

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4267 OF 2003

Ramchandra Uttam Dhavale

... Petitioner

vs.

1 Smt. Padma Shamrao Patil

2 Shahu Shikshan Prasarak Seva Mandal
Vadgaon, Tal. Hatkanangale,
District Kolhapur.

3 The Principal,
Vijay Sinh Yadav Arts, Science and Commerce
College, Peth Vadgaon,

4 The Joint Director of Higher Education,
Kolhapur Region, Kolhapur,

5 The Registrar, Shivaji University,
Kolhapur.

6 The Director,
College & University Development Board,
Shivaji University, Kolhapur.

... Respondents

Mr. N.V. Bandiwadekar i/b Mr. Sagar Mane for the Petitioner.
Mr. C.G. Gavnekar a/w Mr. G.S. Hiranandani for the Respondent No.1.
Mr. S.V. Pitre for the Respondent Nos.2 and 3.
Mrs. K.R. Kulkarni, AGP for the Respondent No.4/State.
Mr. A.B. Borkar for the Respondent Nos.5 to 6.

Coram : A.A.Sayed, J.

Judgment Pronounced on : 7 September 2017

JUDGMENT:

1. The challenge in this Petition under Article 227 of the Constitution, is to the judgment and order dated 11 March 2003 passed by the College Tribunal whereby the Appeal filed by the Respondent No.1/original Appellant under section 59 of the Maharashtra Universities Act, 1994 was partly allowed. The Petitioner was arrayed as Respondent No.3 in the said Appeal before the College Tribunal.

The operative part of the impugned judgment reads as follows:

“1. Appeal is partly allowed and disposed off with no order as to costs of all the parties.

2. The termination order dated 5.8.2002 is hereby held illegal and the decision taken by the Respondent Nos.5 and 6 also to withdraw the approval of the appellant which was communicated to Respondent No.1 by the letter dated 25.7.2002 is also hereby held illegal and improper, in respect of the appointment of appellant.

3. The Respondent Nos.1 and 2 are hereby directed and ordered to issue reinstatement order to the appellant with effect from the opening of the new academic year i.e. from June 2003, on which date the college of the respondent Nos.1 and 2 shall start working after vacation. However, it is made clear that the services of the appellant would be deemed and presumed to have continued for the purpose of seniority, pay scale, promotions and pension purposes as from the date of her appointment on the basis of the statutory selection i.e. from 23.11.2000 onwards.

4. However, since the period of non availability of the service because of the intervening termination order is not that long and since the same is less than one year, the appellant is hereby held entitled to get the salary and pay only after her reinstatement. However, it would be for the respondent Nos.1 and 2 to consider the issue of backwages for the intervening period if the appellant makes such a request in writing to them on humanitarian ground or other grounds.”

2. The case of the Respondent No.1- Padma (original Appellant) in Appeal in a nutshell was as follows:

She belongs to open category and initially came to be appointed as Lecturer in Marathi subject by a Local Selection Committee in the Respondent College run by the Respondent Management from 13 August 1999 till 13 October 2000. Thereafter, pursuant to an advertisement by the Management, she had applied for the post of Lecturer in Marathi subject as a regular appointment. The said post was advertised for open category. Petitioner - Ramchandra, (original Respondent No.3 in the Appeal) had also applied for the said post. A regular Selection Committee interviewed the candidates and declared that the Petitioner was selected at serial No.1 while she was selected at serial No.2. It came to light that the Petitioner had refused to join though he was issued with an appointment order by the Management. On refusing to join, she was given the appointment by the Management

vide appointment letter dated 22 November 2000. She was appointed on probation for a period of two years and she accordingly joined service with effect from 29 November 2000. On 10 July 2000, the Management tried to stop her from signing the muster roll. She therefore, made a Complaint to the Management as well as the University. She signed the muster roll till 22 July 2002, however, from 23 July 2002 she was not allowed to sign the muster roll though she was continuing to serve the College. She was told that the Petitioner had made a Complaint with the University Authorities interalia stating that he was selected by the regular Selection Committee at serial No.1 and that he was entitled to the said post and the appointment granted to her was illegal. Without giving any hearing on the Complaint made by the Petitioner, she was issued a termination order dated 5 August 2002 which stated that her services were terminated on the Complaint made by the Petitioner since the Respondent University found his Complaint valid and had cancelled the approval given by the University to her. On her enquiry she was supplied the copy of the letter written by the Petitioner to the Director College & University Development Board, Shivaji University (Respondent No.6 herein). The termination order dated 5 August 2002 was illegal and unjust. She was duly qualified and was appointed as a teacher in the senior College as she was M.A. with First Class and also had passed her NET examination. She has put 1½ years service on her appointment by the Local Selection Committee

