

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11023 OF 2017

1. Tapi Parisar Vidya Mandal, Faijpur
Tq.Yawal, Dist. Jalgaon,
Through its Vice Chairman
Sudhakar Kashinath Choudhari,
Age-73 years, Occu-Retired,
Vice President of the Trust
R/o Vidyanagar, Faijpur,
Tq.Yawal, Dist. Jalgaon,
2. Tapi Parisar Vidya Mandal, Faijpur
Tq.Yawal, Dist.Jalgaon
Through its Secretary,
3. Dhanaji Nana Mahavidyalaya
Faijpur, Tq. Yawal, Dist. Jalgaon,
Through its Principal

– PETITIONERS

VERSUS

Shekhar Kamlakar Zambre
(Since deceased through his Legal heirs)

1. Kamlakar Vishnu Zambre (father)
Age-76 years, Occu-Retired,
2. Nina Kamlakar Zambre (mother),
Age-71 years, Occu-Household,
3. Rajiv Kamlakar Zambre (brother)
Age-49 years, Occu-Agriculture,
4. Sanjiv Kamlakar Zambre (brother)
Age-45 years, Occu-Service,

All R/o Namrata Nagar, Faijpur,
Tq. Yawal, Dist. Jalgaon

– RESPONDENTS

Mr.A.V.Hon, Advocate for the petitioners.
Mr.A.G.Talhar, Advocate for respondent Nos. 1 to 4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 05/10/2017

ORAL JUDGMENT :

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

2. The petitioner/Educational Institution seeks to challenge the order passed by the College and University Tribunal dated 04/07/2017 in Misc.Appl.Nos.4/2016, 5/2016 and 6/2016 in N.M.U. Appeal No.7/2010.

3. The petitioners have put forth prayer clause B in the petition as under :-

“B. Quash and set aside the order dated 04.07.2017 passed by the Presiding Officer, University and College Tribunal, Aurangabad below Misc.Application Nos. 4/2016, 5/2016 and 6/2016 in Appeal No.NMU-7/2010.”

4. Grievance is that the order of abatement dated 28/10/2015

has been recalled by the Tribunal, delay of 249 days is condoned and the applicants have been brought on record as the legal heirs of the deceased appellant who has challenged his termination.

5. It is strenuously contended by the learned Advocate for the petitioner that the impugned order is perverse, without any reasons, without application of mind and hence erroneous.

6. I have considered the submissions of the learned Advocates for the respective sides and have gone through the 13 grounds formulated by the petitioners in their petition.

7. The applicants before the Tribunal have been before this Court in WP No.854/2016 wherein by order dated 15/02/2016, the LR's of the deceased appellant were permitted to make an application for seeking recalling of the order of abatement dated 28/10/2015.

8. By order dated 17/01/2017 passed in WP No.363/2017 filed by the Management, this Court has condoned the delay of 249 days caused in filing the applications for bringing the LR's on record and therefore sustained the order of the Tribunal dated 02/08/2016.

9. The petitioner/Management is now aggrieved by the order of the Tribunal allowing the LR's to be brought on record. Contention is that unless the claim of the deceased appellant is allowed, no rights would be created to be enforced by the LR's.

10. It cannot be ignored that appeal NMU-07/2010 was abated by order dated 28/10/2015 due to the demise of the original appellant. He was unmarried. His legal heirs, who are the father, mother and real brother, have moved the application to implead them as LR's of the appellant. Unless the LR's are brought on record, the order of abatement cannot be recalled. After the LR's prosecute the appeal, the Tribunal would come to a conclusion on the merits of the claim put forth by the deceased appellant, notwithstanding the fact that the relief of reinstatement would obviously not be available as the appellant has passed away.

11. In so far as the contention of the petitioners that the right to prosecute the appeal does not survive after the demise of the appellant employee is concerned, this Court has delivered a judgment in the matter of Yogeshwari Shikshan Sanstha, Ambajogai and another Vs. Sujata Prakash Ansarwadkar and another [2017(1) Mh.L.J. 868] as well as in the proceedings in between these parties in

WP No.854/2016 that since the termination of the appellant and unemployment being forced upon him has its own financial and social effects on the LR's, they are entitled to prosecute the appeal.

12. Considering the above, this petition is devoid of merits and is therefore dismissed. Rule discharged.

(Ravindra V.Ghuge, J.)