

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

WRIT PETITION NO. 307 OF 2021

1. Pradeep Vinayakrao Patil, **...PETITIONERS**
Age-53 years, Occu-Nil,
R/o.Leelavati, Plot No.8, O.N. Wagh Nagar,
Near Bhaskar Nagar, Bhadgaon Road,
Pachora, Dist. Jalgaon
2. Ravindra Uttamrao Wagh,
Age-55 years, Occu-Nil,
R/o.99, Swaminarayan Housing Society,
Ramchandra Nagar,
Behind Market Yard, Dist. Dhule

VERSUS

1. Abhay Yuva Kalyan Kendra, **...RESPONDENTS**
Through its Chiarman,
Abhay Hospital, 80 ft, D. P. Road,
Badgujar Plots, Dhule
2. Kaviyatri Bahinabai Choudhari,
North Maharashtra University,
Jalgaon, through its Registrar
3. The Secretary,
Higher & Technical Education Department,
Mantralaya, Mumbai 400 032

Mr. Ajay S. Deshpande, Advocate for the petitioners
Mr. R. D. Sanap, AGP for the respondent /State
Mr. Sachin S. Deshmukh, Advocate for the respondent No.1
Mr.A.B. Girase, Advocate for the respondent No. 2

**WITH
WRIT PETITION NO. 1113 OF 2021**

1. Abhay Yuva Kalyan Kendra,
Through its Chiarmen,
Anmol Nagar, Deopur, Dhule
Taluka and Dist. Dhule

...PETITIONERS

2. Abhay Yuva Kalyan Kendra's
College of Physical Education,
Mumbai Agra Road, Dhule
(Presently closed down)

VERSUS

1. North Maharashtra University,
Jalgaon,
Through its Registrar
2. Pradeep Vinayakrao Patil,
Age-52 years, Occu-Nil,
R/o. 25, Bhaskar Nagar,
Bhadgaon Road, Pachora
Dist. Dhule

...RESPONDENTS

Mr. Sachin S. Deshmukh, Advocate for the petitioners
Mr.A.B. Girase, Advocate for the respondent No. 1
Mr. Ajay S. Deshpande, Advocate for the respondent No.2

**WITH
WRIT PETITION NO. 1114 OF 2021**

1. Abhay Yuva Kalyan Kendra,
Through its Chiarmen,
Anmol Nagar, Deopur, Dhule
Taluka and Dist. Dhule

...PETITIONERS

2. Abhay Yuva kalyan Kendra's
College of Physical Education,
Mumbai Agra Road, Dhule
(Presently closed down)

VERSUS

1. North Maharashtra University,
Jalgaon,
Through its Registrar
2. Ravindra Uttamrao Wagh,
Age-53 years, Occu-Nil,
R/o. Ramchandra Nagar,
Behind Market Yard, Dhule,
Dist. Dhule

...RESPONDENTS

Mr. Sachin S. Deshmukh, Advocate for the petitioners
Mr.A.B. Girase, Advocate for the respondent No. 1
Mr. Ajay S. Deshpande, Advocate for the respondent No.2

CORAM : N. J. JAMADAR, J.

RESERVED ON : 11-03-2021

PRONOUNCED ON : 04-05-2021

JUDGMENT :

. Rule. Rule made returnable forthwith and with the consent of the counsel for the parties heard finally at the stage of admission.

2. These petitions arise out of a common judgment and

order passed by the learned Presiding Officer, University and College Tribunal, Aurangabad in Misc. Application No. 1 of 2019 (in Appeal No. MMU-14/1998) and Mis. Application No. 2 of 2019 (in Appeal No. 16 of 1998) dated 01-12-2020. The writ petition Nos. 1113 of 2021 and 1114 of 2021 are preferred by the employers. The writ petition No. 307 of 2021 is preferred by the employees, who are contesting respondents in petitions preferred by the employers. Hence, all these petitions are decided by this common judgment.

3. The petitions arise in the backdrop of the following facts.

A] The petitioner No.1-Abhay Yuva Kalyan Kendra's is a public charitable trust. It runs Abhay Yuva Kalyan Kendra the College of Physical Education (petitioner No.2) (the employers). Mr. Pradeep Patil and Mr. Ravindra Wagh (the employees) were appointed as Lecturers in the college of Physical Education by the appointment order dated 09-10-1991 and 03-09-1990, respectively. The employees were appointed to the posts of Lecturer as they fulfilled

the requisite eligibility criteria. The employees continued to render services as the Lecturers. By the communication dated 16-11-1998, the employers terminated the services of the employees w.e.f. 01-04-1999.