prior to her regular selection. She has thereafter discharged services for about two years. She had received regular approval from the University. Her work and behavior was satisfactory. The Vice Chancellor of the University and the Director, College & University Development Board did not have such powers to intervene in the matter. The Petitioner was serving elsewhere and was not interested in serving the Respondent College. After long lapse of time, the Petitioner cannot be allowed to intervene in this manner and cause hardship to her career. She could not have been terminated merely because of the withdrawal of approval by the University. No order was communicated to her, as to how and under what circumstances her approval was withdrawn. The impugned order of termination dated 5 August 2002 was therefore required to be set aside and she be reinstated alongwith full backwages.

3 The Petitioner-Ramchandra (original Respondent No.3 in Appeal) had filed his Reply to the Appeal filed by Respondent No.1 - Padma before the College Tribunal. The case of the Petitioner in his Reply was as follows:

The College Tribunal had no jurisdiction to decide the Appeal. The University had withdrawn the approval of the Respondent No.1 Padma. He had not received any appointment order allegedly given by the Respondent Management and therefore there was no question of refusing the alleged appointment order to join service. He had lodged

the Complaint with the University. He belongs to reserved category and he had appeared for the selection of open post on merit. The contention of Respondent No.1 that there was no deviation in the merit list was not true. He was selected with the first preference given by the Selection Committee. Despite that the Respondent Management appointed the Respondent No.1 who was given second preference by the Selection Committee. This was clear violation of statutory provisions which caused injustice to him. He was not employed anywhere before 26 August 2002. When he learnt that the Respondent No.1 was appointed by the Respondent Management in violation of the selection procedure of the University, he lodged a Complaint and appealed to the Vice Chancellor of the University to institute an enquiry about the injustice done to him.

4 The Respondent No.4 Shivaji University, Kolhapur, had also filed its Reply in the Appeal. The case of the Respondent University before the College Tribunal was as follows:

The College Tribunal had no jurisdiction to entertain and try the Appeal under the provisions of section 59 of the Maharashtra Universities Act, 1994. The Selection Committee had selected the Petitioner at serial No.1 while the Respondent No.1 was at serial No.2. Therefore, the Petitioner gets a first right over the post. However, as the Respondent University received a letter dated 26 May 2001 purporting to be a letter written by the Petitioner allegedly stating that

he is not interested in the post as the Respondent College is being run on non-grant basis, the Respondent University took a decision to give approval to Respondent No.1. However, later on it was revealed on Complaint by the Petitioner that in fact such letter was never given by him. Due to the Complaint of the Petitioner the Respondent University appointed a fact finding Committee which examined all the relevant papers and gave an opportunity to the Respondent Management as well as the Petitioner and came to the conclusion that an Affidavit be taken from the Petitioner that the aforesaid letter was not written by him and further action be taken accordingly. The Petitioner submitted the Affidavit that no such letter dated 26 May 2001 was written by him to the Respondent University and that he has not received the Respondent University letter dated 24 May 2001 and hence there was no question of replying to the same. The Petitioner has further mentioned in the Affidavit that his name is Ramchandra Uttam Dhavale while the name written on the letter dated 26 May 2001 was Uttam Ramchandra Dhavale. It was further pointed out in the said Affidavit that the signature on the said letter was not his. In these circumstances, in order to do complete justice between the parties and as it was revealed that the appointment given to Respondent No.1 was vitiated by fraud, misrepresentation and mistake, the Respondent University took a decision to withdraw the approval given to Respondent No.1 and give the same to the Petitioner. The Respondent

No.1 was not given an opportunity before the fact finding Committee as this was an internal fact finding Committee appointed to report to the University to see mainly the record of the Respondent Management.

