

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.4459 OF 2017

Jaywant Pratishthan Through its Chairman and another... Petitioners  
Vs.  
Prof. Govind Maruti Ambi and others ... Respondents

WITH  
WRIT PETITION (ST.) NO.11009 OF 2017

Prof. Govind Maruti Ambi ... Petitioner  
Vs.  
Chairman, Jaywant Pratishthan and others ... Respondents

Mr. Narendra V. Bandiwadekar for Petitioners in W.P. No.4459 of 2017 and for Respondents No.1 and 2 in W.P.(St.) No.11009 of 2017.

Mr. Ganesh C. Gavnekar for Respondent No.1 in W.P.No.4459 of 2017 and for Petitioner in W.P.(St.) No.11009 of 2017.

Ms K. R. Kulkarni, AGP for Respondent No.3 in W.P.No.4459 of 2017 and for Respondents No.4 and 5 in W.P.(St.) No.11009 of 2017.

**CORAM : R. G. KETKAR, J.**

**DATE : JULY 21, 2017**

**P.C. :**

Heard Mr. Bandiwadekar, learned Counsel for petitioners in Writ Petition No.4459 of 2017 and for respondents No.1 and 2 in Writ Petition (St.) No.11009 of 2017, Mr. Gavnekar, learned Counsel for respondent No.1 in Writ Petition No.4459 of 2017 and for petitioner in Writ Petition (St.) No.11009 of 2017 and Ms Kulkarni, learned AGP for respondent No.3 in Writ Petition No.4459 of 2017 and for respondents No.4 and 5 in Writ Petition (St.) No.11009 of 2017 at length.

2. Writ Petition No.4459 of 2017 is instituted by the management challenging the judgment and order dated 17.02.2017 passed by the learned Presiding Officer, Savitribai Phule, Pune, Shivaji & Solapur University & College Tribunal (for short 'Tribunal') in Appeal No.3 of 2014. By that order, the Tribunal partly allowed the appeal preferred by

the respondent No.1 in Writ Petition No.4459 of 2017 and petitioner in Writ Petition (St.) No.11009 of 2017, hereinafter referred to as 'respondent'. The Tribunal set aside the order of termination of services of the respondent dated 24.01.2014 and directed the management to reinstate the respondent on his original post as Assistant Professor in Sociology with continuity of service with effect from 24.01.2014 within three months from the date of the order. On reinstatement, if workload is not available, the Management is at liberty to apply to the University and Government for declaring the respondent as surplus. The Tribunal held that the respondent is entitled to 25% back-wages for the period from 28.01.2014 till the date of reinstatement.

3. Writ Petition (St.) No.11009 of 2017 is instituted by the respondent as the Tribunal has declined to award 75% back-wages for the period from 28.01.2014 till the date of reinstatement.

4. In support of the management's petition, Mr. Bandiwadekar has invited my attention to the resignation dated 22.01.2014 tendered by the respondent. He submitted that the said resignation is in the handwriting of the respondent. The respondent gave reason of his domestic problems for giving resignation. He submitted that on 15.01.2014, agenda of monthly meeting scheduled on 23.01.2014 at 11.30 a.m. was issued. On 23.01.2014, the meeting of Governing Body (Trustees) was convened. Subject No.4 dealing with resignation of the respondent was discussed as a last minute subject with the permission of the Chair. Resolution No.4 was passed accepting the resignation of the respondent. It was also resolved to waive the notice period of three months as also pay of three months in lieu of notice. By communication dated 24.01.2014, the management communicated respondent about acceptance of his resignation. He submitted that respondent purportedly gave letter dated

22.01.2014 alleging therein that management had obtained his resignation forcibly and against his wishes, and therefore, his resignation, which was undated, may be treated as cancelled. He invited my attention to the said letter, which also made grievance that respondent's applications dated 22/23/24.01.2014 for signing on the muster and putting thumb impression (bio-metric attendance) were rejected. In other words, he submitted that though the letter of cancelling resignation is purportedly dated 22.01.2014, it is clearly a anti-dated letter as respondent could not have made grievance about rejecting his applications dated 23/24.01.2014. He submitted that once the resignation was accepted, respondent could not have withdrawn or requested the management to cancel the resignation.

