secretary, Dr. J. J. Magdum Trust and another*Petitioners*

: *Versus* :

Ajay Pravinchandra Shah and others*Respondents*

WITH
WRIT PETITION NO. 10951 OF 2024

Secretary, Dr. J. J. Magdum Trust and another*Petitioners*

: *Versus* :

Shamala Rajaram Mahadik and others*Respondents*

MR. ANIL ANTURKAR, SENIOR ADVOCATE i/by. *Mr.Dhairyasheel Sutar, Ms. Latika Kabad and Ms. Kavita Vijapure, for the Petitioners.*

MR. SAURABH PAKALE i/by. *Ms. Padmaja Umesh Malgaonkar, for Respondent No.1.*

MR. VIKRAM WALAWALKAR, *for Respondent No.2.*

MS. SNEHAL JADHAV, *AGP for Respondent-State in WP-10915-2024 and WP-10916-2024.*

MR. KETAN JOSHI, 'B' PANEL *Advocate for Respondent-State in WP-10922-2024 and WP-10920-2024.*

MS. ALOKA A. NADKARNI, *AGP for Respondent-State in WP-10950-2024.*

MR. P.V. NELSON-RAJAN, *AGP for Respondent-State in WP-10951-2024.*

CORAM : SANDEEP V. MARNE, J.

DATED : 2 MAY 2025.

P.C. :

1) These petitions are filed by the Petitioner-Management challenging common judgment and order dated 21 June 2024 passed by the Presiding Officer, Savitribai Phule, Pune, Shivaji and Solapur University College, Tribunal (**College Tribunal**) partly allowing the appeals preferred by the Respondents and setting aside the decision of the Management dated 19 January 2019 reducing the pay scale of the Respondents. The College Tribunal has directed Petitioner to restore the pay scales of the Respondents to their original positions as before 19 January 2019 with further direction for refund of recovered amounts.

2) Petitioner No.1 is a Trust which runs Petitioner No.2 Engineering College. Respondent No.1 in each of the petitions (**who are hereinafter referred to as Respondents**) joined the services of Petitioner No.2-College on various dates. All India Council of Technical Education (**AICTE**) issued notification dated 5 March 2010 under which three categories of teaching posts in Colleges of Lecturer, Assistant Professors and Professors were designated as Assistant Professors, Associate Professors and Professors respectively. This is how designation of the erstwhile post of Assistant Professor was revised as Associate Professor in terms of AICTE Notification of 5 March 2010. However, one of the conditions for redesignation of Assistant Professor as Associate Professor was possession of Ph.D degree. However, a special dispensation is made for acquisition of Ph.D degree within a period of 7 years from the date of appointment as Assistant Professor. Respondents could not acquire Ph.D. within the specified period of 7 years. Therefore, Petitioners issued letters dated 19 January 2019 reverting them to the pay scales of Rs.15,600-39,000/- plus AGP Rs. 8,000/- from the scale of pay which they were drawing consequent to

their redesignation as Associate Professors (Rs. 37,400-67,000 *plus* AGP Rs. 9,000/-).

3) Respondents got aggrieved by letters dated 19 January 2019 and filed complaints before the Grievance Committee of Shivaji University in March 2019. In addition to reduction of payscale, Respondents also raised three other grievances relating to non-release of increments during the period of their selection through local committee till selection through university committee, non-release of arrears of 6th Pay Commission and non-payment of Dearness Allowance as per rates declared by the Government of Maharashtra from time to time. The Grievance Committee disposed of the complaints filed by the Respondents by order dated 17 November 2021 rejecting the prayer for release of increments in respect of the period from selection by local committee to selection by University Committee. So far as the balance three demands were concerned, including the prayer for restoration of payscale, the Grievance Committee held that proceedings were pending before the College Tribunal and that therefore the same could not be adjudicated by it. Respondents challenged the orders passed by the Grievance Committee on 17 November 2021 by filing Appeals before the College Tribunal. The College Tribunal has partly allowed the Appeals preferred by the Respondents to the limited extent of setting aside letter dated 19 January 2019 reducing the payscale. The Tribunal directed restoration of payscale of the Respondents to the one which they were drawing prior to 19 January 2019 with further directions for refund of recovered amount. The other prayers for release of increments during the period between selection through local selection committee and selection through University Selection Committee, arrears of 6th Pay Commission Payscale and Dearness Allowance as declared by the State of Maharashtra has been rejected. The Petitioner-Management has filed

the present petitions challenging the common judgment and order dated 21 June 2024 passed by the College Tribunal.