5. The Respondent Management had also filed Reply before the College Tribunal. It is interalia averred in the Reply as follows:

It is true that there was some communication presumably from the Petitioner (Respondent No.3 in Appeal) to the effect that he is not interested in joining the service in the College. The Petitioner was originally selected and appointed in the said post. The communications by the Management/College did not reach the Petitioner. They had informed the Petitioner to submit the copies of his certificate and mark-sheets, but no response was received from him. They had informed these facts to the Shivaji University. The University conducted an inquiry in this matter and after hearing the parties the Respondent No.6 Board cancelled/withdrew the approval given to the Respondent No.1 and directed the Management that the Petitioner be appointed and be allowed to resume duties. As per these directions, which are binding upon them, they have effected the termination of the Respondent No.1's services and have appointed the Petitioner who in turn has joined the services. The action on the part of these respondents is bonafide.

6 I have heard learned Counsel for the parties.

7 The learned Counsel for Petitioner-Ramchandra has filed a written Synopsis and made the following submissions:

(i) The Respondent No.2 College is an un-aided senior College affiliated to the Respondent No.5 – University i.e Shivaji University, Kolhapur. In June 2000 the Respondent No.1 Management issued public advertisement inviting applications for one unreserved post of Lecturer in Marathi subject. On 13.10.2000 (Exhibit-A, page 72 of the Petition) – the University Selection Committee interviewed 6 candidates and prepared its Selection Report. The Petitioner was selected at Sr.No.1, while the Respondent No.1 was selected at Sr.No.2. Against the name of the Petitioner, it was stated that he is selected and if he does not join, then the Respondent No.1 is selected.

(ii) It was necessary for the Respondent Management to issue the order of appointment to the Petitioner and informing him to join within specified time, failing which the candidates at Sr.No.2 shall be given appointment. However, the Petitioner did not receive any such letter, order or communication from the Respondent

No.2 calling upon the Petitioner to join the post of full time Lecturer in Marathi subject.

(iii) On 16.11.2000 vide letter No.VYMP/197 dated 16.11.2000 the Respondent Management submitted the Selection Committee report to the Vice Chancellor. On 22.11.2000 (Exhibit-B, page 74 of the Petition) the Respondent Management issued appointment order to the Respondent No.1 with effect from 29.11.2000. It was stated if her acceptance is not received upto 7 days, her appointment is liable to be cancelled.

(iv) By letter dated 25.11.2000 (Exhibit-C, page 75 of the Petition) the Respondent Management forwarded to the Respondent University the proposal to grant approval to above appointment of the Respondent No.1. It was stated that the appointment order was given to the Petitioner but he did not join within the given period of 7 days and therefore, the appointment order was given to the Respondent No.1, to which the approval may be granted. On 25.01.2001 (Exhibit - D, Page 76 of the Petition) the Respondent University issued order to grant approval to the appointments of Lecturers made in the Respondent College. The University further directed the Respondent No.3 – Principal to submit the attested copies of the

Petitioner's mark lists in B.A., M.A. and SET exams and also of SET exam of the Respondent No.1. It was further directed to make appointment of candidates as per the order of merit in the report of the Selection Committee. On 23.2.2001 (Exhibit-E, page 79 of the Petition) the Respondent Management addressed a letter informing the University, inter alia, that by letter dated 16.10.2000, the College had made correspondence with the Petitioner demanding from him the attested copies of the mark lists for B.A. and M.A. and SET, but the same are not yet received from the Petitioner and hence the Management cannot submit the same to the University. However, the Petitioner never received any such letter dated 16.10.2000 or of any other date from the Management. Even no such letter has been produced by the Management before the Tribunal or before this Hon'ble Court.

(v) On 24.5.2001 the University is said to have issued a letter to the Petitioner, calling upon him to submit his testimonials to the University, since the University was informed by the College that even though the said certificates were demanded by the College, the same are not submitted. Learned Counsel submitted that the Petitioner never received the said letter. Relying upon a hand written letter dated 26.5.2001 (Exhibit-H, page 84 of the Petition)

alleged to be written by the Petitioner, the University was informed by the Management that the Petitioner had appeared for the interview being under the impression that it is an aided College, but after the interview he came to know that it is an unaided College and therefore, he did not submit the documents to the University although demanded. This letter is neither written nor signed by the Petitioner. The name of the Petitioner is Ramchandra Uttam Dhavle, whereas in this letter the name is mentioned as Uttam Ramchandra Dhavle. The signature on this letter is not that of the Petitioner. Thus the said letter as well as the signature thereon is false and forged. The aforesaid record was created only to show that after being selected by the University Selection Committee, the offer of appointment was given to the Petitioner by the Management, but he did not join the post within the time of 7 days, and that therefore, the appointment was given to the next candidate on the select list viz the Respondent No.1.