B] The employees assailed the said termination by preferring appeal Nos. 14 of 1998 and 16 of 1998 before the Tribunal. On 01-07-1999, when those appeals were taken up by the Tribunal, a submission was made on behalf of the employers that the aforesaid termination letters, impugned therein, had been withdrawn. On the basis of the said submission, appeals came to be disposed of by the Tribunal by passing the following order:

“Since the impugned termination letter has been withdrawn, it follows that no cause of action survives for adjudication of question of legality or otherwise of that termination letter. All that is left is whether in view of the circumstances, the Appellant would be entitled to salary from the date of their termination till the date they joined the duties, and onwards. The moment impugned order is withdrawn, it follows that the appellant would be entitled

to other consequential relief which depended on the adjudication of the impugned order. Since the impugned order is withdrawn, it follows that the appellants are entitled to consequential relief of salary during the period from 01-04-1999 to 28-06-1999 and onwards, and it is ordered accordingly.”

C] By the aforesaid order, the Tribunal had recorded that in view of the withdrawal of the impugned letters of termination, the employees were entitled to consequential benefits and salary for the period 01-04-1999 to 28-06-1999 and onwards. As it transpired, the aforesaid orders were not given effect to and the employees were not reinstated in service nor paid wages.

D] The employees, thus, moved Tribunal under Section 63 of the Maharashtra Universities Act, 1994 (the Act, 1994) alleging disobedience of the order passed by the Tribunal, by taking out Misc. Application Nos. 18 of 1999 and 19 of 1999. Both the applications were disposed of by a common order dated 16-02-2000. The relevant part of the order reads as under:-

“1. These contempt petitions now deserves to be disposed off in the set of following circumstances.

2. By order dated 12-01-2000, respondent No.1 was held guilty of contempt of the Tribunal for disobeying the order dated 01-07-1999, and he was fined Rs.500/-. Advocate for the Respondent makes a statement that fine was deposited. The receipt No. 4115 dated 19-02-2000 shows the deposit of fine. The order dt. 12-01-2000 further directed the Respondent No.1 to comply with the order of this Tribunal by or before 19-01-2000. On 19-01-2000, when matter came before this court, it was stated on behalf of Respondent No.1 that the Appellants are at liberty to join right at this place at Aurangabad in the office of the Tribunal itself. Accordingly, appellants joined on 19-01-2000. A copy of the joining report is filed at Exhibit-16, and R-5, respectively on 19-01-2000. It is also stated by the Appellants in the Court that the salary has been paid to them. In view of all these aspects both of these contempt petitions now stand disposed off.”

E] The aforesaid order indicates that the Tribunal had held the employer guilty of contempt of the Tribunal and mulcted the employer with penalty of Rs.500/-. The employers were directed to comply with the order of the Tribunal dated 01-07-1999, on or before 19-01-2000. On that day, a statement was made on behalf of the employers that the employees were at liberty to join their posts in the very office of the Tribunal. The joining reports were filed. Salary was also reported to have been paid to the employees.

F] It was the grievance of the employees that despite the aforesaid submissions and developments before the Tribunal, the employees were not allowed to join their posts nor they were paid the salary. The employees again invoked the jurisdiction of the Tribunal under Section 63 of the Act, 1994 by filing application Nos. 40 of 2000 and 41 of 2000.

G] By the judgment and order dated 26-02-2001, the learned Presiding Officer of the Tribunal was persuaded to dismiss the applications holding *inter alia* that since the employees were allowed to report to duty and joining reports were also filed before

the Tribunal on 16-02-2000, there was compliance of the order of the Tribunal dated 01-07-1999. The fact that the employees were thereafter not allowed to enter the college and impart instructions, in the opinion of the learned Presiding Officer, was altogether a different cause of action and beyond the scope of the provisions contained in Section 63 of the Act, 1994 and for which the employees could resort to appropriate proceeding under the Act, 1994.

H] The employees assailed the aforesaid judgment and order, in the second round of the contempt proceedings, by filing writ petitions, being writ petition Nos. 4834 of 2001 and 4835 of 2001, before this court. By a common judgment and order dated 05-05-2017, this court quashed and set aside the order of the Tribunal dated 26-02-2001, and remitted the matter back to the Tribunal for deciding the same afresh. This court observed that there was no doubt that the employers committed the breach of undertaking furnished by them to the Tribunal and, consequently, the order passed by the Tribunal directing the reinstatement remained to be complied with, and the contravention of the said order was, thus, a

continuing breach.

I] Post remand, the Tribunal allowed Misc. Application Nos. 40 of 2000 and 41 of 2000 by the judgment and order dated 05-04-2018. The employers were held guilty of contempt. A fine of Rs. 2000/- was imposed. The employers were directed to allow the employees to join their posts immediately and also make payment of due wages including arrears within a period of three months of the said order. The Tribunal did not accede to the submission on behalf of the employers that the employers were prevented by a reasonable cause from complying with the order dated 01-07-1999 as the College of Physical Education was closed pursuant to the resolution passed by the trust in the meeting of its management committee, held on 15-11-1998. The learned Presiding Officer held that the employers had not followed the procedure prescribed in Section 92 of the Act, 1994 for closure of the college and, thus, the college was functional in the eye of law.

