

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

901 CIVIL APPLICATION NO.12660 OF 2021
IN WP/1750/2018 WITH WP/1738/2018 WITH
WP/1750/2018 WITH CA/12661/2021 IN WP/1738/2018

MAHAVEER PRAVIN JAIN
VERSUS
KHANDESH EDUCATION SOCIETY THROUGH ITS SECRETARY
JALGAON AND OTHERS

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Advocate for Applicants/petitioners : Mr. Waramaa B. R.
AGP for Respondent/s-State : Mr. S. B. Yawalkar.
Advocate for Respondent Nos.1 &2 : Mr. S. P. Brahme a/w
Mr. M. S. Shah.

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**CORAM : RAVINDRA V. GHUGE, AND
S. G. MEHARE, JJ.**

DATE : 07.12.2021

PER COURT :-

1. On 03.12.2021, we had passed the following order :

“1. In both these civil applications the applicants were working as ‘Junior Clerk’ in Class-3 post and a ‘Peon’ in Class-4 post, respectively. The issue raised in their writ petitions is against the refusal of grant of approval by the concerned authority on the ground that these two applicants were appointed irregularly. The salary grants were therefore not extended to these two employees and they were treated as being in the employment of the Institutions, which posts were not supported by grant-in-aid.

2. While dealing with the writ petitions filed by these two

petitioners, challenging the refusal of approval, this Court (Coram: Z. A. Haq and S. M. Gavhane, JJ.) admitted the petitions vide order dated 24/02/2020 and directed the Management as under :

“4. However, considering the facts of the case and nature of the controversy, following order is passed :

[i] The Respondent-Management shall make payment to the petitioner in the prescribed pay scale as per the rules, for the post of Peon.

[ii] The arrears, after adjusting the amount paid, shall be paid by the Respondent-Management by a Demand Draft or by depositing the amount in the bank account of the petitioner, till 15.05.2020.

[iii] The Respondent-Management shall continue to pay the regular salary to the petitioner as per the prescribed pay scale every month along with other emoluments by depositing the amount in the bank account of the petitioner.

[iv] The Respondent-Management is at liberty to make claim for disbursement of the amount from the department and if such claim is made, the department shall take decision as per the rules.”

3. The Management preferred review petitions, which were considered by this Court and by order dated 24/09/2021, this Court recorded in paragraph Nos.7 to 14 as under :-

“7. The contention is that the writ petitions have been filed by the original appellants/ employees, who were terminated employees of the review applicant/ Management. Both the parties settled the dispute before the University Tribunal and the Management agreed to

reinstate the employees without backwages on the condition that they would be paid salary as per the pay scale. The Management would seek reimbursement of the amount of salary paid to the employees and if the Education Department declines to sanction the payment as per the pay scale, the Management would not be responsible. Since the Education Department declined to sanction salary grants as the employees, according to the Education Department, were not appointed by following the legal procedure, that the employees have preferred Writ Petition Nos.1738/2017 and 1750/2018 for challenging the decision of the Education Department dated 18.08.2017.

8. We find from the record that the learned counsel representing the Management, when the interim orders sought to be reviewed dated 24.02.2020 were passed, is not the advocate, who has preferred these Review Applications. When the writ petitions are pending and the order sought to be reviewed is an interim order passed therein, the party seeking review should have practiced self imposed restraint and ideally should have approached this Court through the same advocate. Nevertheless, we have extensively heard the learned advocate for the review applicants and we do not intend to go into the issue as to why the Management has opted for a new advocate. We leave this issue to the good conscience and wisdom of the Review Applicants.

9. It is undisputed that the employees at issue were being paid Rs.140/- per day, which is about Rs.4200/- per month. Our judicial conscience is shocked by this fact. We do not expect a human being to keep his mind, body and soul together with a paltry amount of

Rs.4200/- per month in which he and his family is to survive.

10. The above aspect was canvassed before the learned Bench which passed the interim orders dated 24.02.2020 and after considering this aspect, the learned Bench has passed the interim orders.

11. The learned advocate for the review applicants/ Management submits that the directions at paragraphs 4(i) and 4(iv) need to be reviewed. The basis for such contention is that the settlement between the employees and the Management does not prescribe that the Management should pay the pay scale to the employees if the Education Department does not sanction the prescribed pay scale. We do not find that the said submission could be sustained for the reason that the compromise between the employees and the Management cannot create a financial burden on the State Government, which is not a party to the settlement between the two outside the Court. No such settlement without participation of the Government, could create a financial burden on the Government, either directly or indirectly. In this backdrop and keeping in view that an employee cannot be expected to sustain himself and his family in Rs.4200/- per month, we do not find that paragraph 4(i) deserves to be reviewed.