(vi) On 21.6.2001 (Exhibit-F, page 81 of the Petition) the University issued an order granting approval to the Respondent No.1. This was in reference to the aforesaid letter dated 23.2.2001 sent by the Management to the University. It is submitted that by

that letter the Management had not at all sought approval to the appointment of the Respondent No.1, but still the University granted approval by referring to that letter. In the aforesaid letter of approval, it was stated that if any complaint would be received in respect of the said approval, the approval shall be cancelled. On 16.8.2001 (Exhibit-I, page 85 of the Petition) when the Petitioner came to know that inspite of having been placed at Sr.No.1 in the select list he has not been given the appointment and on the other hand the Respondent No.1 who was at Sr.No.2 in the select list has been given the appointment, the Petitioner made a complaint to the Vice Chancellor of the University.

(vii) On 4.9.2001 (Exhibit-J, page 86 of the Petition) the Respondent No.6 (Director, Board of College & University Development) sent a letter to the Management informing them that a Complaint is received from the Petitioner about not being allowed to join. The Management was directed to remain present in the University on 25.2.2002 alongwith the original application of the Petitioner, the original letter sent to the Petitioner by R.P.A.D. and if there are any other documents signed by him. It appears that the Respondent Management did not respond to the said letter. On 15.3.2002 (Exhibit – L, page 88 of the Petition) the

Respondent No.6 therefore, once again sent similar notice to the Respondent Management directing them to remain present in the University on 11.3.2002 with the above mentioned papers and documents. On 20.3.2002 (Exhibit-M, page 89 of the Petition) in the meeting held at the University, in the presence of the Chairman and the Secretary of the Management, the Incharge Principal of the College, the Petitioner alongwith his representative, the matter was discussed. The Petitioner stated that he had not received any appointment order from the Management and therefore, there was no question of he failing to join the services within 7 days. He further stated that he has not at all addressed the letter dated 26.5.2001 to the University. At the said meeting, the Management did not produce any record to show that they had issued the order of appointment to the Petitioner with instruction to join within 7 days and since he did not join within the said period, that the Respondent No.1 came to be issued the appointment order.

(viii) The Secretary of the Management stated that the permission may be granted to re-advertise the said post and to fill up the same or whatever decision would be taken by the University, the same shall be accepted by the Management. The

University representative stated that an Affidavit on stamp paper should be obtained from the Petitioner that he had not written the letter dated 26.05.2001 (incorrectly mentioned as letter dated 16.08.2001). On 25.7.2002 (Exhibit-N, page 91 of the Petition) the Respondent No.6 (Board of University) therefore, informed the Respondent-Management that since the Complaint made by the Petitioner against the order of approval dated 21.6.2001 of the Respondent No.1 is found to be correct, the said order of approval is cancelled and in that place the Petitioner is granted approval as full time Lecturer for Marathi subject. The Respondent Management was therefore, directed to issue appointment order to the Petitioner and after allowing him to join the services in the College, to submit this information to the University without delay by filing up the changes in Staff Form. On 5.8.2002 (Exhibit -O, page 92 of the Petition) the Respondent Management issued letter to the Respondent No.1 informing her that the University has cancelled the approval granted to her and it is directed that the Petitioner should be appointed. Accordingly the Respondent No.1 was relieved from service.

(ix) On 20.8.2002 (Exhibit-P, page 93 of the Petition) the Respondent Management issued appointment order to the

Petitioner as full time Teacher. Accordingly the Petitioner joined the Respondent College. On 18.8.2002 (Exhibit-A4, page 23 of the Petition) the Respondent No.1 filed Appeal No.59 of 2012 (S) before the College Tribunal, Pune against the aforesaid order of termination and seeking to direct the Respondents to reinstate her in service. However, there was no prayer made to set aside the order issued by the University cancelling the approval which was previously granted to the appointment of the Respondent No.1. On 11.3.2003 (Exhibit -A6, page 39 of the Petition) the College Tribunal by the impugned order partly allowed the Appeal filed by the Respondent No.1. On 17.5.2003 (Exhibit-R, page 109 of the Petition) in view of the order passed by the College Tribunal, the University directed the Management to allow the Respondent No.1 to join the services.

