

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

WRIT PETITION NO. 9736 OF 2016

Mrs.Alka w/o Chandrakant Bharote,
Age : 57 years, Occupation : Service as
Lecturer in Education at R.C. Patel,
B.Ed. College, Shirpur, Tq.Shirpur,
Dist.Dhule.
R/o Anuradha Apartment, Plot No.4,
G.S.High School Road, Amalner,
Dist.Jalgaon.

...PETITIONER

-VERSUS-

- 1 The Vice Chancellor,
North Maharashtra University,
Jalgaon, Dist.Jalgaon.
- 2 The Joint Director of Higher Education,
Jalgaon, Dist.Jalgaon.
- 3 The Shripur Education Society,
R.C.Patel Main Building,
Near Shirpur Telephone Exchange,
Shirpur, Dist.Dhule.
Through its President.
- 4 The Vice President,
The Shripur Education Society,
R.C.Patel Main Building,
Near Shirpur Telephone Exchange,
Shirpur, Dist.Dhule.
- 5 The Principal,
R.C.Patel College of Education,
Near Karvand Naka, Shirpur,
Tq.Shirpur, Dist.Dhule.

...RESPONDENTS

...
Advocate for Petitioner : Shri Joshi Sujeet D.
AGP for Respondent 2 : Shri P.N.Kutti.
Advocate for Respondents 3, 4 and 5 : Shri D.S.Bagul.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st September, 2016

Oral Judgment :

1 Shri Joshi, learned Advocate for the Petitioner, submits that Respondent No.1 is a formal party and no notice is required to be issued to it.

2 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

3 The Petitioner is aggrieved by the order dated 12.08.2016 in Appeal No.NMU/4/2016 by which the delay of 34 days in filing her appeal before the University Tribunal has been condoned, but by imposing the condition that the Petitioner shall waive the claim of back wages from the date of passing of the order of termination which is 18.03.2016 till the date she is reinstated in service. Costs of Rs.250/- have been granted to the Respondents.

4 Shri Joshi, learned Advocate for the Petitioner, contends that earlier the Petitioner had approached this Court in Writ Petition No.4369/2016 challenging the order of termination dated 18.03.2016. This Court disposed of the said Writ Petition by order dated 02.05.2016 since the remedy of approaching the University Tribunal under Section 59 of the Universities Act, 1994 was the appropriate statutory remedy. An appeal was preferred after summer vacation on 12.06.2016 and hence, delay of 34 days. When costs are imposed for condoning minor delay of 34 days, the direction of the University Tribunal compelling the Petitioner to waive the claim of back wages from the date of termination till the date of reinstatement is uncalled and is unjustified.

5 Shri Bagul, learned Advocate for Respondent Nos.3, 4 and 5, submits that the dispute is as regards the issue of termination of the Petitioner at the hands of these Respondents. These Respondents are willing to reinstate the Petitioner in service. Her appeal to the extent of the termination will, therefore, be rendered infructuous though it may be entertained to the extent of the claim for back wages. The right of the Management to initiate disciplinary proceedings cannot be taken away.

6 He further submits that the Petitioner, by approaching wrong forum, has caused the delay. She cannot claim back wages for the period

of delay. This petition, therefore, deserves to be dismissed.

7 The learned AGP submits on behalf of Respondent No.2 that
the dispute is mainly in between the Petitioner and Respondent Nos.3 to 5.

8 I have considered the submissions of the learned Advocates.

9 It is apparent that the Petitioner has pursued a wrong remedy
and this Court, therefore, disposed of her writ petition as an appeal under
Section 59 was available. By excluding the limitation period, delay caused
was of 34 days which is neither deliberate nor inordinate. (See *Collector,
Land Acquisition, Anantnag v/s Mst.Katiji*, **AIR 1987 SC 1353** and *Esha
Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*,
(2013) 12 SCC 649).

10 I find from the impugned order that costs of Rs.250/- for
minor delay of 34 days has been imposed on the Petitioner. I do not find
that the impugned order could be termed as being erroneous to this
extent.

11 However, the University Tribunal has issued the direction to
the Petitioner while condoning delay and which reads as under:-

“..... It is hereby directed to the applicant to consider the aspect of waiving of claim of back-wages from the date of passing of impugned order of termination till the date of her so-called reinstatement in case the offer of her reinstatement in service comes from the Management.”

12 I find the above reproduced condition imposed upon the Petitioner to be inappropriate and uncalled for. Delay of 34 days has been rightly condoned by imposing costs of Rs.250/-. The University Tribunal cannot direct the Petitioner to waive the claim for back wages from the date of her termination till the date of reinstatement.

13 In the light of the above, this Writ Petition is partly allowed. The direction of the University Tribunal reproduced above is, therefore, quashed and set aside. Rule is made partly absolute in the above terms.

14 Insofar as the offer made by Respondent Nos.3 to 5 of reinstating the Petitioner in service is concerned, they are at liberty to present the said offer to the Petitioner before the University Tribunal in a written form. It is left open to the litigating sides to settle the matter as is being suggested by Shri Bagul. The same shall be subject to the adjudicatory process of the University Tribunal.