12. Insofar as paragraph 4(iv) is concerned, the State Government, which is not a party to the settlement, is not obliged to grant funds for the reasons which are already subject of challenge in the pending Writ Petitions. The fact remains that the Management has reinstated the employees so as to avoid the

judgment of the University Tribunal and after the employees waived the backwages which reduced the financial burden on the Management. Disallowing of the bills, would cast the burden on the Management to make the payment of salary to the employees, who are admittedly working with the Management and cannot be expected to survive with Rs.4200/- per month.

13. In view of the above, paragraph 4(iv) of the interim order does not call for review as no error or mistake apparent on the face of the record is made out.

14. The Review Applications are, therefore, rejected.”

4. Paragraph 12 of the above reproduced order would indicate that these applicants were earlier terminated and they had approached the University Tribunal and vide judgment of the learned University Tribunal, they were reinstated in employment.

5. By these two civil applications, the applicants submit that they have been terminated from employment by orders dated 01/11/2021, on the ground that they were appointed as daily wagers, they were not occupying a post and as the Management has to pay their salary from it's coffers, the Management cannot afford to continue them in employment without salary grants being extended to them.

*6. We have perused the impugned order. Though the applicants have not pleaded in their civil applications, we find that the impugned order dated 01/11/2021 is based on a Resolution passed by the Governing Council of the Management on 01/11/2021 and the services of the applicants have been terminated with retrospective effect from 31/10/2021. In the light of the law laid down by this Court in **Assaram Raibhah***

Dhage Vs. Executive Engineer & ors., 1989 (2) C.L.R. 331, termination with retrospective effect is unforeseen and impermissible in law. The Management can surely terminate an employee by following due process of law as a Court cannot prevent a Management from terminating services of an employee by way of blanket relief.

7. *The learned Advocate for the Management graciously submits that he would take instructions from the Management and make a statement on 07/12/2021.*

8. *In view of the above, we are placing these applications in the 'passing orders' category, on 07/12/2021."*

2. Today, the learned advocate for the Management submits that the Management, while issuing the termination order to the petitioners, committed an error in dating the termination order as 31.10.2021. By a resolution dated 01.11.2021, it was decided by the Management to terminate the services of the petitioners. A specific date was not mentioned in the resolution dated 01.11.2021. Hence, considering the order of this Court dated 03.12.2021, the Management has recalled its earlier termination order dated 31.10.2021 and has passed a fresh order dated 06.12.2021 making the termination effective from 08.12.2021. The said order has been forwarded through R.P.A.D. as well as WhatsApp. The learned advocate for the petitioners submits that they have received the WhatsApp

message, but yet to receive copies of the order. He further submits that now, in the Court Hall, he has received a copy of the said order.

3. The learned advocate for the Management submits that considering the peculiar situation as above, both the petitioners have been paid their wages with effect from 01.11.2021 till 08.12.2021.

4. The learned advocate for the petitioners submits that these petitioners have been terminated only to frustrate the order of the High Court. The learned advocate for the Management has pointed out from the termination order that as approval is refused to these two employees and since they have to be paid salary from the coffers of the Management, it is not possible for the Management to sustain their private services and hence their services have been terminated.

5. This Court had passed an order in the Writ Petition taking into account the cause of action put forth. Both the petitioners were challenging the refusal of their approval. Since no Court can pass an order directing a Management never to terminate an employee and as the law mandates that

any protection to be granted to the employee could be in the nature of 'not to terminate without following the due procedure of law', any such termination would be an independent cause of action. The Maharashtra Public Universities Act provides powers to grant reliefs, to a Tribunal under Section 83. An appeal can be filed before the Tribunal under Section 81, challenging the dismissal, removal or otherwise termination or compulsory retirement of an employee or his reduction in rank, by the University or the Management. Such appeal shall be maintainable before the Tribunal.

6. Considering the above, these two Civil Applications are disposed off.

7. We leave the petitioners / applicants at liberty to avail of the remedy as is permissible under the Maharashtra Public Universities Act.

8. Needless to state, since the petitions filed by these two petitioners pertain to a challenge to the refusal of the Education Officer in granting approval to their services, both the petitions cannot be said to be infructuous and can be

considered on their own merits.

9. As such, list both the petitions on 10.01.2022. If time permits, the petitions would be considered finally at admissions stage.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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vmk/-