(x) After the passing of the impugned order, on 23.06.2003 (Exhibit-S, page 110 of the Petition) the Respondent Management issued an order and directed the Respondent No.1 to resume duty on the same date. On 23.6.2003 (Exhibit-T, page 111 of the Petition) the Respondent No.1 joined the College by submitting joining report. In June 2003 the Petitioner filed the present Writ Petition in this Court to challenge the above order of the College

Tribunal. On 24.06.2003 the learned Single Judge passed order of status-quo in the Writ Petition. In spite of this, the Management issued ante-dated order on 23 June, 2003 and terminated the services of the Petitioner. On 28.6.2003 the learned Single Judge admitted the Writ Petition and directed that the status-quo as of that day shall continue till further orders. The Court further observed that it is open to the Petitioner to file appropriate Application with regard to the grievance that, to stultify the order of status-quo passed on 24 June 2003, the Management had passed ante-dated order on 23 June 2003. Rule was returnable peremptorily in February 2004. Since the Writ Petition was not placed for final hearing, the Petitioner filed Civil Application No.1541 of 2004. On 15.10.2004 the Hon'ble Court directed that keeping in view the peculiar facts and circumstances of the case, the Writ Petition be placed for final hearing in the 1st week of March 2005. However, the Petition was not placed for final hearing in March 2005. The Petitioner filed Civil Application No.1841 of 2005 to place on record the ante-dated order of termination passed by the Management on 23.6.2003. On 25.8.2006 this Court directed that the said Civil Application shall be heard alongwith the main Writ Petition. The Court also observed that, in the meanwhile it is open for the Petitioner to

challenge the order of termination before the Tribunal without prejudice to his rights and contentions in the present Writ Petition.

(xi) Accordingly the Petitioner filed Appeal No.3 of 2007 (S) before the College Tribunal at Kolhapur to challenge the aforesaid termination order dated 23.6.2003. However, till date the said Appeal has not been heard by the Tribunal on the ground that the aforesaid Writ Petition is pending in this Court. On 19.10.2011 the Petitioner therefore, filed Civil Application No.123 of 2012 for a direction to College Tribunal to decide the said Appeal on its own merits irrespective of pendency of the present Writ Petition in this Hon'ble Court. Alternatively it was prayed to expedite the hearing of the Writ Petition. On 27.1.2012 the Hon'ble Court disposed of the said Civil Application. The R&P is called for from the College Tribunal and the hearing came to be expedited.

Learned Counsel for the Petitioner-Ramchandra in support of his contentions has placed reliance on the following judgments:

- i) United India Insurance Company Limited Vs. Rajendra Singh: Sanjay Singh, 2000 DGLS(Soft.) 542;
- ii) Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd., (1996) 5 Supreme Court Cases 550;
- iii) S.P. Chengalvaraya Naidu (Dead) by LRS. Vs. Jagannath (Dead)

by LRS. And others, (1994) 1 Supreme Court Cases 1;

- iv) Tanaji Madhukar Barbade Vs. State of Maharashtra & Ors. 2010(6) Mh.L.J. 901;
- v) Kendriya Vidyala Sangathan and Others Vs. Ajay Kumar Das and others, (2002) 4 Supreme Court Cases 503;
- vi) T. Vijendradas and another Vs. M. Subramanian and others (2007) 8 Supreme Court Cases 751;
- vii) Ganpatbhai Mahijibhai Solanki Vs. State of Gujarat and others, (2008) 12 Supreme Court Cases 353;
- viii) Sunil Gayaprasad Mishra Vs. Rashtra Sant Tukdoji Maharaj University & others, 2012(6) Bom.C.R. 37;
- ix) Arti d/o Vithalrao Warkhede Vs. Education Officer (Secondary) Zilla Parishad, Wardha and others, 2011(1) Mh.L.J. 638;
- x) Shaila Subrao Shetye and others Vs. Kunda Madhukar Shetye and others, 2014(3) Mh.L.J. 194;
- xi) Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil, 2010(6) Mh.L.J. 661;
- xii) Secretary, State of Karnataka and others Vs. Umadevi (3) and others, 2006 Supreme Court Cases (L&S) 753.