4) I have heard Mr. Anturkar, the learned senior advocate appearing for the Petitioner-Management. At the very outset, Mr. Anturkar would fairly invite my attention to the judgment and order dated 28 January 2024 passed by this Court in case of same parties in Secretary, Dr.J.J. Magdum Trust & Anr. Versus. Shamala Rajaram Mahadik & Ors¹. He would submit that the judgment of this Court conclusively decides the issue of reduction of Respondents from the post of Associate Professor to that of Assistant Professor. He would submit that since this Court has already upheld the order of the School Tribunal setting aside reversion of the Respondents, restoration of their payscales would have been otherwise eminent. He would however submit that the Petitioner-Management has challenged the judgment dated 28 January 2025 before the Hon'ble Apex Court and that the challenge is pending. Additionally, he would invite my attention to the judgment in The Secretary, All India Shri Shivaji Memorial Society (AISSMS) & Ors. Versus. The State of Maharashtra & Ors.² in which the Hon'ble Apex Court has held that those Assistant Professors, who have failed to acquire Ph.D. degree within seven years are not entitled to the benefit of 2010 Notification issued by AICTE and are therefore not entitled for grant of higher payscale. He would therefore submit that the Apex Court judgment in The Secretary, All India Shri Shivaji Memorial Society (supra) would squarely apply to the present case thereby dis-entitling the Respondents from the benefit of higher payscale on account of failure to complete Ph.D. degree within a period of 7 years.

1 WRIT PETITION NO.419/2025 DECIDED ON 28 JANUARY 2025.

2 SPECIAL LEAVE PETITION (CIVIL) NO.(S)-7058-7061/2019 DECIDED ON 1 APRIL 2025.

5) The petitions are opposed by Mr. Pakale, the learned counsel appearing for the Respondents. He would submit that the Tribunal has rightly considered the difference between the two concepts of reduction in rank from Associate Professor to Assistant Professor and reduction in lower stage of increment/reduction in payscale. Upon analyzing University Statute-212, the Tribunal has rightly appreciated that the two concepts constitute distinct actions. He would therefore submit that mere pendency of litigation relating to restoration of status by setting aside order of reduction in rank could not have been a ground for the Grievance Committee not to adjudicate upon validity of letters dated 19 January 2019, which has the effect of reduction in payscale of the Respondents. He would submit that Petitioners have otherwise succeeded in the parallel proceedings relating to the illegal action of reduction in rank and therefore there is no warrant for this Court to interfere in the impugned order of the Tribunal, which sets aside the action of reduction in payscale. He would therefore pray for dismissal of the petitions.

6) In my view, Respondents have clearly erred in initiating two parallel proceedings in respect of the same cause of action. The Petitioner-Management reduced the payscale of Respondents by letter dated 19 January 2019 on account of their failure to complete Ph.D. degree within a period of seven years. The letter dated 19 January 2019 reads thus :

Ref-JJMCE/Reversion.-Ph.D/2018-19/321-6

Date-19th January, 2019
By hand/By RPAD-

To

Shri. Vijay Jaysingrao Khot,
Associate Professor/Dept of Mechanical Engg-
Dr.J.J.M.C.o.E., Jaysingpur
At & Post- Jaysingpur
Tal-Shirol Dist-Kolhapur

Sub- Reversion in existing scale of pay, regarding...

Ref- Our Letter No. JJMCOE/2008-10/650/9 dated-24th November, 2009 of your appointment on the Post of Assistant Professor in Department of Mechanical Engineering & subsequent intimation of approval vide No. JJMCE/APP.REG-1/1008/6/2009-10 dated-05th April, 2010.