J] The employers challenged the aforesaid order dated 05-04-2018 by preferring writ petition Nos. 1578 of 2019 and 5601 of

2019. Both the writ petitions were dismissed by this court by the order dated 06-11-2020.

K] In the meanwhile, the employees again approached the Tribunal alleging failure on the part of the employers to comply with the order passed by the Tribunal in Misc. Application Nos. 40 of 2000 and 41 of 2000. By the impugned judgment and order dated 01-12-2020 in Misc. Application No. 1 of 2019 (in Appeal No. NMU-14 of 1998) and Misc. Application No.2 of 2019 (in Appeal No. NMU-16 of 1998), the learned Presiding Officer of the Tribunal allowed both the applications. The employers were held guilty for contravention of the order passed by the Tribunal and, thus, for the 3rd breach of the order of the Tribunal fine of Rs.5,00,000/- was imposed on the employers. In addition, for the continuing breach of the order of the Tribunal, a further fine of Rs. 500/- per day till the contravention subsists, was imposed on the employers w.e.f. 01-12-2020. In the event of default on the part of the employers to deposit the fine amount within three months of the said order, the respondent No.3-Kaviyatri Bahinabai Choudhari, North Maharashtra University therein was directed to cancel or withdraw the affiliation

given to all colleges run by petitioner No.1-trust.

4. Being aggrieved by and dissatisfied with the aforesaid judgment and order the employers have preferred writ petition Nos. 1113 and 1114 of 2021.

5. The employees have also questioned the aforesaid judgment and order by filing writ petition No. 307 of 2021 being dissatisfied with the impugned order to the extent it does not direct reinstatement of the employees and payment of backwages, in terms of the original order of the Tribunal dated 01-07-1999 and the order dated 05-04-2018 passed in Misc. Application Nos. 40 and 41 of 2000.

6. I have heard Mr. Sachin S. Deshmukh, learned Advocate for the petitioners-employers in writ petition Nos. 1113 and 1114 of 2021 and respondent No.1 in writ petition No.307 of 2021, Mr. Ajay Deshpande, learned counsel for the petitioners-employees in writ petition No. 307 of 2021 and respondent No.2 in writ petition Nos. 1113 and 1114 of 2021, Mr. R. D. Sanap, learned AGP for the State

and Mr. A. B. Girase, Advocate for the respondent/Kaviyatri Bahinabai Choudhari, North Maharashtra University-respondent No.1. With the assistance of the learned counsel for the parties I have also perused the material on record including the orders referred to herein above.

7. Mr. Deshmukh, learned counsel for the employers assailed the legality and correctness of the impugned judgment and order by raising a slew of exceptions. Firstly, according to Mr. Deshmukh, learned Presiding Officer committed a grave error in law in not advertng to the pivotal issue as to whether the failure to comply with the order on the part of the employers was 'without any reasonable cause'. It is not mere non-compliance of the order that empowers the Tribunal to impose the penalty under Section 85 of the Maharashtra Public Universities Act, 2016, (which corresponds with Section 63 of the Maharashtra Universities Act, 1994) but a deliberate and willful non-compliance, urged Mr. Deshmukh. In the facts of the case where the College of Physical Education was undisputably closed since the year 1999 itself, the Tribunal committed a manifest error in holding that the employers

failed to comply with the order passed by the Tribunal.

8. Secondly, the impugned judgment and order suffers from the vice of gross judicial impropriety as the learned Presiding Officer did not advert to the pronouncement of the Supreme Court in the case of Kanwar Singh Saini Vs High Court of Delhi (2012) 4 SCC 307, which was heavily relied upon by the employers in support of their submission that there was no willful breach of the order of the Tribunal. This approach of the Tribunal to ignore the legal position settled by the judgment of the Supreme Court amounts to judicial impropriety of highest order and, on this count alone, according to Mr. Deshmukh, the impugned order deserves to be quashed and set aside. Thirdly, on facts the Tribunal erred in not properly appreciating the ground of impossibility of compliance of the order in view of closure of the College of Physical Education. Fourthly, the penalty imposed upon the employers errs on the side of severity. Lastly, the direction issued by the Tribunal to the Kaviyatri Bahinabai Choudhari North Maharashtra University, Jalgaon to cancel or withdraw the affiliation granted to all the colleges run by the petitioner No.1-trust is clearly beyond the

province of the authority of the Tribunal, urged Mr. Deshmukh.