8. Learned Counsel for the Respondent No. 1-Padma has also filed synopsis and submitted as under:

(i) Before the College Tribunal, the appointment of the Respondent No. 1 was never challenged by the Petitioner.

(ii) No allegations of misrepresentation, fraud and forgery were made in the Reply filed by the Petitioner. No particulars of alleged fraud were given in the pleadings of the Peititioner.

(iii) There were no allegations in the Reply filed by the Petitioner against the Respondent Management or as to how Respondent No. 1 was responsible for getting the approval fraudulently.

(iv) It is not permissible to raise the plea of misrepresentation, fraud or forgery for the first time in the present Writ Petition filed under Article 227 of the Constitution of India.

(v) The scope of this Court under Article 227 of the Constituion is limited and only errors of law apparent on record ought to be interfered and findings of fact do not warrant interference unless the findings are perverse or not based on any material and cause manifest injustice.

(vi) The Respondent No. 1 was appointed by the Management by Appointment order dated 22 November 2000 as a Lecturer and the University had approved her appointment and the Respondent No.1

had acquired a vested right in the post. Hence, if her appointment was to be disturbed, she was required to be granted an opportunity to be heard by the Committee which was constituted by the University before her approval was revoked.

(vii) The College Tribunal had rightly set aside the order of termination dated 05-08-2002 and the decision of the Respondent No.5 (University) and the Respondent No. 6 (Director, College & University Development Board, Shivaji University).

Learned Counsel for the Respondent No.1-Padma has relied upon the following judgments:

- i) Essen Deinki Vs. Rajiv Kumar, (2002) 8 Supreme Court Cases 400;
- ii) Chief Engineer, M.S.E.B. and Another Vs. Suresh Raghunath Bhokare, (2005) 10 Supreme Court Cases 465.

9 Learned Counsel for the Respondent No. 5 and 6 (University and Board) supported the impugned order of the College Tribunal and submitted that the Committee constituted by the University was a fact finding Committee and the Management was heard and that it was not necessary to hear the Respondent No. 1. He has relied upon the judgment in State of Chhattisgarh and others Vs. Dhirjo Kumar Sengar, (2009) 13 Supreme Court Cases 600.

10. I have given due consideration of the rival contentions. Prima facie I find substance in the submissions of the learned Counsel for the Petitioner. In my view, the Respondent Management has not come clean. It is an admitted position that as per the Report dated 13.10.2000 of the Selection Committee constituted by the University the Petitioner was selected and was shown at Sr. No. 1. The Respondent No. 1 was shown at Sr. No. 2. The Petitioner had a first right over the post. It is only when the Petitioner would not join service that Respondent No. 1 could have been selected. It was therefore for the Management to show that despite the Petitioner being intimated about his selection and appointment, he did not join service and therefore the appointment was given to the Respondent No. 1. It is therefore necessary to see what was the stand of the Management before the College Tribunal. The Reply filed by the Management before the College Tribunal is curious. It states that the Petitioner was originally selected and appointed to the said post. It further states that the communications by the Management/College did not reach the Petitioner. It also asserts that they had informed the Petitioner to submit copies of his certificates and mark-sheets, but no response was received from him. The Reply avers that there was some communication 'presumably' from the Petitioner to the effect that he is not interested in joining the service in the College. What is of significance, however, is that no particulars of such communications

have been furnished nor such communications produced before the College Tribunal by the Management.

11 It needs to be borne in mind that the Respondent No. 1 was issued an appointment order dated 22.11.2000. Therefore it was necessary for the Management to show communications, if any, sent by them to the Petitioner prior to this date viz. 22.11.2000. The Petitioner in the present proceedings has annexed copies of certain communications. At Exhibit E at page 79 of the Petition, the Petitioner has annexed a letter dated 23.02.2001, written by the Management to the Respondent No. 6, Director of Board of College and University Development, Shivaji University, interalia stating that by communication dated 16.10.2000, the College had made correspondence with the Petitioner demanding from him the attested copies of the mark lists for B.A., M.A and SET, but the same are not yet received from the Petitioner and hence the Management cannot submit the same to the University. According to the Petitioner, he had never received any such letter dated 16.10.2000 or of any date from the Management. Pertinently, no such letter has been produced by the Management before the College Tribunal or even before this Court. No appointment order allegedly issued in favour of the Petitioner prior to the appointment to Respondent No.1 is produced before the College Tribunal or before this Court. At Exhibit H at page 84 of the Petition is

