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

WRIT PETITION NO.8975 OF 2016

Rajendra Vikramrao Mundhe
Age: 43 Yrs., occu. Service,
R/o Dodadgaon, Tq. Shahpur,
Tq. Ambad, Dist. Jalna. = **PETITIONER**

VERSUS

1. Pratishthan Shikshan Prasarak
Mandal, Paithan, Tq.Paithan,
District Aurangabad.
Through its Secretary.
2. Pratishthan Mahavidyalaya,
Paithan, Tq.Paithan,
District Aurangabad.
Through its Principal.
3. Dr.Babasaheb Ambedkar Marathwada
University, Aurangabad,
Through its Registrar. = **RESPONDENTS**

Mr. Santosh S.Jadhavar, Advocate for Petitioner;
Mr. ID Maniyar, Adv. for Respondent Nos.1 & 2;
Mr. SS Thombre, Adv. For Resp.No.3.

CORAM : P.R.BORA, J.
DATE : 25th July, 2019

ORAL JUDGMENT

1. Rule. Rule made returnable forthwith.
Heard finally with consent of learned counsel for
the parties.

2. Appeal No.1/2015 filed by present
petitioner has been dismissed by University and

(2)

College Tribunal, Aurangabad (herein after referred to as College Tribunal) vide its order dated 11.12.2015 on the ground that bar under Section 11 of the Code of Civil Procedure would operate since in the earlier appeal filed by the present petitioner, similar issues were raised and they are decided on merits.

3. After having heard the arguments of the learned counsel appearing for the parties and after having gone through the documents placed on record, I have no hesitation in holding that the finding recorded by the College Tribunal is apparently unsustainable. From the documents which are placed on record before the college tribunal also, it is revealed that after the previous round of litigation, according to the case of the petitioner, he was allowed to resume the duties and the proposal was also forwarded to the University for seeking approval to his appointment. It is his further case that the university has accordingly granted approval in pursuance of the said letter. It is the further case of the petitioner that thereafter since the college authorities restrained

(3)

the petitioner from resuming the duties, he was again constrained to file a second appeal, alleging that his services are otherwise terminated.

4. The contentions so raised are opposed by the learned counsel appearing for Respondent Nos.1 and 2. It is their contention that after 2003, the petitioner was never allowed to resume the duties nor any such proposal was forwarded by the college seeking approval to the appointment of the petitioner. The learned counsel submitted that the appeal filed by the present petitioner was dismissed on merits. Though the petitioner approached this court by filing a writ petition, even said writ petition was dismissed. The learned counsel submitted that in such circumstances, there was no reason for Respondent Nos.1 and 2 to allow the present petitioner to resume his duties.

5. The learned counsel further submitted that certain letters were obtained by the present petitioner representing that they may be useful for him to claim continuity in service if at all he gets the appointment in any other college.

6. The argument so advanced on behalf of the respondent is difficult to be accepted. The documents, which are relied upon by the petitioner, more particularly the proposal dated 20th July, 2009, forwarded to the university, which is duly signed by the Principal of the college, cannot be accepted to have been issued by the Principal of the college, for the purpose, as argued by the learned counsel for the respondent that it will help the petitioner for claiming continuity in service. Moreover, certain subsequent correspondence is also placed on record. The approval granted by the university communicated to the respondent college on 30th October, 2010, also cannot be said to be a document procured by the petitioner. In the circumstances, the learned Presiding Officer of the Tribunal must have considered all these subsequent events and the documents along with the plea raised by the respondents that after termination of the petitioner in the year 2003, the petitioner was never allowed to resume the duties. However, in no case, the appeal could have been dismissed by the

(5)

Tribunal on the ground of res judicata.

7. In view of the fact that the cause of action for filing the subsequent appeal was based on the subsequent events and the documents in that regard were placed on record by the petitioner, it cannot be said that the issues involved in the appeal subsequently filed by the petitioner, were directly and substantially in issue in the former appeal between the parties. As such, the conclusion recorded by the Tribunal that the subsequent appeal filed by the petitioner was barred by the principle of res judicata, cannot be sustained and deserves to be set aside.

8. It has to be stated that even if it is the contention of the respondents that all such averments as about the subsequent cause of action are false and the documents filed on record by the appellant were concocted, even that aspect was liable to be adjudicated by the Tribunal and in no case, the appeal could have been dismissed on the ground of res judicata.

9. In the above circumstances and for the

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reasons recorded above, following order is passed,

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ORDER

i. The impugned judgment and order dated 11.12.2015 passed by Presiding Officer, University & College Tribunal, Aurangabad in Appeal No.BAMU-01/2015, is set aside.

ii. The matter is remanded to the College Tribunal to decide it afresh by giving due opportunity of hearing to the parties concerned.

iii. The Tribunal is requested to expedite hearing of the appeal and to decide it as expeditiously as possible and preferably within a period of six months from the date of this order.

(P.R.BORA)
JUDGE

BDV