

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

WRIT PETITION NO. 4834 OF 2001

Ravindra Uttamrao Wagh

Age : 36 Yrs., Occ. Service,

R/o : Dhule, Taluka &

Dist.: Dhule.

.... PETITIONER

VERSUS

1. Abhay Yuwa Kalyan Kendra
Through its Chairman
(College of Physical Education)
Anmol Nagar, Deopur, Dhule
Taluka & Dist. Dhule.
2. The Principal
Abhay Yuwa Kalyan Kendra's
College of Physical Education,
Mumbai – Agra road, Dhule
Taluka & Dist. Dhule.
3. The Registrar
North Maharashtra University,
Jalgaon.
4. The State of Maharashtra

.... RESPONDENTS

**WITH
WRIT PETITION NO. 4835 OF 2001**

Pradeep Vinayakrao Patil
Age : 33 Yrs., Occ. Service,
R/o : C/o Prof. R.U.Wagh,
Ramchandra Nagar,
99, behind Market Yard,
Dhule.

.... PETITIONER

VERSUS

1. Abhay Yuwa Kalyan Kendra
Through its Chairman
(College of Physical Education)
Anmol Nagar, Deopur, Dhule
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North Maharashtra University,
Jalgaon.
4. The State of Maharashtra

.... RESPONDENTS

Mr. Girish Rane, Advocate for Petitioners.
Mr. Y.B.Bolkar, Adv., Advocate for R – 3.
Mr. S.P.Tiwari, A.G.P. for R – 4.

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CORAM : P.R.BORA, J.

JUDGMENT RESERVED ON : APRIL 25th, 2017

JUDGMENT PRONOUNCED ON : MAY 5th, 2017

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JUDGMENT :

1. The petitioners have challenged the common order passed by the learned University and College Tribunal, Aurangabad [for short, 'Tribunal'] on 26/02/2001 in Miscellaneous Application Nos. 40/2000 and 41/2000. The petitioners had filed aforesaid applications u/s 63 of the Maharashtra Universities Act, 1994 [for short, 'said Act'] and the same have been rejected by the Tribunal vide the impugned order.

2. The petitioners had filed Appeal Nos. 14/1988 and 18/1988 before the Tribunal challenging their termination. Both the aforesaid Appeals were allowed by the following common order passed on 01/07/1999 by the Presiding Officer, University and College Tribunal,

Aurangabad, which reads thus,

" Since the impugned termination letter has been withdrawn, it follows that no cause action surveyors for adjudication of question of legality or otherwise of that termination letter. All that is left is whether in view of the circumstances, the Appellant would be entitled to salary from the date of their termination till the date they joined the duties, and onwards. The moment impugned order is withdrawn, it follows that the Appellant would be entitled to other consequential relief which depended on the adjudication of the impugned order. Since the impugned order is withdrawn, it follows that the Appellants are entitled to consequential relief of salary during the period from 01.04.1999 till 28.06.1999 and onwards, and it is ordered accordingly."

3. Since the respondents did not comply with the said order, the petitioners filed Misc. Application Nos. 18/1999 and 19/1999. Said applications were disposed of by following common order passed by the Tribunal on 16/02/2000.

" 1. These contempt petitions now deserves to be disposed off in the set of following circumstances :

2. By order dated 12/01/2000, respondent No. 1 was held guilty of contempt of the Tribunal for disobeying the order dated 01/07/1999 and he was fined Rs. 500/-. Advocate for the respondent makes statement that fine was deposited vide receipt No. 4115. The respondent No. 1 was further directed to comply with the order of this Tribunal by or before 19/01/2000. On

19/01/2000, when matter came before this court, it was stated on behalf of respondent No. 1 that the appellants are at liberty to join right at this place at Aurangabad in the office of Tribunal itself. Accordingly, Appellants joined on 19/01/2000. A copy of the joining report is filed at Exh. 16 and R-5 respectively on 19/01/2000. It is also stated by the Appellants in the court that the salary has been paid to them. In view of all these aspects, both of these contempt petitions now stands disposed off. "

4. As contended in the petitions, respondents did not allow the petitioners to join services as was undertaken by them before the Tribunal and the petitioners were, therefore, constrained to file Miscellaneous Application Nos. 40/2000 and 41/2000. Said applications were dismissed by the Tribunal vide the impugned order. The Tribunal has dismissed the said applications observing that when the contempt applications were disposed of by the Tribunal on an undertaking given by the respondents that they will permit the petitioners to join the services and if the petitioners are not allowed to enter the college and engage the classes by the respondents, it will provide the petitioners altogether a different cause of action which is beyond the scope of Section 63 of the said Act. Perusal of the impugned order shows that the Tribunal has recorded

finding that in such a case the action of the respondents of not allowing the petitioners to join the services would amount to otherwise termination and as such the petitioners have the remedy of filing Appeal before the appropriate forum and preferring application again u/s 63 of the said Act, was not permissible.

5. Mr. Rane, learned counsel for the petitioners had assailed the said order passed by the Tribunal. Learned counsel submitted that the learned Tribunal has not properly appreciated the provisions u/s 63 of the said Act. Reading out Section 63 of the said Act, learned counsel submitted that the request made by the petitioners clearly falls within the ambit of section 63 of the said Act.