5. Mr. Bandiwadekar invited my attention to the Trust Deed dated 04.09.2000 and in particular clauses (4) to (6) thereof. Clause (4) deals with trustees. Clause (4)(3) lays down that the minimum trustees shall be 5 and the maximum trustees shall be 9. Clause (5) deals with powers of the trustees. Clause (6)(4) lays down that the Coram for all the meetings of the trustees shall be 4. It further lays down that if there are less than 7 trustees, the remaining trustees will carry out the functions of the Trust. The remaining trustees are also entitled to appoint new trustees to ensure that the coram is full. He submitted that in the present case there were 5 trustees. Out of the 5 trustees, Kaushalyatai Jaywantrao Shinde expired on 31.05.2013 and Hambirrao Dinkarrao Jadhav expired on 10.09.2013. In view of clause 6(4), the remaining 3 trustees were entitled to carry out work of the management and in that capacity they were justified in accepting the resignation tendered by the respondent.

6. Mr. Bandiwadekar has taken me through the affidavit made by the

respondent on 17.11.2016 and in particular paragraph 6 thereof. In paragraph 6, respondent stated that as he was permanently employed with the management, he did not look for service elsewhere and he did not get service anywhere. He submitted that the affidavit however does not give details as to what attempts were made by the respondent for securing the employment. He also invited my attention to the reply dated 29.01.2017 filed on behalf of the management and in particular paragraph 2 thereof. In paragraph 2, it is stated that respondent did not produce any material to substantiate that he made attempts for securing employment elsewhere. Respondent's wife is working as Professor in Yashoda Technical Campus, Satara and therefore, sufficient income is available in the family of the respondent. Hence, he is not entitled to any back-wages.

7. Mr. Bandiwadekar relied upon the decision of this Court in ***Paper Machine Wire Industries Vs. Athin*, 2013 (2) Mh.L.J. 155** and in particular paragraph 8 thereof. In paragraph 8, this Court referred to the decision of the Apex Court in ***Kendriya Vidyalaya Sanghatan Vs. S. C Sharma*, (2005) 2 SCC 363**, wherein it is laid down that initially it is the burden of the workman to prove the factum of his unemployment and the efforts taken by him to seek employment. After the said burden is discharged by the workman, the employer is required to lead rebuttal evidence. In the present case, respondent has not pleaded and proved efforts taken by him to seek employment.

8. Mr. Bandiwadekar further submitted that as the workload is reduced, the post on which the respondent was working namely Assistant Professor, Sociology is abolished. There is no sanctioned post of Assistant Professor in Sociology. He submitted that after accepting the resignation of the respondent, though resolution was passed for

filling up the said post, the said resolution is not given effect to. He also relied upon the decision of the Apex Court in ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya, (2013) 10 SCC 324***, and in particular paragraph 38.3 thereof. In paragraph 38, the Apex Court culled out the propositions from the discussions referred therein.

9. Mr. Bandiwadekar submitted that in paragraph 10, the Tribunal has noted that after terminating the services of the respondent, no students have taken admission for Sociology subject for the years 2014-15, 2015-16 and 2016-17 i.e. during the pendency of the appeal. The Tribunal also repelled the contention of the respondent that in order to avoid reinstatement to the respondent, students were not given admission. He, therefore, submitted that Petition filed by the management requires consideration.

10. Mr. Bandiwadekar submitted that respondent was appointed as a fresh employee on 11.08.2011 and his resignation was accepted on 23.01.2014. Having regard to the length of service of the respondent, no case is made out for interfering with the order passed by the Tribunal awarding 25% back-wages.

11. On the other hand, Mr. Gavnekar relied upon Statute 204 of Shivaji University. He submitted that clause (a) thereof lays down that no teacher shall leave the service of the affiliated College / Recognised Institution without giving to the Governing Body three months' notice, if he is confirmed or one month's notice if he is temporary or on probation or in lieu of notice, pay the Governing Body an amount equal to three months' or one month's pay as the case may be. He submitted that in the present case, it is not in dispute that the respondent is a confirmed employee, and therefore, he has to give three months notice or in lieu of

notice, pay to the Governing Body an amount equal to three months pay. Clause (c) thereof provides that the Governing Body, at its discretion may waive the notice period or notice pay in part or in full. He submitted that in the first place, Statute 204 does not use the term “resignation”. Secondly, it can be said that giving of resignation is a unilateral act. In the present case, having regard to clause (c) of Statute 204 as the Governing Body has to exercise discretion in waiving the notice period or pay in part or in full in lieu of notice. Acceptance of resignation is required and therefore, it is a bilateral act. He submitted that basically the acceptance of resignation in the meeting of 23.01.2014 itself is defective as admittedly, out of 5 trustees, 2 trustees expired and therefore, remaining 3 trustees do not constitute a requisite coram for accepting the resignation. He further invited my attention to paragraph 10 of the impugned order. He submitted that the Tribunal, without giving any reasons, awarded 25% back-wages.

12. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The moot question for decision in the present Petition is whether the management had validly accepted the resignation in the meeting of 23.01.2014 or not?

13. A perusal of the trust deed dated 04.09.2000 and in particular, clauses 4 to 6 thereof shows that as per clause 4(3), the minimum trustees are 5 and the maximum trustees are 9, which will constitute the Governing Body of the management. Clause 5 deals with the powers of the trustees. Clause 6(4) lays down that for all the meetings of the trustees, the coram shall be of 4 trustees. Clause 6(5) also reiterates that no business shall be transacted unless the coram is complete. Mr. Bandiwadekar relied upon clause 6(4) which also lays down that if the

trustees are less than 7, the remaining trustees can carry out the work of the management and therefore, though 3 trustees accepted the resignation, it amounts to validly accepting resignation tendered by the respondent.

14. It is not possible to accept this submission. As noted earlier, Kaushalyatai Jaywantrao Shinde expired on 31.05.2013. Management had 7 months time for filling up the vacancy caused by the death of Kaushalyatai. The other trustee, Hambirrao Dinkarrao Jadhav expired on 10.09.2013. The remaining trustees had three months time for filling up the vacancy caused by the death of Hambirrao Dinkarrao Jadhav on 10.09.2013. Admittedly, no steps were taken by the management for filling up the vacancies as on 23.01.2014. A perusal of the minutes of the meeting shows that out of 5 trustees, on account of death of two trustees, only three trustees transacted the business. It is no doubt true that by resolution No.3, remaining trustees appointed Ashokrao Kalba Navale in the place of Hambirrao and also approved appointments of two trustees namely, Rahul K. Jagtap and Vaishalитай S. Shinde. It is however not in dispute that the newly appointed trustees did not participate in the meeting. The net result of the discussion is that three trustees attended the meeting of 23.01.2014 and accepted the resignation of the respondent. The resolution No.4 passed by the three trustees accepting resignation is, therefore, not valid.

15. Whether acceptance of resignation is required or not is also another question in the present case. In order to deal with this question, it is necessary to consider Statute 204. Statute 204 reads thus,

“S. 204 : Seeking Release:

a) No teacher shall leave the service of the affiliated College / Recognised Institution without giving to the Governing Body three months' notice, if he is confirmed or one month's notice if he is temporary or on probation or in lieu of

notice, pay the Governing Body an amount equal to three months' or one month's pay as the case may be.

b) No Principal appointed in a College affiliated to the University / Head of the Recognised Institution shall leave the service without giving one month's notice if on probation or three month's notice, if confirmed, or in lieu of notice, pay one month's pay, if on probation or three months' pay if confirmed.

c) The Governing Body, at its discretion may waive the above notice period or notice pay in part or in full.”

16. A perusal of clause (a) shows that no teacher can leave the service of the affiliated College / Recognised Institution without giving to the Governing Body three months' notice, if he is confirmed or one month's notice if he is temporary or on probation or in lieu of notice, pay the Governing Body an amount equal to three months' or one month's pay as the case may be. In the present case, it is not in dispute that the respondent is a confirmed employee. He is, therefore, required to give either 3 months notice or in lieu of notice, pay the Governing Body an amount equal to three months' pay. Clause (c) of Statute 204 lays down that the Governing Body at its discretion may waive the above notice period or notice pay in part or in full.

17. In the case of ***Union of India Vs. Gopal Chandra Misra, (1978) 2 SCC 301***, the Constitution Bench of the Apex Court was considering the resignation tendered by the Judge of Allahabad High Court. The Apex Court considered principles applicable to the Government servant and the Constitutional functionaries. In paragraph 50 of the majority judgment rendered by Hon'ble Mr. Justice R. S. Sarkaria, it was observed thus,

“50. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it

becomes effective, and it becomes effective when it operates to terminate the employment or the office- tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant/or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority.”

18. In paragraph 95 of the minority judgment of Hon'ble Mr. Justice S. Murtaza Fazal Ali, it was observed thus,

“95. Thus the position that emerges from the aforesaid decisions is that where a resignation given by a Government servant is dependent for its effectiveness on the acceptance by the appropriate authority, the government servant concerned has an unqualified right to withdraw the resignation until the same is accepted by the authority. In other words, the position is that where the resignor has a right to resign but the resignation can be effective for only after acceptance, it is a bilateral act. That is to say, resignation by one, authority and acceptance of the resignation by the other authority. Unless the two acts are completed, the transaction remains in an inchoate form. That is to say a resignation sent by a servant is no resignation in the eye of law until accepted by the employer and so long as it is not an effective resignation, there can be no bar to withdrawing the same.”

