

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

C.A.W. Nos.2028/2018, 2024/2018 & 2221/2018 IN W.P. NO. 2715/2015 (D)
 (MOHAN PARSHURAM BHANDARKAR (DEAD) THR. LR's ALHAD DIGAMBARRAO BHANDARKAR &
 OTHERS **VERSUS** NATHUJI TANBAJI FARANDE (DEAD) & OTHERS)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri R.L. Khapre, counsel for petitioners.
 Shri A.S. Mardikar, Senior Advocate with Mrs. R.S. Sirpurkar, counsel for
 applicant in CAW Nos.2024/2018 and 2028/2018.
 Shri U.A. Aurangabadkar, counsel for applicant in CAW No.2221/2018.
 Ms D.R. Muley, Advocate h/f Mrs. A.S. Bhandarkar, counsel for R-11.

CORAM : A.S. CHANDURKAR, J.

DATE : NOVEMBER 01, 2018.

Civil Application No.2028 of 2018 has been filed by
 Dr.Sanjay Govindrao Poharkar with a prayer that said applicant be
 permitted to intervene in the proceedings in Writ Petition No.2715
 of 2015.

In the said application, it has been stated that there is a
 dispute pending with regard to the entitlement to the post of
 Principal at Samarth Mahavidyalaya, Lakhani. The applicant claims
 to be a contender to the said post but on account of there being a
 dispute between two groups in the management, his services came
 to be suspended by the rival group. It is further stated that the
 applicant has filed Writ Petition No.6849 of 2016 challenging the
 order of suspension passed against him. This Court has by an
 interim order stayed the order of suspension. It is further stated
 that a Departmental Enquiry has been initiated against the
 applicant which is in a manner contrary to law. The applicant
 states that the petitioner no.2 in Writ Petition No.2715 of 2015 is
 his rival claimant and he alongwith other petitioners had moved an
 application being C.A.W. No.985 of 2018 seeking permission to

submit the enquiry report relating to the enquiry proceedings against the applicant to the Competent Authority. This Court on 07.08.2018 allowed the prayer made in C.A.W. No.985 of 2018 but in the said process, the present applicant was not joined as a party and he was also not heard. The applicant has thus filed C.A.W. No.2024 of 2018 seeking recall of the order dated 07.08.2018.

Reply has been filed on behalf of the original petitioners in Writ Petition No.2715 of 2015 to both the aforesaid civil applications. Various contentions including the locus of the present applicant to move these civil applications have been raised. According to the petitioners, the applicant merely being an employee of the college, he cannot be treated to be a person interested so as to be heard in the affairs relating to the administration of the trust and the college.

After hearing the learned counsel for the parties who have raised various contentions in the light of their respective pleadings in the civil applications as well as replies filed thereto, I am satisfied that the applicant has made out a case for recalling the order dated 07.08.2018. By said order, permission was granted to the petitioners to submit the enquiry report pertaining to the proceedings held against the applicant to the Nagpur University by observing that submission of that enquiry report would not amount to any major decision being taken in terms of the order dated 07.12.2015 passed in Writ Petition No.2715 of 2015. Said order dated 07.08.2018 passed in C.A.W. No.985 of 2018 is recalled for the following reasons:-

(a) One of the considerations that weighed with the Court while allowing C.A.W. No.985 of 2018 was the lodging of First Information Report bearing No.145 of 2016 against the present applicant. That First Information Report was with regard to

offences punishable under Sections 408, 409, 468, 471, 420 read with Section 34 of the Penal Code. Reference to lodging of the First Information Report was made in paragraph 1 of C.A.W. No.985 of 2018. However, the fact that the present applicant had filed Criminal Application (APL) No.306 of 2017 seeking quashing of said First Information Report and the fact that this Court on 10.07.2017 had permitted the investigation to continue but had restrained filing of the charge-sheet, was not brought to the notice of the Court. The petitioner no.2 in Writ Petition No.2715 of 2015 has been arrayed as non-applicant no.2 in Criminal Application (APL) No.306 of 2017 and he had entered appearance on behalf of his counsel in September-2017. This relevant fact that by interim order, the Investigating Officer had been restrained from filing the charge-sheet was not brought to the notice of the Court when the said order was passed. C.A.W. No.985 of 2018 though filed on 20.04.2018 does not refer to the orders passed in the aforesaid criminal application.

(b) In Writ Petition No.6849 of 2016, C.A.W. No.2938 of 2017 was moved by petitioner no.2 in Writ Petition No.2715 of 2015 making a prayer that the management had permitted to forward the necessary papers to the Competent Authority as well as to the Management Council of the University seeking permission to inflict punishment upon the present applicant. This application was opposed by the present applicant by filing his reply. The applicant was therefore, contesting a similar prayer in Writ Petition No.6849 of 2016 as was made in C.A.W. No.985 of 2018. The applicant however was not a party in Writ Petition No.2715 of 2015 and he was thus not heard when the order dated 07.08.2018 came to be passed. In the light of the fact that an identical prayer made by the petitioner no.2 was in contest between the parties which included

the present applicant before the Division Bench of this Court, grant of an identical relief in C.A.W. No.985 of 2018 without hearing the applicant is certainly prejudicial to his legal rights. On the ground that the order dated 07.08.2018 was passed without hearing the applicant who was directly affected by the same, a sufficient ground to recall that order is made out.

In view of aforesaid, I find that sufficient grounds have been made out to recall the order dated 07.08.2018 passed in C.A.W. No.985 of 2018. Consequently, C.A.W. No.2024 of 2018 is allowed in terms of prayer clause (1) of the civil application. In view of this order, the purpose for filing C.A.W. No.2221 of 2018 by the respondent no.5 in the writ petition stands served. Hence, that civil application is also disposed of. The order dated 07.08.2018 passed in C.A.W. No.985 of 2018 in Writ Petition No.2715 of 2015 is recalled. C.A.W. No.985 of 2018 is disposed of in the light of the fact that identical prayers have been made by the petitioner no.2 in Writ Petition No.6849 of 2016 wherein the applicant is also a party. The petitioners are at liberty to take such other steps in the matter in accordance with law as advised.

C.A.W. Nos.2028 of 2018 and 2024 of 2018 are accordingly disposed of on aforesaid terms.

JUDGE