

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9336 OF 2014

1. Atulchandra Pandit Sarode }
Flat No. 2, Anandi Park, Laxmi }
Nagar, Taluka - Khalapur, }
Khopoli-410 203, }
District - Raigad }
}
2. Rajendra Pandurang Jadhav }
'Prathamesh', Flat No. 4, }
Plot No. 10, Shaha Colony, }
Talegaon Dabhade, Maval, }
Pune-410507 }
}
3. Sucheta Omprakash Poonia }
Room No. 11, Balaji Homes, }
Siddhant Colony, Taluka }
Khalapur, Carmel School Road, }
Bhanvaj, Khopoli-410 203, }
District Raigad }

versus

1. The State of Maharashtra }
through the Secretary, Higher }
and Technical Education and }
Employment Department, }
Mantralaya, Mumbai - 400 032 }
}
2. The Director, }
Maharashtra State Board of }
Technical Education, }
Government Polytechnic }
Building, 49, Kher Wadi, }
Ali Awar Jung Marg, Bandra, }
Mumbai - 400 051 }
}
3. Director of Technical }
Education, Maharashtra State, }
3, Mahapalika Marg, }
Mumbai - 400 001 }

4. Joint Director of Technical Education, Mumbai Region, Government Polytechnic Building, 49, Kherwadi, A. J. Marg, Bandra (East), Mumbai - 400 051 }
5. All India Council for Technical Education (AICTE), through Advisor, AICTE (Western Region), Industrial Assurance Building, Opp. Churchgate Station, Mumbai }
6. The Chairman, Khalapur Taluka Shikshan Prasarak Mandal, Near Old Police Station, Khopoli, Tal. Khalapur, Dist. Raigad, PIN-410 023 }
7. The Principal, BL Patil Polytechnic, near Old Police Station, Khopoli, Tal. Khalapur, Dist. Raigad, PIN - 410 023 }
- Respondents

Mr. S. S. Pakale I/b. Mr. A. R. Belge for the petitioners.

Mr. S. B. Kalel-AGP for respondent nos. 1, 3 and 4 (State).

Mr. Abhijeet Joshi for respondent no. 5.

Mr. Mihir R. Govilkar I/b. Mr. R. V. Govilkar for respondent no. 2.

Mr. Prafulla B. Shah with Ms. Gunjan Shah I/b. Mr. Kayval Shah for respondent nos. 6 and 7.

**CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.**

DATE :- JANUARY 9, 2019

ORAL JUDGMENT :- (Per S. C. Dharmadhikari, J.)

1. By this writ petition under Article 226 of the Constitution of India, the petitioners are raising a common grievance. The petitioners allege that they are lecturers in the Chemical Department of the seventh respondent which is the Polytechnic College. The first respondent is the State of Maharashtra, the second respondent is the Director, Maharashtra State Board of Technical Education. Then, there is a third respondent styled as Director of Technical Education. The fourth respondent is the Joint Director of Technical Education and the fifth respondent is All India Council for Technical Education (AICTE). The sixth respondent is the Khalapur Taluka Shikshan Prasarak Mandal situated at Khopoli, Taluka Khalapur, District Raigad and the seventh respondent is the Principal, B. L. Patil Polytechnic, Khopoli, Taluka Khalapur, District Raigad.

2. The claim of the petitioners is that each one of them have been working in respondent no. 7 college from 18th September, 1989 and therefore, they cannot be said to be merely temporary employees, but their appointments are confirmed. We are not

taking any facts outside the writ petition memo for para 4 of the memo of this writ petition reads as under:-

“4. Petitioner No. 1 has been working as a lecturer with Respondent No. 7 since 18th September 1989 and In-charge HOD since 12th September, 1992. Petitioner No. 2 has been working as a lecturer with Respondent No.7 since 1st October 1993. Petitioner No. 3 has been working as a lecturer with Respondent no. 7 since 27th October 1993. The petitioners were initially appointed on a temporary basis, and their appointments were subsequently confirmed. Annexed hereto and marked **Exhibit B (Colly.)** are letters from Respondent No. 7 appointing Petitioner No. 1, Petitioner No. 2 and Petitioner No. 3 respectively.”