a hand-written letter dated 26-05-2001 (which is much after the appointment order dated 22.11.2000 issued to the Respondent No. 1) alleged to be written by the Petitioner informing the University that the Petitioner had appeared for the interview being under the impression that it was an aided College, but after the interview, he came to know that it is an unaided College and therefore he did not submit the documents to the University, though demanded. The Petitioner has stated in the present Petition that this letter dated 26-05-2001 is neither written nor signed by him. The learned Counsel for the Petitioner has pointed out that in this hand-written letter dated 26-05-2001, the name of the Petitioner is written as Uttam Ramchandra Dhavle when his name is Ramchandra Uttam Dhavle and the said letter is fabricated and forged. Prima facie, the learned Counsel for the Petitioner is right in his submission that a person addressing the letter would certainly not write his father's first name first. It is submitted that in any event, this letter shows the date as 26-05-2001, which is after about 6 months from 22-11.2000, when the order of appointment was already issued to the Respondent No. 1 and there was no occasion for the Petitioner to write such a letter. The Petitioner has denied that he had received any communication dated 24.05.2001 from the University which was subsequent to the appointment of the Respondent No. 1. In these circumstances, I find force in the submission of the learned Counsel for the Petitioner that the Management wanted to appoint the Respondent

No. 1 as she was already working the College as a temporary lecturer notwithstanding the Report of the Selection Committee.

12 Having observed as above, it is however required to be noted that most of the communications/documents are for the first time annexed to the present Writ Petition by the Petitioner. The said communications/documents were not before the College Tribunal whilst passing the impugned order. The entire thrust of the arguments of the learned Counsel on behalf of the Petitioner is that the Management and Respondent No.1 have practiced fraud and forgery and have fabricated documents. However, it is noticed that in the Reply dated 02 December 2002 filed by the Petitioner before the College Tribunal there is no pleading about fraud or forgery by the Management or by Respondent No.1. No particulars of the fraud alleged are averred in the Reply, though at the relevant time the Complaint of the Petitioner made to the University was pending and meetings were held before the fact finding Committee constituted by the University. As a matter of fact, the Petitioner had also filed an Affidavit dated 31-05-2002 before the fact finding Committee disclosing that he had no concern with the letter dated 26-05-2001 allegedly written by him and the said letter mentions his name as Uttam Ramchandra Dhavale, when his name is Ramchandra Uttam Dhavale. The impugned order of the College Tribunal was ultimately passed on 11-03-2003 and the Petitioner ought to have brought forth all the facts before the College Tribunal. It now

trite that fraud has to specifically pleaded alongwith with particulars. The allegations of fraud by the University in their Reply would not absolve the Petitioner from making necessary averments of fraud, forgery and fabrication which are made by the Petitioner for the first time in the present Writ Petition. It was for the Petitioner to state before the College Tribunal that there was fraud practiced and the handwritten letter dated 26-05-2001 was not written by him and that the same was a forged and fabricated document by the Management. However, inasmuch as, prima facie, I find substance in the case of the Petitioner that a fraud has been practised in the manner in which the Respondent No.1 came to be appointed bypassing the right of the Petitioner to the post of Lecturer, it would not be proper to turn a blind eye as fraud would vitiate the entire appointment process.

13 The College Tribunal, unfortunately, has proceeded on the basis that once approval is granted, the same cannot be revoked. The College Tribunal has failed to consider that the approval granted by the University to the appointment of Respondent No.1 was a conditional approval and the letter dated 21 June 2000 of the University granting approval to the appointment of Respondent No.1 specifically stated that in the event any complaint is received in respect of grant of approval, the approval shall stand cancelled. Even the letter dated 25 January 2001 of the University to the College specifically stated that the Vice Chancellor has approved the preference wise