6. I deem it appropriate to reproduce hereinbelow the relevant portion of Section 63 of the Act of 1994 which reads thus:

"63. (1) If the university or, as the case may be, management fails, without any reasonable cause, to comply with any direction issued by the Tribunal under section 61 within the period specified in the direction, or within such further period as may be allowed by the Tribunal, the university or, as the case may be, management shall on conviction, be punished,--

(a) for the first offence, with fine which may extend to one thousand rupees; Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the Tribunal, the fine shall not be less than one hundred rupees; and

(b) for the second and subsequent offences, with fine which may extend to two thousand rupees;

Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the Tribunal, the fine shall not be less than five hundred rupees:

Provided further that, when the direction issued by the Tribunal is not complied with within the period stipulated in the direction or within such further period as allowed by the Tribunal, and when the contravention is a continuing one, the convicted person shall be punished with a further fine of rupees one hundred per day during which such contravention continues after conviction. "

7. Previous applications filed by the petitioners under Section 63 of the Act of 1994, were disposed of by the learned Tribunal on an assurance and undertaking given by respondent no.1 to the Tribunal to the effect that the present petitioners would be allowed to join their duties. In fact, the joining reports which were got prepared before the Tribunal and were placed on record of the Tribunal on 19.1.2000 were the notional joining reports. However, as has been complained by the petitioners, the said joining reports remained only on paper and in reality respondent nos. 1 and 2 did not allow the petitioners even to enter in the college premises. The allegations so made by the petitioners are not denied by

respondent nos. 1 and 2. In the impugned order the learned Tribunal has also noted that the factual averments made by the petitioners in their applications that they are not allowed to enter the college and engage the classes are not disputed.

8. In the premise of the undisputed facts as aforesaid, the finding recorded by the Tribunal, 'that since the appellants were allowed to report on duty and of which the record was made available while passing order dated 16.2.2000, there is compliance of that part of the order' is ex facie unsustainable. The Tribunal has failed in appreciating that the notional joining reports existing on record of the Tribunal had lost their sanctity and significance in view of the subsequent fact brought on record that the said joining reports were not acted upon. It has to be, therefore, held that the order passed by the Tribunal was not complied with and disobedience of the said order was continuing.

9. The act of respondent nos. 1 and 2 of not allowing the petitioners to enter the College and engage the classes has direct nexus with the undertaking given by respondent nos. 1 and 2 to the Tribunal on 19.1.2000 and

it cannot be said that such an act of respondent nos. 1 and 2 would form a different cause of action beyond the scope of Section 63 of the Act of 1994. Had it been the case of respondent nos. 1 and 2 that in pursuance of the undertaking given by them to the Tribunal, the petitioners were allowed to join their duties and thus, the notional joining reports of the petitioners submitted before the Tribunal on 19.1.2000 were given effect to and subsequently the services of the petitioners were again terminated, then it could have been said that there was a separate cause of action and it could also have been held that the same was beyond the scope of Section 63 of the Act of 1994.

10. Respondent nos. 1 and 2 have submitted their affidavit in reply in the present petition. In the reply so filed, respondent nos. 1 and 2 have not denied the allegation made by the petitioners that they were not allowed to join their duties and sign the muster rolls on 20th of June, 2000 and even thereafter though the petitioners were regularly visiting the College and requesting the authorities to allow them to join the duties. On the contrary, the respondents have come out with a case that the Physical Education College in which the

petitioners were appointed is no longer in existence and the said College was closed by resolution dated 15.11.1998. By not denying the allegation that the petitioners were not allowed to join their duties on 20th January, 2000, the respondents have, in a way, confirmed the fact that they did not fulfill the undertaking given by them to the Tribunal on 19th January, 2000 on the basis of which the order came to be passed on 16th February, 2000 by the Tribunal thereby disposing of the application Nos.40/2000 and 41/2000.

11. From the facts as aforesaid, there remains no doubt that respondent nos. 1 and 2 committed breach of an undertaking given by them to the Tribunal and consequently, the order passed by the learned Tribunal directing reinstatement remained not complied with and the contravention of the said order was thus continuing one. Though for the first contempt, the learned Tribunal had punished the contemnors with fine, the Tribunal was not precluded to take cognizance of the subsequent offences in view of Section 63(1)(b) of the Act of 1994. The Tribunal, thus, has erred in recording a finding that the allegations made by the petitioners in the Miscellaneous Application Nos. 40 of 2000 and 41 of 2000

were beyond the scope of Section 63 of the Act of 1994.

12. In the circumstances, the matter needs to be remitted back to the Tribunal for deciding it afresh. Hence, the following order:

ORDER

1. The order passed by the University and College Tribunal at Aurangabad on 26.2.2001 in Miscellaneous Application Nos. 40 of 2000 and 41 of 2000 is quashed and set aside.

2. Both the matters are remitted back to the University and College Tribunal for deciding the same afresh.

3. Parties shall appear before the University and College Tribunal on 8th June, 2017, at 11.00 a.m.

4. The Writ Petitions are allowed. Rule made absolute in aforesaid terms.

(P.R.BORA)
JUDGE

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