3. Then, it is stated that having served this respondent no. 7 diligently and without any blemish, the staff of 39 employees, out of which 26 permanent and 13 temporary, is left in lurch. They have not been paid any salaries since June, 2014. The petitioners rely upon Annexure 'A' to this writ petition and say that this is the impugned order/communication. It informs petitioner no. 1 that the notice, putting an end to their services, is with reference to a communication of 9th August, 2014 which precedes the impugned one. The institution has already informed by the above communication that it has not got any students for the academic year 2014-15 in the division/course. That division or course is Chemical Engineering. Since that division or course is now decided to be closed, one month termination notice has been issued. It would be presumed that the services stand terminated and the concerned petitioners stand relieved with effect from 27th

October, 2014. However, they will be entitled to Gratuity and Provident Fund as per the rules. The petitioners state that similar letters have been received by all of them. However, para 11 of this writ petition makes an interesting reading. In para 11 and which is a pleading in the alternative, it is stated that the petitioners are qualified to be absorbed into other departments of respondent no. 7. To our mind, this pre-supposes something more than a mere issuance of the communication, copy of which is at Annexure 'A'. The petition proceeds on the footing that there is a closure of the institution or in the least, its closure.

4. The petitioners have claimed the following two principal reliefs:-

“a) that this Hon'ble Court be pleased to exercise powers vested in it under Article 226 of the Constitution of India and gave a declaration that the impugned closure and consequential retrenchment notices dated 26th September, 2014 issued to the Petitioners at **Exhibit A (colly.)** to the present Petition be declared void and illegal and are not capable to be given effect and thus, the Respondent Nos. 6 and 7 be ordered and directed to allow the Petitioners to continue to work in their establishment on the same post and position and that the Petitioners be paid their monthly salary w.e.f. June 2014 and further they be paid their salary regularly from month to month till their respective retirement;

b) In the alternative, that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or direction under Article 226 of the Constitution of India ordering and directing Respondent Nos. 6 and/or 7 to absorb the Petitioners into some other department of Respondent No. 7 on the same service conditions as are applicable and admissible to them and they be paid their monthly salary from June 2014 and be paid regularly from month to month till their respective retirement.”

5. On such a writ petition, which claims the above reliefs and brought in this court, on 10th October, 2014, a Division Bench of this court was persuaded to pass the following order:-

“Issue notice to Respondent Nos. 6 and 7, returnable on 27th October 2014. Hamdast is granted.

2 In the meantime, no coercive steps based upon the impugned order dated 26th September 2014, till the next date.

3 Stand over to 27th October 2014 (HOB).”

6. This order has been continued and by the further orders, a Division Bench of this court directed that the petition raises some issue which requires deeper consideration. That issue is crystallised in an order passed by this court on 2nd February, 2016. That reads as under:-

“None appears for A.I.C.T.E. Learned AGP to take appropriate instructions on following issue:

Whether after the enactment of AICTE Act, 1987, the closure of division or institution would be governed under the AICTE Act, 1987 or by the State of Maharashtra?

2. Learned AGP shall take further instructions in respect of the contentions raised in Paragraph-5 of affidavit-in-reply filed on behalf of respondents 1, 3 and 4.

3. Stand over to 12th February, 2016.”

7. Mr. Pakale learned counsel appearing for the petitioners raised various contentions, including that the mandate of section 35 of the Maharashtra State Board of Technical Education Act, 1997 (for short “the MSBTE Act”) has been breached and violated and as that has been breached and violated, the action is ex-facie

illegal. There cannot be any termination effected and in the manner done by this respondent no. 7. Respondent no. 7 should have followed the requirements of law and if section 35 was not applicable, as is now contended, there should have been at least a closure understood by both, the statutory authorities, namely, respondent nos. 1 to 4 and respondent no. 5. Once their affidavits have been placed on record and it is now purported to be clarified that the institution as a whole has not closed down, but only this course or further, alternatively, there are no admissions to that course in the respondent no. 7, then, even that has to follow certain procedural aspects. Thus, the impugned communication, without closure of any nature, must be declared to be illegal.

8. Mr. Pakale has also brought to our notice Rule 26 of the Maharashtra Employees of Private Schools (Regulation of Conditions of Service) Rules, 1977 and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. Mr. Pakale would submit that the Polytechnic is a school and therefore, a private school is also covered by the Act and the Rules. That rule has also not been followed. Mr. Pakale contended that the petitioners are deemed to have been continued in service. Their salaries, therefore, should be released and they cannot be illegally withheld.