9. In opposition to this Mr. Deshpande, the learned counsel for the employees, would urge that the instant petitions reflects a highly reckless and callous approach on the part of the employers. The petitions at hand cannot be decided through the legal prism alone. In the case at hand, according to Mr. Deshpande, the brazen conduct on the part of the employers which ruined the career of the employees, must enter judicial verdict. The conduct on the part of the employers, in a sense, constituted a fraud on the Tribunal and revealed the tendency to take the system for a ride. On the one hand, the Tribunal was persuaded to dispose of the appeals by making a statement that the impugned orders of termination were withdrawn. On the other hand, the employers took a stand that the college of Physical Education was closed pursuant to the resolution dated 15-11-1998. To add to this, in first round of contempt application, after the employers were imposed a fine of Rs.500/- a farce of allowing the employees to join before the Tribunal itself was made. Furthermore, there is material on record in the form of repetitive communications from the University to show that the

employers did not co-operate with the authorities in ensuring compliance with the provisions under Section 92 of the Act, 1994 for closure of the college. Viewed in the backdrop of these acts and omissions, on the part of the employers, the submission on behalf of the employers that the non-compliance was not without any reasonable cause, is wholly unsustainable, urged Mr. Deshpande.

10. Though these petitions, as emerges from the aforesaid narration, have a chequered history, yet, following facts appear to be rather uncontroverted. First, the employees were duly appointed by the employers as the Lecturers in the college of Physical Education by the appointment orders dated 03-09-1990 and 09-10-1991. Second, the employees continued to discharge their duties as such till their services were sought to be terminated w.e.f. 01-04-1999 by communication dated 16-11-1998. Third, it is incontrovertible that when the employees challenged the said termination, in appeal Nos. 14 of 1998 and 16 of 1998, the employers made a statement before the Tribunal that the letters of termination were withdrawn and, thus, the Tribunal was persuaded to dispose of the appeals recording that the employees stood

reinstated in service and they were entitled to wages from the date of termination. Fourth, when the employees alleged non-compliance of the said orders, in Misc. Application Nos. 40 of 2000 and 41 of 2000, the employers again persuaded the Tribunal to dispose of those contempt applications by allowing the employees to join before the Tribunals and, in fact, joining reports were filed before the Tribunal.

11. In the backdrop of the aforesaid facts, the rival submissions now fall for consideration. Section 85(1) of the Maharashtra Public University Act, 2016 reads as under:-

85 (1)- Penalty to management for failure to comply with directions of Tribunal:

(1) If the university or management, as the case may be, fails, without any reasonable cause, to comply with any direction issued by the Tribunal under Section 83 within the period specified in the direction, or within such further period as may be allowed by the Tribunal, the university or management, as the case may be, shall on conviction, be punished-

(a) for the first contravention, with fine which may extend to one Lakh rupees.

Provided that, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Tribunal, the fine shall not be less than ten thousand rupees;

(b) for the second and subsequent contraventions, with fine which may extend to five lakh rupees for each such contravention:

Provided that, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Tribunal, the fine shall not be less than five thousand rupees:

Provided further that, when the direction issued by the Tribunal is not complied with, within the period stipulated in the direction or within such further period as allowed by the Tribunal, and when the contravention is a continuing one, the convicted person shall be punished with a further fine of rupees five hundred per day during which such contravention continues after conviction.

12. From the phraseology of aforesaid Section it becomes abundantly clear that the Tribunal before imposing the penalty thereunder has to record two findings. One, there is failure on the part of the University or Management to comply with any direction issued by the Tribunal under Section 83 of the Act, which empowers

the Tribunal to give appropriate reliefs and directions. Two, such non-compliance is without any reasonable cause. The legislature has also used the expression, "on conviction". Evidently the provisions are of penal nature.

13. Laying emphasis on the aforesaid provision, especially the expression, 'without any reasonable cause', Mr. Deshmukh, would urge that the provision warrants a strict construction and in the event two views are possible, the view which absolves the person from penalty is required to be taken.

14. To bolster up the aforesaid submission Mr. Deshmukh, placed reliance on the judgment of the Supreme Court in the cases of *Tolaram Relumal and Another Vs The State of Bombay AIR 1954 SC 496 and Bijay Kumar Agarwal Vs State of Orissa (1996) 5 SCC 1*. In the case of *Tolaram Relumal* (supra), the Supreme Court was confronted with the question "whether receipt of a sum of money by a person who enters into an executory contract to grant a lease of a building under construction falls within the mischief of Section 18(1) of the Bombay Rent Control Act, 1947", which created an

offence. The Supreme Court held that provisions of Section 18(1) are penal in nature and it is a well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature.

15. The aforesaid judgment was followed, with approval, by the Supreme Court in the case of *Bijay Kumar Agarwal* (supra) to emphasise that strict construction is the general rule of penal statutes.

16. There can be no duality of opinion as regards the aforesaid proposition. The question that wrenches to the fore, in the case at hand, is whether the employers were prevented by a reasonable cause from not complying with the order of the Tribunal. The attendant circumstances and contemporaneous conduct of the employers assumes critical salience.