With reference to the above-cited letter, it is to inform you that, you had been appointed and designated as Assistant Professor in Department of Mechanical Engineering, as per provisional approval accorded by Shivaji University subjected to completion/acquiring Ph.D degree within the period of seven years from the date of your appointment/joining the post and you were placed in the scale of Pay Rs. 37,400-67000 in the AGP 9,000 with admissible allowances thereto. As regards, you were directed to adhere to this condition and comply well within time and you were orally informed from time to time. However, it seems that, till date neither completed/acquired your Ph.D. degree nor reported here.

Therefore, on account of non-compliance/fulfilment of this specific condition, your scale having been effected to your appointment, is being reverted and shall be Rs. 15,600-39,100 AGP 8,000 from the date of its origin effect of scale and date of appointment as Assistant Professor, as referred above. As per placement, you have drawn salary from April, 2014 TO June, 2018. Hence, the difference of salary amount revealing against the reversion whatever, shall be adjusted against the pending salaries up till date, that which you owe to receive from the college. Be noted.

7) It appears that the pay-scale of Rs. 37,400-67,000 plus AGP 9,000 is payable to Associate Professor and the Petitioner-Management proceeded to reduce the Respondents to the post of Assistant Professor in the payscale of Rs.15,600-39,100/- plus AGP 8,000. Thus, a composite act was performed by the Petitioner-Management by reducing rank from Associate Professor to Assistant Professor as well as reducing the payscale.

8) The judgment and order dated 28 January 2025 passed in Writ Petition No.419/2025 would indicate that the action initiated vide letter dated 19 January 2019 was revisited on 23 September 2019 as a settlement was arrived at between the parties and the payscales of the Respondents were restored to that of Rs. 37,400-67,000/- plus AGP 9,000/-. In the meantime, Respondents had already addressed a

complaint to the Grievance Committee on 12 March 2019, which they did not withdraw even though action initiated vide letter dated 19 January 2019 was withdrawn on 23 September 2019. Be that as it may. Subsequently, the Petitioner again reduced Respondents to the payscale of Rs.15,600-39,100/- vide letter dated 18 February 2021. By separate communication dated 12 April 2021, the rank of the Respondents was also reduced from that of Associate Professor to Assistant Professor and excess payments were sought to be recovered. Thus, the action which commenced on 19 January 2019 leading to reduction in payscale (*and consequent reduction in rank as well*) was withdrawn on 23 September 2019 and was re-implemented vide letters dated 18 February 2021 and 12 April 2021.

9) The letter dated 12 April 2021 became subject matter of challenge in Appeals preferred by the Respondents before the College Tribunal. In the light of this position, the Respondents ought to have withdrawn their complaint before the Grievance Committee *qua* reduction of pay scale as letter dated 19 January 2019 no longer survived. However, because the complaint also contained three other grievances relating to (i) non-release of increments during the period between local selection committee and university selection committee, (ii) non-grant of arrears of 6th Pay Commission and (iii) non-release of Dearness Allowance declared by the Government of Maharashtra, the Respondents apparently continued with their complaint before the Grievance Committee. The Grievance Committee rightly held that the issue of reduction in pay scale was already subject matter of Appeals pending before the College Tribunal and accordingly disposed of the complaints by order dated 17 November 2021.

10) The Respondents unnecessarily preferred Appeals before the College Tribunal challenging the decision of the Grievance Committee

dated 17 November 2021 at least *qua* the grievance of reduction of payscale. This is because their grievance relating to letter dated 12 April 2021, which also had the effect of reduction in rank and reduction of payscale, was already pending before the College Tribunal. Here again, filing of separate appeals before the College Tribunal can be attributed to rejection of other three prayers relating to non-release of increments, non-grant of 6th Pay Commission arrears and non-release of Dearness Allowance. The College Tribunal has committed gross error in entertaining the grievance relating to reduction of payscale in Appeals filed by the Respondents challenging Grievance Committee's decision dated 17 November 2021. While allowing the Appeals preferred by the Respondent by common judgment and order dated 21 June 2024, the Tribunal lost sight of the fact that another set of Appeals challenging letter dated 12 April 2021 were already pending. The Tribunal erroneously went into the exercise of comparing the action of the Management in reduction of rank and reduction of payscale with major penalties prescribed under University Statute No.212(II). It is held that reduction in rank is a separate penalty then that of reduction in pay-scale. The Tribunal has completely misdirected itself in not appreciating the position that the action of reduction in rank or reduction in payscale was not an outcome of any disciplinary measure. Reduction in rank automatically results in reduction of payscale. Once the Respondents were brought down from the post of Associate Professor to that of Assistant Professor, reduction of their payscale was also automatic. The College-Management had erroneously issued two separate letters on 18 February 2021 and 12 April 2021 directing reduction in payscale and reduction in rank respectively. The Tribunal has lost sight of the fact that this action of reduction in payscale and reduction in rank effected vide letter dated 18 February 2021 and 12 April 2021 was subject matter of challenge in another set of Appeals and that previous action vide letter dated 19 January 2019 no longer survived.