9. To such a writ petition, we have number of affidavits being filed. The affidavit that has been filed by respondent no. 7, copy of which is at page 39 of the paper book, says that the petitioners have not approached this court with clean hands. The petitioners' appointment, allegedly as lectures, has never been confirmed. Secondly, the seventh respondent is a private unaided polytechnic. The financial condition of respondent nos. 6 and 7 is precarious. They are heavily indebted and does not have financial resources to continue with the Chemical Department of respondent no. 7. There are no students in that Department. In the first year, there are no students at all. In the second year, there is one student and in the third year, there are four students. Once the four students from the third year pass out in this year, there would be only one student left, who will go to third year. It is, therefore, very difficult to continue the activities of the Chemical Department. It is in these circumstances that the decision was taken to close down this Department. Once there are no students and the financial condition is as above, then, the petitioners, in the absence of any permanency status, cannot raise the grievance at all. That has been raised against a private unaided college. All the more when the appointments of the petitioners have not been approved.

10. In this affidavit, it is also stated that the petitioners are aware that there are no students in the Chemical Department since last 3 to 4 years and during the year 2014-15, not a single student has been admitted. It is in these compelling circumstances that the decision to close down the Department was taken.

11. In para 13 of this affidavit, the deponent says as under:-

“13. With reference to para 10 of the petition, I say and submit that requisite approvals/No Objection have been received from the Competent Authority. Hereto annexed and marked **Exhibit 1** is a copy of the letter dated 5th December 2012 received from the Maharashtra State Board of Technical Education forwarding therewith No Objection Certificate for closure of course of the Institute received from Maharashtra State Board of Technical Education, Mumbai in the prescribed format provided by A. I. C T. E. Hereto annexed and marked **Exhibit 2** is a copy of the letter dated 21/1/2013 issued by the government of Maharashtra through its Higher and Technical Education Department, Mantralaya issuing its no objection for closure of the course. I say and submit that the petitioners do not possess the requisite qualifications relating to the other branches of the colleges and in such circumstances, there is no question of absorbing the petitioners in other departments of the respondent no. 7 College.”

12. Then, what we have is an affidavit stated to be the affidavit in rejoinder of the petitioners. Prior thereto, we must make a reference to Exhibit '1' to the affidavit of the Management/respondent no. 7. Exhibit '1' is stated to be a letter or communication from the Director, Maharashtra State Board of Technical Education, Mumbai, addressed to the Regional Officer,

Western Regional Office, All India Council for Technical Education, Mumbai. There, it says that it is forwarding the No Objection Certificate for closure of course of Khalapur Taluka Shikshan Prasarak Mandal, B. L. Patil Polytechnic, Janata Vidyalaya from the academic year 2013-14. This is a No Objection Certificate forwarded as per the prescribed format for necessary action at the end of AICTE. Then, the format of NO Objection Certificate is enclosed and it indicates the position with regard to the intake capacity and admission.

13. There is also a communication dated 21st January, 2013 from the Government of Maharashtra addressed to the Member Secretary, AICTE, New Delhi, copy of which is at page 52 of the paper book. This says that the State Government has no objection for closure of diploma course in Chemical Engineering Intake-30 at the seventh respondent college from the academic year 2013-14. The petitioners, in the writ petition, make no reference to these documents though they are admittedly prior to 10th October, 2014, the date of filing of the petition. However, their without prejudice argument in the above reproduced para 11 of the writ petition is eloquent enough.

14. In the affidavit in rejoinder, the petitioners claim that it is common ground that No Objection Certificate to close down the

institution is not a permission to close down the institution as contemplated under section 35 of the Maharashtra State Board of Technical Education Act, 1997. They rely upon a communication stated to be issued by the Director of Technical Education, Maharashtra State permitting the seventh respondent to admit 30 students for Chemical Engineering course for the academic year 2014-15. If the Government had granted permission to close down this course from the academic year 2013-14, such a letter could not have been issued by the Director of Technical Education is the contention. The copy of that communication is at page 59 of the paper book.