17. Even if the case of the employers is taken it par, the situation which obtains is that the Managing Committee of the petitioner No.1-Trust decided to close the college of Physical Education from the academic year 1999-2000 and terminated the services of the teaching and non-teaching staff therein w.e.f. 01-04-1999. The resolution was passed in the meeting held on 15-11-1998. The letters of termination dated 16-11-1998 were apparently issued in pursuance of the said resolution.

18. It defies comprehension, if the college was to be closed from the academic year 1999-2000, where was the occasion for employers to persuade the Tribunal to dispose of the appeals preferred by the employees, being appeal No. 14 of 1998 and 16 of 1998, by making a statement that letters of termination were withdrawn. The situation was further exacerbated by the fact that the employers attempted to wriggle out of the situation, which arose consequent to the applications preferred by the employees, being Misc. Application Nos.18 of 1999 and 19 of 1999, alleging non-compliance of the order dated 01-07-1999. A bold submission

was made before the Tribunal that the employees were allowed to join their posts by filing joining reports before the Tribunal and, thus, those applications were disposed of on 16-02-2000.

19. It is the claim of the employers that the petitioner No.1-trust addressed the communication to the University apprising its decision to close the college from the academic year 1999-2000. In the context of said decision, the stands taken by the employers were totally irreconcilable. On 01-07-1999, the Tribunal was persuaded to dispose of the appeals on the basis of the statement that the letters of termination were withdrawn. On 08-07-1999 University was informed that the college of Physical Education was decided to be closed from the academic year 1999-2000. Yet, on 16-02-2000, a solemn statement was made before the Tribunal that the employees were at liberty to join before the Tribunal itself and joining reports were also obtained from them.

20. A litigant who takes irreconcilable stands with a view to gain time or win over a day, before the court or tribunal, acts to his own peril. In the case at hand, the employers are not only guilty

of taking inconsistent stands but are also complicit in persuading the Tribunal to pass orders on the basis of solemn statements which were to their knowledge not true. Conversely, the employees were made to alter their position to their prejudice. All the elements of suggestio falsi and suppressio vary present themselves in full measure. The employers endeavour to mislead the authority cannot but be termed reprehensible.

21. The court frown upon litigant, who deliberately make false statements or refrain from making full disclosure of the facts with intent to deceive and mislead the court. Such litigant who do not approach the court with clean hands are held not entitled to be heard on the merits of the case. What accentuates the audacity of falsehood in the case at hand is that an educational institution has resorted to such sharp practices.

22. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **Dilip Singh Vs State of Uttar Pradesh and others (2010) 2 SCC 114** wherein the Supreme Court lamented gradual erosion of values in litigation.

The first paragraph of the judgment reads as under:

“1. For many centuries Indian Society cherished two basic values of life i.e. “Satya” (truth) and “ahimsa” (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.”

23. In the case of **Kishor Samrite VS State of Uttar Pradesh and ors (2013) 2 SCC 398** the Supreme Court recapitulated some of the principles which govern the obligation of a litigant while approaching court for redressal of any grievance and consequences of abuse of process of court. The following propositions bear upon

the controversy at hand.

“32.3. The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this court.

32.4 Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.

32.5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

32.6 The court must ensure that its process is not abused and in order to prevent abuse of process of court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty-bound to impose heavy

costs.

38. No litigant can play “hide and seek” with the courts or adopt “pick and choose”. True facts ought to be disclosed as the court knows law, but not facts, One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the court is duty-bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of court.”

24. Nonetheless let us test the reasonability of the cause sought to be ascribed by the employers. Section 92 of the Maharashtra Universities Act, 1994, which then governed the matter of closure of college, contained elaborate procedure. The Sub-section (1) of Section 92 declared in empathetic terms that no management of a college or recognised institution shall be allowed to close down the college or recognised institution without prior permission of the State Government. It is plain, neither a college

can be opened without prior permission of the State Government nor a college can be closed at the sweet will of Management, as such a measure is impregnated with consequences for the students, faculty, staff and other stakeholders.

25. Succeeding Sub-Sections of Section 92 prescribed procedure for closure of the college commencing with application to the University, followed by the enquiries by the Academic Council regarding desirability of granting permission to close the college, recommendation by Academic council with a feasibility report to the Management Council, inclusive of the aspect of payment of compensation to the teachers and staff retrenched, and final decision by the Academic council with prior concurrence of Management council and approval of the State Government. Consequential provisions for taking over the college by the University or transfer of the same to other management were also made therein.

26. In the instant case, it would be suffice to note that the employers paid no heed to repeated communications from the

University to carry out the exercise envisaged by Section 92 of the Act, 1994. In the communication dated 25-02-2009, the University recorded that three committees were constituted by the University; in the year 2000, 2002 and 2009, for conducting the enquiry envisaged by Section 92 (3) of the Act, 1994 and the employers did not co-operate with any of the Committees and, therefore, the procedure prescribed under Section 92 of the Act, 1994 for taking a decision on the proposal of the employers to close the college could not be completed.