19. In the light of the above principles, let us consider whether resignation tendered by the permanent teacher is required to be accepted

by the management and whether the teacher can withdraw his resignation before acceptance of it by the management. It is settled principle of law that withdrawal of resignation is always linked with acceptance. Where no acceptance is required and the resignation has been made in accordance with the prescribed procedure, the process gets exhausted and the resignation becomes *fait accompli*. Clause (a) of Statute 204 gives the teacher a unilateral right to cut short his tenure by following the procedure prescribed therein, of his own volition. Such a resignation to be effective may not require acceptance by the management. Clause (a) does not give right to withdraw the resignation once given in accordance with the manner prescribed therein. If acceptance is required then the teacher cannot withdraw the resignation after it is accepted. If acceptance of the management is not required, the resignation tendered must be in conformity with Clause (a) of Statute 204. In order to terminate his tenure, the confirmed teacher has to-

- a. give three months' notice; or
- b. in lieu of notice, pay the Governing Body, an amount equal to three months' pay.

20. In the present case, admittedly, the respondent has neither given three months notice nor in lieu of notice, paid the Governing Body, an amount equal to three months pay.

21. Now let us consider cases of 3 permanent employees, 'A', 'B' and 'C'. Permanent employee 'A' tenders resignation by giving 3 months notice. In that event, there won't be any occasion for the management to invoke clause (c) of Statute 204. In other words, there won't be any occasion for the management to exercise discretion as regards waiving of the notice period or notice pay in part or in full. Thus, it will be a complete unilateral act on the part of the resignor. As far as the case of

permanent employee 'B' is concerned, he has not given three months notice required by clause (a) of Statute 204 but has given say two months notice as also not paid three months pay in lieu of notice but say has paid two months pay. In that case, the management will have to invoke clause (c) for considering whether to exercise discretion of waiving the notice period or notice pay in part or in full. In the case of permanent employee 'C', he does not give any notice and also does not pay any amount equal to three months' pay and pays lesser amount. Even in that case, the management will have to invoke clause (c) of Statute 204 for considering whether to exercise discretion of waiving notice pay in part or in full. In the case of permanent employee 'A', it will be an effective resignation which perhaps would not require management to invoke clause (c) of Statute 204. In that case, it will not be necessary for the management to accept the resignation. I am not expressing any final opinion on this point as the said issue is not involved in these Petitions. In so far as permanent employees 'B' and 'C' are concerned, surely, the management will have to invoke clause (c) of Statute 204. In that case, it cannot be said that employees 'B' or 'C' tendered effective resignation. The management will have to exercise discretion in terms of clause (c) of Statute 204, and waive either notice period or notice pay in part or in full. The resignation given by employee 'B' or 'C' is dependent, for its effectiveness, on the acceptance by the Governing Body, and therefore, employee 'B' or 'C' has an unqualified right to withdraw the resignation until the same is accepted by the authority. In other words, the position is that where the resignor has a right to resign but the resignation can be effective only after acceptance, it is a bilateral act. That is to say, resignation by one and acceptance of resignation by the other. Unless the two acts are completed, the transaction remains in an inchoate form. That is to say, a resignation sent by a servant is no resignation in the eye of law until

accepted by the employer and so long as it is not an effective resignation, there can be no bar to withdrawing the same.

22. In the present case, admittedly, respondent neither gave three months notice nor paid the Governing Body an amount equal to three months pay. In view thereof, while passing resolution on 23.01.2014, the management exercised discretion in waiving, both, three months notice period as also three months pay. I have already held that the coram was not complete as the meeting was attended by only three trustees as against the coram of 4 trustees. In view thereof, it has to be held that the acceptance of the resignation was defective.

23. Even if I accept Mr. Bandiwadekar's contention that the letter dated 22.01.2014 was not actually of 22.01.2014 and is post 24.01.2014, no material is brought on record to indicate that the management convened a meeting of valid coram and accepted the resignation of the respondent. As such, respondent can withdraw resignation before it could validly be accepted. The respondent had withdrawn resignation before its acceptance by the management. In view thereof, I do not find that the Tribunal committed any error in setting aside the order of termination as also directing reinstatement of the respondent. The Tribunal also gave liberty to the management to approach the University and Government in case workload is not available for declaring the respondent as surplus.