15. It is possibly thereafter that the Government of Maharashtra and the Directorate woke-up and filed their affidavit in reply. In this affidavit at page 63, they claim that these respondents had not admitted students in the seventh respondent during the academic year 2013-14. The fifth respondent to this writ petition, namely, AICTE has not closed down this course during the academic year 2014-15, but given extension of approval for this academic year for 9 diploma courses, including Chemical Engineering with the intake capacity of 30 students. At the same time, it is asserted that the seventh respondent has not participated in the centralised admission

process of diploma courses in Engineering/ Technology during the academic year 2014-15 and the seventh respondent has admitted the students at the institute level in Civil Engineering, Electrical Power System, Mechanical Engineering 1st Shift and Mechanical Engineering 2nd Shift. This affidavit proclaims that the final authority is AICTE, New Delhi and it has not closed down this course during the academic year 2014-15.

16. After such an affidavit is filed, respondent nos. 6 and 7 filed a further affidavit seeking to clarify this issue and which is purely factual in nature. This affidavit is dated 3rd February, 2015. In this affidavit, it is stated that the seventh respondent has obtained requisite permissions from the concerned authorities, namely, the Maharashtra State Board of Technical Education on 6th December, 2013 and from the Government of Maharashtra on 21st January, 2013. On 7th February, 2013 it made an application to the fifth respondent (AICTE) seeking its approval to close down the course. That application, is, however, pending. Respondent no. 7 contests the position that the AICTE was not the final authority for closure of this course and rather respondent nos. 1 and 2 are the final authorities. They have granted the No Objection to the closure.

17. With this position being on record, ordinarily, this writ petition would not have survived. However, the matter gets further compounded and in the light of the additional affidavit filed by respondent nos. 1, 3 and 4. They purport to deal with the issues raised by this court and say that after the enactment of AICTE Act, 1987, the AICTE has power to grant approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the agencies concerned. The AICTE has also been conferred with a power under section 10(q) to withhold or discontinue grants in respect of courses, programmes to such technical institutions which fail to comply with the directions given by the AICTE within the stipulated period of time and take such other steps as may be necessary for ensuring compliance with the directions of the Council. Thus, given these provisions, the closure would be covered by the AICTE Act, 1987 and not by the State law, namely, the MSBTE Act. Then, it is stated that insofar as the closure of diploma course is concerned, it is the AICTE which is the competent authority. The proposal submitted by respondent no. 6 for closure of Chemical Engineering course met with infavourable response of the AICTE. The AICTE pointed out by its letter of 30th April, 2013 that the extension of approval for all courses for academic year 2013-14 in respondent no. 7-polytechnic cannot be

granted on account of deficiencies. Relying upon this letter, it is submitted that once the AICTE is an apex body, then, the same would have to be satisfied with regard to the aforereferred issue of closure.

18. Respondent nos. 6 and 7 filed an additional affidavit purporting to answer this court's queries and in that, it is stated that the AICTE has listed the college in no-admission category for the first year and hence, there was no admission for academic year 2014-15 in all courses. Though there was an application filed with the AICTE for closure of the subject course, the AICTE has not passed any order on the application although it placed the institution in no-admission category. Pertinently, respondent nos. 1, 3 and 4 granted their no-objection for closure of Chemical Engineering course. This fact is confirmed by the first respondent by its letter dated 26th February, 2015. Thus, their earlier communications are valid and in any event, the seventh respondent has not admitted the students in the Chemical Engineering diploma for the academic year 2013-14 and 2014-15. In the light of the confirmatory letter of 26th February, 2015 of the second respondent, even the AICTE, relying upon it and a corrigendum dated 18th May, 2015, refused extension of approval for the academic year 2015-16 to the seventh respondent. All

this, according to these 6th and 7th respondents, brings about a closure of this course. If that was not the position, the 10 students of that course would not have been transferred to another institute. It is then clarified that by letter of 18th May, 2015, the AICTE has granted permission for closure of Chemical Engineering course. It says that the AICTE, in doing so, relied upon the no-objection certificate granted by the State Government. Our attention has been invited to all the exhibits to this affidavit by Mr. Shah appearing for respondent nos. 6 and 7. Thus, it is argued that the course is no longer continuing in this respondent no. 7. Thus, the controversy is sought to be put to rest by this letter of 18th July, 2015.