27. In the vary nature of the consequences which follow a decision to close the college, the employers cannot be heard to say that nothing was to be performed by the petitioner No.1-Trust after the decision of its Management Committee that the college was to be closed. In law, the Management is not free to close the college whenever it chooses to.

28. In P. Ramanatha Aiyar's the term reasonable cause is explained as;

'Reasonable cause, as applied to human action, that which would constrain a person of average intelligence and ordinary prudence; probable cause; legal cause'.

29. The conduct on the part of the employers, in the case at hand, is far from reasonable. The employers have persuaded the Tribunal to pass the orders on the basis of submission which, consistent with their defense in the action for non-compliance, they were fully aware could not have been given effect to. Conversely employers did not pursue the proposal for closure of the college. The design was to present employees with *fait accompli*. A conduct which was in flagrant violation of the statutory regime and betrayed recklessness of highest order cannot be said to be reasonable, even if maximum latitude is given to the employers.

30. In the backdrop of the aforesaid circumstances, submission on behalf of the employers that the impugned order is required to be interfered with for not adhering to the binding precedent in the case of **Kawar Singh Saini Vs High Court of Delhi (2012) 4 SCC 307** does not merit countenance.

31. In the case of **Kawar Singh Saini** (supra) the Supreme Court was primarily concerned with invocation of the provisions contained in order 39 Rule 2-A of the Code of Civil Procedure, after passing of the decree. The Supreme Court held that the proceeding under order 39 Rule 2-A are available only during the pendency of the suit and not after the conclusion of the trial of the suit. Therefore, any undertaking to the Court during the pendency of the suit on the basis of which the suit itself has been disposed of becomes a part of the decree and breach of such undertaking is to be dealt with in execution proceeding under Order 21 Rule 32 of the Code of Civil Procedure and not by means of contempt proceedings. Undoubtedly, the Supreme Court also adverted to the nature of contempt proceeding and the standard of proof required in contempt cases.

32. Even if it is assumed that the Tribunal did not consider the aforesaid judgment in the case of *Kawar Singh Saini* (supra), though relied upon by the employers, yet, it is evident that the Tribunal has recorded in clear and explicit terms that non-

compliance was without reasonable cause.

33. Though the employers have found themselves in the predicament brought about by their own conduct yet, the court cannot be oblivious to the enforceability of the directions of the Tribunal in its order dated 05-04-2018, in Misc. Application Nos. 40 and 41 of 2000. Indisputably the college of Physical Education has since long been closed. The direction of the Tribunal to reinstate the employees in their posts of Lecturer, thus, cannot be given effect to; however reprehensible the conduct on the part of the employers in bringing about the things to such a pass. The direction to pay due wages, including the arrears, though theoretically possible to be given effect to, being in the nature of a monetary claim, yet the fact that such remuneration is either financed by grant in aid or fees generated from the students where the college is unaided also needs to be kept in view.

34. Mr. Deshpande, learned counsel for the employees would urge that the aforesaid order passed by the Tribunal on 05-04-2018 has attained finality. Writ Petition Nos. 1578 and 5601 of

2019, wherein the said order was assailed were summarily dismissed by this court by the order dated 06-11-2020. The employers have not challenged the order passed by this court in the said writ petitions. Thus, according to Mr. Deshpande, the petitioners are precluded from assailing the legality, propriety and correctness of the judgment and order passed by the Tribunal on 05-04-2018.

35. In the instant petitions, the employers have prayed for quashing and setting aside the order dated 05-04-2018 passed by the Tribunal in Misc. Application Nos. 40 and 41 of 2000 as well. It is incontrovertible that in writ petition Nos. 1578 and 5601 of 2019 the employers had sought quashing and setting aside of the order dated 05-04-2018 passed by the Tribunal in the Misc. Application Nos. 40 and 41 of 2000. Writ Petitions were dismissed by this court by following order.

“I do not find any substance in both the writ petitions. So far as the Contempt Proceedings are concerned, the College Tribunal has heard both the parties at length and reserved the matters for

orders. Though, the petitioners have requested the College Tribunal to keep the Contempt Proceedings in abeyance till disposal of the writ petitions, however, the College Tribunal has not considered the same since the matters are already reserved for orders and informed the petitioners that after Diwali Vacation, orders will be pronounced. It further appears that the petitioners herein, have not challenged the original order passed by the College Tribunal, of which the contempt has been alleged. In view of the same, the petitioners are always at liberty to challenge the order passed by the College Tribunal in those Contempt proceedings. However, these petitions are premature.

2. There is no reason for this Court to consider the grounds raised by the petitioners before the College Tribunal when the Tribunal has reserved the orders in said contempt proceedings, by adhering to the grounds raised by the petitioners in the Contempt Proceedings.