11) As observed above, Respondents have succeeded in their Appeals challenging letter dated 12 April 2021 and by judgment and order dated 26 November 2024 of the Tribunal has already set aside the said letter directing restoration of the Respondents to their original position as '*Associate Professor*' w.e.f 12 April 2021 with all consequential benefits. This would also mean that the payscale of the Respondents would obviously be restored to that of Rs. 37,400-67,000/- +AGP 9,000 w.e.f. 12 April 2021. As observed above, the earlier action in the form of letter dated 19 January 2019 was already withdrawn on 23 September 2019 and Respondents had drawn the payscale of the post of Associate Professor of Rs. 37,400-67,000/- + AGP 9,000/- upto 12 April 2021. On account of success in second set of Appeals before the Tribunal by virtue of judgment and order dated 26 November 2024, the Respondents are already directed to be restored to the position of Associate Professor and consequently to the payscale of Rs.37,400-67000/- + AGP 9,000. The Tribunal's order dated 26 November 2024 is upheld by this Court by judgment and order dated 28 January 2025. Therefore, simultaneous agitation of the same issue by the College Tribunal in separate set of appeal was unwarranted. It is for this technical reason that the judgment and order passed by the College Tribunal on 21 June 2024 will have to be set aside. As aforesaid, the Respondents have already succeeded in another set of appeals before the College Tribunal which ensures their restoration to the position as Associate Professor and pay-scale of Rs. 37,400-67,000/- + AGP 9,000 w.e.f. 12 April 2021 with all consequential benefits. Therefore, even if order dated 21 June 2024 is set aside, the same would not have any effect on the success achieved by Respondents in other set of appeals and particularly before this Court vide judgment and order dated 28 January 2025. As pointed out by Mr. Anturkar, the judgment and order dated 28 January 2025 of this Court is subject matter of challenge in the Special Leave Petitions pending before the Hon'ble Apex Court. The

correctness of the decision of this Court would be tested before the Hon'ble Apex Court in the light of the view subsequently taken in the *The Secretary, All India Shri Shivaji Memorial Society*. Therefore, the rights and entitlements of the Respondents to seek restoration to the position of Associate Professor and payscale of Rs. 37,400-67,000/- + AGP 9,000 would ultimately be decided by the Hon'ble Apex Court. Mr. Anturkar has in fact fairly conceded that if the Petitioner-Management fails before the Hon'ble Apex Court, it is bound to restore both rank as well as payscale of the Respondents.

12) Accordingly, the petitions succeed and I proceed to pass the following order:

- (i) Orders dated 21 June 2024 passed by the College Tribunal are set aside to the extent of direction for setting aside letter dated 19 January 2019 and for restoration of payscales of the Respondents to the position prior to 19 January 2019 as well as direction for payment of costs.
- (ii) It is clarified that the orders passed by the College Tribunal are not set aside on merits and entitlement of the Respondents for restoration to the position as Associate Professor, as well as to the payscale of Rs. 37,400-67,000/- plus AGP 9,000 w.e.f 12 April 2021 would be governed by judgment and order dated 26 November 2024 passed by the College Tribunal read with judgment and order dated 28 January 2025 passed by this Court subject to the outcome of proceedings before the Hon'ble Apex Court.

13) With the above directions, all the petitions are **disposed of**.

Digitally
signed by
NEETA
SHAILESH
SAWANT
Date:
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[SANDEEP V. MARNE, J.]