19. The second respondent, who is the employee of the Department of Technical Education, but in-charge Deputy Secretary of Maharashtra State Board of Technical Education says that the petitioners argument that section 35 of the State Act would apply is incorrect. The governing law would be the AICTE Act. In paras 4 and 5 of this affidavit at running page 155, the deponent says as under:-

“4. The institutions imparting technical educations are governed viz. by the All India Council for Technical Education, under the relevant said act passed by the Parliament. The said All India Council for Technical Education (AICTE for short) governs, controls and administers various powers, duties and functions including granting permission to the institutions or conduct of courses or new courses etc. The

AICTE is a superior authority being an authority under the Central Act. The MSBTE is governed by the act of State of Maharashtra.

5. The institution, respondent nos. 6 & 7, informed in the year 2015 for closure of the Chemical Engineering Course and that students were not admitted to the 1st year and directly admitted to 2nd year Chemical Engineering Department AY 2013-14 as the institution was in "No Admission Status" for the year 2013-14 and no students were admitted in Chemical Engineering Course. It was informed that the institution had obtained NOC from Director of Technical Education and Govt. of Maharashtra and also from MSBTE. The Said letter bears date as 18.02.2012 but the no. of letter shows years 2014-15 and the Principal signed the said letter on 18.02.2015. Hence the date showing the date of letter is typographical mistake of the institute. A true copy of the letter is annexed herewith and marked as **EXHIBIT "A"**."

20. In para 6, it refers to no-objection for closure of the course and which was forwarded by the Department and the MSBET. We have, therefore, scanned all these affidavits only to satisfy ourselves as to whether there is anything surviving for adjudication.

21. On 26th December, 2017, the AICTE also files an affidavit and admits that it has put up the college (respondent no. 7) in "no-admission category" for all courses for the academic year 2013-14. There were, thus, no first year admissions for the batch of 2013-14 in any course, including Chemical Engineering programme. The application for extension of approval for the further academic years 2014-15, 2015-16, 2016-17 and 2017-18 did not contain the programme of Chemical Engineering. While it

is true that in the extension of approval in the year 2014-15, the diploma course was included with intake capacity of 30 students, but for the extension of approval for the academic year 2015-16, this course is not included. No intake capacity was assigned. Thus, there is an assertion in this affidavit that the AICTE excludes the course only when permission from the State Government and from the MSBTE is received. Since the AICTE has received both the permissions, this course was excluded by it from 2015-16 onwards.

22. It is precisely for this reason that we have employed the words that the position is confusing and it gets compounded by all these affidavits and the factual assertions therein. From a reading of all this material, it is evident that the legal issue, namely, as to whether the governing law is the AICTE Act or MSBET Act, need not be gone into at all. Therefore, no reference is also required to be made to the judgments brought to our notice by Mr.Pakale.

23. Mr.Pakale's apprehension that the challenge to Exhibit 'A' will survive is clearly unfounded. After Exhibit 'A' is challenged by the petitioners, but without reference to any preceding factual developments and in any event the subsequent one, it is clear that the petitioners are protected against a coercive act of the

Management. There is an ad-interim order to that effect from 10th October, 2014. The petitioners may claim that they are permanent employees, that they continued in service on account of this ad-interim order and that they are entitled to their full salaries and other benefits, but we cannot go into these matters simply because there is no pleading to question or challenge the subsequent developments. All the subsequent developments noted by us could still mean that the petitioners employment continues and that their status is as asserted by them. But, these matters would have to be decided in the event the petitioners challenge these subsequent developments. They can challenge them and while they can challenge them, they can also assert that Exhibit 'A' no longer survives and that in any event, because of the intervention of this court, the services of the petitioners are protected. Equally, all respondents can assert to the contrary. We do not think that this writ petition can be decided on the basis of inadequate and incomplete pleadings and in the format in which they are placed before us. In the memo of the petition, there are no particulars and no details and therefore, any academic issues need not be considered. The petitioners have never bothered to amend the pleadings though this petition is pending for past four (4) years and more.

24. We dispose of this writ petition by granting liberty to the petitioners to bring a comprehensive challenge to these subsequent developments and all contentions in that behalf are kept open. The petitioners' alternate contention as raised in this writ petition can also be urged while raising the comprehensive challenge.

25. The writ petition is disposed of with the aforesaid clarification. There would be no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)