3. In view of the above, both the writ petitions are hereby dismissed.”

36. In the backdrop of the aforesaid order, the question that wrenches to the fore is whether the employers are precluded from agitating the issue of legality, propriety and correctness of the order dated 05-04-2018 on the ground of *res judicata* or the principles analogous thereto. The bar of *res judicata* or the principles analogous thereto applies in all kinds of civil proceedings. It applies to writ petitions as well. The question which, in the circumstances like the case at hand often arises is, whether the decision in the earlier writ petition was on merits, so as to constitute a *res judicata* or the petition was dismissed in limine without the court having entered into the merits of the case. If the court has entered into the merits of the case and dismissed the writ petition by an order which indicates reasons, however brief they may be, the decision operates as *res judicata* with full force and vigour. Difficulty arises in those cases where the writ petitions are dismissed without ascribing reasons.

37. A profitable reference can be made to the Constitution Bench judgment of the Supreme Court in the Case of **Daryao and**

others Vs State of U. P. AIR 1961 SC 1457 wherein the Supreme Court considered the question as to whether the dismissal of a writ petition filed by the party for obtaining an appropriate writ, by the High Court, creates bar of *res judicata* against the similar petition filed in the Supreme Court under Article 32 on the same or similar facts and praying for the same or similar writ. After analyzing the provisions and precedents the Supreme Court culled out the legal position in the following words.

“19. We must now proceed to state our conclusion on the preliminary objection raised by the respondents. We hold that if a writ petition filed by a party under Art.226 is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said judgment and move this court under Art. 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs. If the petition filed in the High Court under Art. 226 is dismissed not on the

merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the dismissal of the writ petition would not constitute a bar to a subsequent petition under Art. 32 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Art. 32. If a writ petition is dismissed in limine and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reasons that the petitioner was guilty of laches or that the had an alternative remedy it would not be a bar except in cases which we have already indicated. If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata. It is true that, prima facie dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the court took the view that there was no substance in the petition at all but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the court and that

makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Art. 32. If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Art. 32 because in such a case there has been no decision on the merits by the court.”

38. The Supreme Court has instructively pointed out the distinction between the dismissal of the writ petition in limine with reasons and without reasons. Thus, the Supreme Court held that if the writ petition is dismissed in limine whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on merits, it would operate as bar. If the petition is dismissed in limine without passing speaking order then such dismissal cannot be treated as creating a bar of *res judicata*. The Court went on to observe that prima-facie dismissal in limine even without passing a speaking order may strongly suggest that the court took the view that there was no substance in the petition at all; but in the absence of speaking order it would not be easy to decide what prevailed upon the court, and absence of reasons, thus

makes it difficult and unsafe to hold that such summary dismissal is dismissal on merits so as to constitute bar of *res judicata*.

39. The aforesaid judgment was referred to by another three Judge Bench in the case of **Workmen of Cochin Port Vs Board of Trustees of the Cochin Port Trust and another (1978) 3 SCC 119**. Again the Supreme Court illuminately postulated the circumstances in which the bar of *res judicata* would come into play in case of dismissal of a writ petition summarily. The following observations in para 10 are instructive and thus extracted below.

“10.But the technical rule of *res judicata*, although a whole-some rule based upon public policy, cannot be stretched too far to bar the trial of identical issues in a separate proceeding merely on an uncertain assumption that the issues must have been decided. It is not safe to extend the principle of *res judicata* to such an extent so as to found it on mere guesswork. To illustrate our view point, we may take an example. Suppose a writ petition is filed in a High Court for grant of writ of certiorari to challenge some order or decision on several grounds. If the

writ petition is dismissed after contest by a speaking order obviously it will operate as *res judicata* in any other proceeding, such as, of suit, Article 32 or Article 136 directed from the same order or decision. If the writ petition is dismissed by a speaking order either at the threshold or after contest, say, only on the ground of laches or the availability of an alternative remedy, then another remedy open in law either by way of suit or any other proceeding obviously will not be barred on the principle of *res judicata*. Of course, a second writ petition on the same cause of action either filed in the same High Court or in another will not be maintainable because the dismissal of one petition will operate as a bar in the entertainment of another writ petition. Similarly even if one writ petition is dismissed in limine by a non-speaking one word order 'dismissed', another writ petition would not be maintainable because even the one-word order, as we have indicated above, must necessarily be taken to have decided impliedly that the case is not a fit one for exercise of the writ jurisdiction of the High Court. Another writ petition from the same order or decision will not lie. But the position is substantially different when a writ petition is dismissed either at

the threshold or after contest without expressing any opinion on the merits of the matter: then no merit can be deemed to have been necessarily and impliedly decided and any other remedy of suit or other proceeding will not be barred on the principle of *res judicata*.”

(emphasis supplied)

40. The aforesaid exposition of law would indicate that whether the previous order of the dismissal of the writ petition creates a bar to entertain the subsequent petition on the same issue turns upon the nature of the earlier order. If the court has entered into the merits of the matter and dismissed the writ petition, it would preclude afresh consideration by the court. On the other hand where the petition is dismissed without entering into the merits of the matter, the subsequent petition would not be barred on the principle of *res judicata*.