24. This brings me to the question of payment of 25% back-wages from the period from 24.01.2014 till the reinstatement.

25. Respondent has made affidavit dated 17.11.2016. In paragraph 6, it is stated that his family background is very poor and he has no other source of income except employment. As he was in the permanent

service of the management, he did not look for job elsewhere, he also did not get job elsewhere. After the death of his father on 30.04.2013, the entire responsibility of his family is on his shoulder. As against this, management has filed reply dated 29.01.2017. In paragraph 2, it is asserted that respondent has not brought any material on record to substantiate that he has made attempt for securing employment elsewhere. Respondent's wife is working as a Professor in Yashoda Technical Campus, Satara, and therefore, respondent has sufficient income and he is not entitled to back-wages.

26. In the case of *Allahabad Jal Sansthan Vs. Daya Shankar Rai*, (2005) 5 SCC 124, in paragraph 6, the Apex Court has observed that a law in absolute term cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Court before whom the dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For that purpose, several factors are required to be taken into consideration. In paragraph 14, the Apex Court referred to the decision in *Hindustan Tin Works (P) Ltd. Vs. Employees*, (1979) 2 SCC 80 and reproduced paragraph 11. In paragraph 11, it was observed that “In the very nature of things, there cannot to a straight jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on of the face of the record.” In paragraph 16, the Apex Court observed that certain decisions referred

highlighted that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.

27. In the case of **Deepali Gundu Surwase** (*supra*), in paragraph 38, the Apex Court, after considering the earlier decisions, culled out the propositions as under:

“38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully

employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame.

Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited* (supra).

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

28. Mr. Gavnekar submitted that respondent has pleaded and made statement in the affidavit that he was not gainfully employed though he made attempts. If the management wants to avoid payment of full back-wages then it has to plead and also lead cogent evidence to prove that respondent was gainfully employed and was getting wages.

29. In paragraph 38.3 of **Deepali Gundu Surwase** (supra), the Apex Court has observed that if the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Considering the cumulative effect and factors in the present case, I am of the opinion that the ends of justice will be served by awarding 50% back-wages.

30. In the present case, the Tribunal has considered the fact that respondent was appointed as Assistant Professor in the subject of Sociology. In paragraph 10, the Tribunal noted that after termination of the respondent in 2014, no students have taken admission in Sociology

subject for the years 2014-15, 2015-16 and 2016-17 i.e. during the pendency of the appeal. Mr. Bandiwadekar submitted that on account of reduction of the workload, the post on which the respondent was working is abolished. There is no sanctioned post of Assistant Professor in Sociology. Though on 23.01.2014, resolution was passed for filling up the vacancy caused on account of resignation tendered by the respondent, the said resolution is not given effect to.

31. It has also come on record that initially, respondent was appointed on 31.07.2009 as Assistant Professor. However, though he had passed NET examination, the certificate was not received by him so his services were terminated on 31.03.2011. After acquiring NET qualification, he was appointed on 11.08.2011. Considering this fact as also having regard to the fact that respondent has asserted that he was not gainfully employed, I find the ends of justice will be served by directing payment of back-wages of 50% from 24.01.2014 till reinstatement.

32. In the light of the aforesaid discussion, Writ Petition No.4459 of 2017 instituted by the management is dismissed. Rule is partly made absolute with no order as to costs in Writ Petition (St.) No.11009 of 2017. Clause 5 of the operative part of the order stands modified and it is held that respondent is entitled to 50% back-wages from the period from 24.01.2014 till the date of reinstatement. On reinstatement, if workload is not available, the Management is at liberty to apply to the University and Government for declaring the respondent as surplus. Order accordingly.

33. At this stage, Mr. Bandiwadekar orally applies for stay of this order for a period of 8 weeks from today. He assures that he will not seek further extension of interim order. Mr. Gavnekar opposes the application.

34. As I have held that the management has not validly accepted the

resignation and the respondent is entitled to reinstatement, this order shall remain stayed for a period of 8 weeks from today subject to the management depositing 50% back-wages from 24.01.2014 till date, within a period of four weeks from today in this Court, under intimation in writing to Advocate for the respondent. It is made clear that if the amount is not deposited within four weeks from today, ad-interim order shall stand vacated without further reference to the Court. It is made clear that no application for further extension for ad-interim order shall be made and entertained by this Court. List the Petitions for reporting compliance after 6 weeks. Order accordingly.

**(R. G. KETKAR, J.)**

*Minal Parab*