

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8779 OF 2005

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Jagannath s/o Janardhan Joshi,
age 62 years, Occ. Retired,
Died Through L.Rs.

Leena Jagannath Joshi,
age 42 years, Occ. Service,
R/o D-2, SBI Staff's "Shivneri"
Housing Society, Shivtirth Nagar,
Paud Road, Kothrud, Pune – 38.

PETITIONER

VERSUS

1. The Accountant General,
the State of Maharashtra,
Mumbai.
(Copy to be served on standing
counsel for Union of India)

2. The State of Maharashtra.

3. The Joint Director of Education,
(Higher Education), Jalgaon.

(Copies to be served on
Government Pleader,
High Court, Bench at Aurangabad)

4. The North Maharashtra University,
through its Vice Chancellor.

5. Jamner Taluka Education,
Society, Jamner, Dist. Jalgaon.
Through its Secretary.

6. The Art, Commerce and Science,
College of Jamner,
Through its Principal.

RESPONDENTS.

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Advocate for Petitioner : Smt. Leela Malu
AGP for Respondents : Mr. V.M.Kagne
Advocate for Respondent 5, 6 : Mr. V G Sakolkar

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CORAM : A.V. NIRGUDE & V.K. JADHAV, JJ.
Dated: October 14, 2015
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ORAL JUDGMENT :- (Per A.V.Nirgude, J.)

1. This petition challenges the order dated 31.8.1999 refusing payment of back wages and continuity of service to the original petitioner.

2. The facts leading to the petition are as under :-

The petitioner was working as Principal of a College managed by respondent no.5. This college was affiliated to respondent No.4-North Maharashtra University. In 1994 or so, the University withdrew approval granted to the appointment of the petitioner as principal. In view of this, the college asked the petitioner not to attend the duty. His salary was stopped and he was rendered jobless. He, therefore, challenged the decision of withdrawal of approval passed by the University before this Court in Writ Petition No.928/1994. The petition was allowed. This court held that, University had no authority to withdraw the approval. However, while allowing the petition, the Court did not make any specific order regarding petitioner's continuity of service and back wages. The court, nonetheless, did not pass any order refusing such relief to the petitioner. The petitioner

was re-instated, but, since he was not paid back wages and continuity in service, he approached respondent No.3 the Joint Director of Education (Higher Education), Jalgaon for necessary relief. The petitioner's case squarely falls within four corners of Rule 71 of The Maharashtra Civil Services (Joining Time, foreign Service and Payment during Suspension, Dismissal and Removal Rules, 1981). Rule 71 of the said rules reads as under :-

“71. Regularization of pay and allowances and the period of absence from duty where dismissal, removal or compulsory retirement is set aside by a Court of law and such Government servant is reinstated.

- (1) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court of Law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularized and the government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3) subject to the directions, if any, of the Court.
- (2)(a) Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of clause (2) of article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to provisions of sub-rule (7) of rule 70, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine after giving notice to the Government servant of the

quantum proposed and after considering the representations, if any, submitted by him, in that connection within such period which in no case shall exceed 60 days from the date on which the notice has been served, as may be specified in the notice :

Provided that any payment under this sub-rule to a Government servant [other than a Government servant who is governed by the provisions of the Payment of Wages Act, 1936 (4 of 1936)] shall be restricted to a period of three years immediately preceding the date on which the judgment of the Court was passed or the date of retirement on superannuation of such Government servant, as the case may be.

(b) The period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension: preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of judgment of the Court, shall be regularized in accordance with the provisions contained in sub-rule(5) of rule 70.

(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court of the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement as the case may be, and the date of re-instatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

(4) The payment of allowances under sub-rule (2) or sub-rule (3) shall be subject to all other conditions under which such allowances are admissible.

- (5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the pay and allowances admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government Servant."

3. The Joint Director of Higher Education, in view of these provisions, had no choice but to give continuity in service to the petitioner as well as back wages. This Rule clearly provided that the period of absence should be considered as period on duty. This Court, on merits, held that the petitioner was wronged and the Executive counsel of the University illegally issued a show cause notice and withdrawn the approval to the appointment of the petitioner as principal. This is strictly speaking not a case of dismissal, removal or compulsory retirement, but the effect of withdrawal of the approval would be as contemplated under Rule 71 of the Rules. The petitioner was not at all at fault. After many years of continuous service, University acted illegally.

4. In view of this, provisions of Rule 71 would squarely apply to the case. The impugned order dated 31.08.1999

deserves to be quashed and set aside. The petitioner deserved to get back wages and continuity of service and all other service benefits alongwith interest @ 6% p.a. on the amount due. This amount shall be calculated and be paid to the petitioner's legal representative who is party to the petition within **six weeks** from the date of this order.

5. Rule is accordingly made absolute in above terms.

Writ Petition is disposed of. No costs.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)

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