41. On the aforesaid touchstone, reverting to the facts of the instant case from the persual of the aforeextracted order dated 06-11-2020, in writ petition Nos. 1578 and 5601 of 2019, so far as

the challenge to the order dated 05-04-2018, which was impugned therein, two sentences are germane.

“I do not find any substance in both the writ petitions.

In view of the above, both the writ petitions are hereby dismissed.”

Rest of the order deals with the grievances of the employers as regards the conduct of the proceeding in Misc. Application Nos. 1 and 2 of 2019 by the Tribunal, in which the impugned order came to be eventually passed.

42. In the circumstances of the case, the question of enforcibility of the direction passed by the Tribunal in its order dated 05-04-2018 was at the heart of the matter. The aforeextracted order dated 06-11-2020, *ex facie*, does not indicate that this court had adverted to said issue. Indisputably, the court observed that it did not find any substance in the writ petitions. These observations, in my considered view, do not unequivocally indicate that the court has entered into the question in controversy and found the petition unworthy of consideration. In the peculiar facts of the case, adverted to above, the aforesaid order dated 06-

11-2020 may not command the status of an order passed on merits. I am, therefore, persuaded to hold that the order dated 06-11-2020 does not constitute *res judicata*.

43. In the order dated 05-04-2018, the Tribunal has proceeded on the premise that since the employers did not follow the procedure prescribed under Section 92 of the University Act, 1994 and the college of Physical Education was not closed in conformity thereof, the college is still functional in the eye of law. Undoubtedly, the conduct of the employer is blameworthy. However, the hard facts could not have been lost sight of. One, the college was not in existence. Two, the employees could not have been reinstated as the posts were non-est. Three, even if notionally reinstated the employees could not have the discharged duties of their posts. Four, the employees were possessing the specialized qualification and they could not have been accommodated in any other posts. An order of reinstatement and payment of backwages, on the premise that, the college was still functional in the eye of law, though indisputably not in existence, does not commend itself.

44. This does not imply that the employees should be left in the lurch. By their conduct, acts and omissions, the employers snatched away the productive years from the life of the employees. Placing reliance on the solemn assurance of the employers, the employees did not explore other avenues. The submission on behalf of the employees that the professional career and personal life of the employees was ruined by the acts and omissions on the part of the employers cannot be said to be unfounded. The employees, therefore, deserve to be adequately compensated. Grant of compensation in lieu of reinstatement, where reinstatement is not practicable, is a well recognized principle.

45. In the case at hand, having regard to the entire gamut of the circumstances including the time lag of about 20 years and the fact that the employees were holding the posts of Lecturer, coupled with the blameworthy conduct of employers, in my considered view, justice would be met if the employers are directed to pay compensation of Rs. 50,00,000/- (Rupees Fifty Lakhs) to each of the employees. The aggregate amount of Rs. 50,00,000/- would represent a sum of Rs. 2,00,000/- and few thousands per

year, which having regard to the circumstances of the case, does not seem unreasonable.

46. In the backdrop of the aforesaid view, which this court is persuaded to take, the impugned order passed by the Tribunal dated 01-12-2020 is also required to be interfered with.

47. The upshot of aforesaid consideration is that the writ petition No. 307 of 2021, preferred by the employees and writ petition Nos. 1113 and 1114 of 2021 preferred by the employers deserve to be partly allowed. The impugned order dated 05-04-2018, passed by the Tribunal, in Misc. Application Nos. 40 and 41 of 2000, and order dated 01-12-2020, in Misc. Application Nos. 1 and 2 of 2019 are required to be quashed and set aside. And instead the employers are directed to pay the compensation to the employees. Hence, the following order:

ORDER

- I] a) The Writ Petition Nos. 1113 and 1114 of 2021 stand partly allowed.

b] The order dated 05-04-2018 passed by the Tribunal in Misc. Application Nos. 40 and 41 of 2000 stands quashed and set aside.

c) The petitioners herein- respondent Nos. 1 and 2 therein, shall pay the compensation of Rs. 50,00,000/- (Rupees Fifty Lakhs) each to the applicants therein Pradeep Vinayakrao Patil and Ravindra Uttamrao Wagh (employees) within a period of twelve weeks from today, failing which the amount shall carry interest @ 8% per annum.

d] The order dated 01-12-2020 in Misc. Application Nos. 1 and 2 of 2019 also stands quashed and set aside.

e) The petitioners-employers shall pay a sum of Rs. 1,00,000/- (Rupees One Lakh)

(46)

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each to the employees Pradeep Vinayakrao Patil and Ravindra Uttamrao Wagh towards the costs and litigation expenses.

II] The writ petition No. 307 of 2021 stands partly allowed to the aforesaid extent.

Rule made absolute in the aforesaid terms.

[N. J. JAMADAR, J.]

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