recommendation made by the Selection Committee, however, if any complaint in that respect would be found by the Vice Chancellor to be proper, the approval would be cancelled. In these circumstances, the College Tribunal had erred in holding that once the approval was granted by the University, the same should not have been withdrawn in view of the language of the Statute 195(3)(e) of Shivaji University. The College Tribunal has incorrectly interpreted the provision of Statute 195(3)(e) and has not gone into the validity of the appointment of the Respondent No.1. In any event, prima facie, if a case of fraud is made out, it would vitiate the entire process of appointment and the approval granted to such appointment. The College Tribunal further erred in observing that the Petitioner who was the complainant in the inquiry proceeding before the University was shown as a member of the Inquiry Committee. The Petitioner who was the complainant and his representative were obviously present before the fact finding Committee of the University in their capacity as the Complainant and his representative not as members of the Committee. Even the fact finding Committee of the University found that the appointment of Respondent No. 1 was vitiated by fraud and the University took a decision to withdraw the approval given to the Respondent No. 1 and granted approval to the Petitioner. Though it may be a matter of debate whether or not the Respondent No. 1 ought to have been heard by the fact finding Committee of the University before the revocation of the

approval inasmuch as it was for the Management to explain the allegations of fraud and the circumstances under which it appointed the Respondent No. 1 instead of the Petitioner, at the same time, the learned Counsel for the University is also prima facie not wrong in his submission that the Respondent No. 1 could not have contributed in any manner in regard to the fraud alleged against the Management and hearing to the Respondent No.1 would be a useless formality. In these circumstances, in my opinion, it would be necessary for the College Tribunal to go into the issue of revocation of the approval by the University threadbare. The entire approach of the College Tribunal and its conclusions, in my view, are not at all justified and the impugned order of the College Tribunal cannot be sustained.

14 It is an admitted position that the services of the Respondent No.1 were terminated only because the University had revoked the approval granted by it to the appointment of the Respondent No.1. In these circumstances, it can hardly be disputed that the College Tribunal is required to go into the issue of validity of the revocation of the approval while deciding whether the order of termination of the Respondent No.1 by the Management was legal or otherwise. In **Arti d/o Vithalrao Warkehede vs. Education Officer (Secondary), Zilla Parishad, Wardha, 2011 (1) MhLJ 638**, it has been held by the Division Bench of this Court that in an Appeal under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,

1977, challenging termination, the Appellant can challenge the rejection of approval by the Education Officer. The same principle, in my view, would apply in the case of an Appeal filed before College Tribunal under section 59 of the Maharashtra Universities Act, 1994 challenging termination order and it would be open to the College Tribunal to go into the legality and validity of the rejection of the approval granted by the University in the Appeal.

15. It is pointed out that Appeal No. 3 of 2007 filed by the Petitioner to set aside his termination and seeking reinstatement is pending before the College Tribunal. It cannot be disputed that unless that substantive Appeal is decided, the Petitioner cannot be granted any effective reliefs in his favour with regard to his appointment in the present Petition.

16. Taking an overall view of the matter, in my opinion, the following order would meet the ends of justice:

- i) The impugned order of the College Tribunal is set aside and the matter is remitted back to the College Tribunal to decide Appeal No.59 of 2002 of the Respondent No. 1 afresh. The said Appeal No.59 of 2002 of the Respondent No.1 shall be heard alongwith the Appeal No.3 of 2007 of Petitioner which is pending before the College Tribunal.

- ii) The College Tribunal shall permit the parties to amend their pleadings in all respects including challenge to the revocation of approval by the University as also to incorporate the communications/documents annexed to the present Petition and to incorporate averments in respect of fraud or forgery or misrepresentation etc. made by the Petitioner, if appropriate Applications are made in that regard within a period of four weeks from today.
- iii) The University shall submit the entire record and files in respect of revocation of approval to the appointment of Respondent No. 1 including the papers of the fact finding Committee before the College Tribunal. The parties would be permitted to file additional Replies, if they so desire. The College Tribunal shall go into the issue of termination/appointment, approval and revocation of approval threadbare and without being influenced by the findings of the fact finding Committee of the University.
- iv) The Appeals shall be decided expeditiously and in any event by 31 January 2018. Until the decision of the College Tribunal, the service of the Respondent No.1 shall not be disturbed.
- v) The parties shall appear before the College Tribunal on 25 September 2017 at 11 a.m. when appropriate directions may be issued.

- vi) The College Tribunal shall not be influenced by the observations in the present judgment. All contentions of the parties are kept open.
- vii) Registry to remit the R & P to the College Tribunal forthwith.

(A.A.Sayed, J.)

Learned Counsel for the Respondent No.1 seeks stay to the operation of this order. In my view, inasmuch as, the service of the Respondent No.1 is not disturbed until the decision of the College Tribunal, it is not necessary to grant any stay.

(A.A.Sayed, J.)