

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

WRIT PETITION NO.6657 OF 2021

Maulana Azad Educational Trust &]
Anr.] ... Petitioners

Vs.

Mohammad Abrar S/o. Mohd.]
Razzaque & Anr.] ... Respondents

ALONG WITH

WRIT PETITION NO.6658 OF 2021

Maulana Azad Educational Trust &]
Anr.] ... Petitioners

Vs.

Shaikh Liyakat Shaikh Yunus & Anr.] ... Respondents

ALONG WITH

WRIT PETITION NO.6665 OF 2021

Maulana Azad Educational Trust &]
Anr.] ... Petitioners

Vs.

Syed Rafiuddin Syed Allemuddin &]
Anr.] ... Respondents

ALONG WITH
WRIT PETITION NO.6662 OF 2021

Maulana Azad Educational Trust &]
Anr.] ... Petitioners

Vs.

Safdar Ali Siddiqui & Ors.] ... Respondents

ALONG WITH
WRIT PETITION NO.6663 OF 2021

Maulana Azad Educational Trust &]
Anr.] ... Petitioners

Vs.

Shaikh Ajaz Shaikh Ismail & Anr.] ... Respondents

ALONG WITH
WRIT PETITION NO.6659 OF 2021

Maulana Azad Educational Trust &]
Anr.] ... Petitioners

Vs.

Shaikh Anwaruddin Shaikh]
Saleemuddin & Anr.] ... Respondents

ALONG WITH
WRIT PETITION NO.6660 OF 2021

Maulana Azad Educational Trust &]
Anr.] ... Petitioners

Vs.

Khan Musheer Ahmed Meraj Ahmed]
Khan & Anr.] ... Respondents

ALONG WITH
WRIT PETITION NO.6661 OF 2021

Maulana Azad Educational Trust &]
Anr.] ... Petitioners

Vs.

Shaikh Zubair Shaikh Jafar & Anr.] ... Respondents

ALONG WITH
WRIT PETITION NO.6666 OF 2021

Maulana Azad Educational Trust &]
Anr.] ... Petitioners

Vs.

Abrar Khan Gulam Rasul Khan &]
Anr.] ... Respondents

ALONG WITH
WRIT PETITION NO.6664 OF 2021

Maulana Azad Educational Trust &]
Anr.] ... Petitioners

Vs.

Abdul Azim Abdul Hakim & Anr.] ... Respondents

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Mr. R.N. Dhorde, senior counsel i/b Mr. P.S. Dighe for the petitioner.

Mr. A.N. Kakade for respondent No.1.

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CORAM : MRS. BHARATI DANGRE, J.

RESERVED ON : 03RD FEBRUARY, 2022.

PRONOUNCED ON : 26TH FEBRUARY, 2022.

JUDGMENT:-

1. These nine writ petitions are instituted by Maulana Azad Educational Trust (for short, **“the said Trust”**) through it’s Chairman and the Managing Trustee of the said Trust, challenging the common judgment and order delivered by the Learned Presiding Officer, University and College Tribunal, Aurangabad, in ten distinct appeals, filed by ten of it’s non-teaching employees, working in the Millennium Institute of

Management (for short, **“the MIM”**) in various capacities. By the impugned judgment delivered on 15/03/2021, the Tribunal has quashed and set aside the termination of the employees and directed their reinstatement along with arrears of salary, from the date of termination, till their reinstatement, coupled with continuity in service.

2. I have heard Mr. R.N. Dhorde, learned senior counsel instructed by Mr. P.S. Dighe for the petitioners and Mr. A.N. Kakade, learned counsel appearing for the respondent-employees, in all the petitions.

Since the respective counsel expressed that they are desirous of arguing the writ petitions finally, at the stage of admission, I deem it necessary to issue Rule. Rule made returnable forthwith. By consent of the parties, writ petitions are heard finally.

3. In order to appreciate the correctness of the impugned judgment and order, it would be apposite to briefly refer to the facts involved, constraining the management to approach this court by filing bunch of the petitions.

Petitioner No.1 is a Trust, founded in the year 1999-2000, aiming expansion of educational field and the Trust introduced, courses in Master of Computer Applications (**“MCA”**) and Master of Business Administration (**“MBA”**) at its Tom Patrick Institute of Computer and Information Technology. It is the case

of the petitioner that it was the pioneer in starting these courses in Aurangabad, since the students aspiring to take education in MBA from Aurangabad region could not afford to travel to Pune and Mumbai. In order to cater to the demand, even a part time course in MBA was also started. At a subsequent point of time, for better administration, Tom Patrick Institute of Computer and Information Technology was merged into MIM, which continued to run three courses viz. MCA, MBA (Full Time) and MBA (Part Time).

4. In order to run the said course, it became imperative for the Trust to appoint the staff, which necessarily included the teaching and non-teaching staff. The respondents to the present petitions, who were the appellants before the Tribunal were appointed in different capacities like, office assistant / lab assistant / peon / attendant / sweeper / assistant librarian / system administrator, etc. and it is the claim of the management that the appointment of the employees was effected without adhering to the due procedure but, there is no denial to the fact that initially, the respondents were appointed in Tom Patrick Institute of Computer and Information Technology, which was subsequently merged with the MIM and even the respondent-employees came to be absorbed in MIM in the non-teaching staff. The respondents claim that they are in service of the MIM since last 10 years and the claim set by them is that some of them were even promoted. The respondents also claim that they are

permanent employees of petitioner No.1-Trust.

The bone of contention between the petitioners and its employees i.e. the respondents, is termination of their services; the employees assailing the same as illegal and arbitrary action, adopted as an escape route from meeting the demands of the employees to grant Fifth and Sixth Pay Commissions, per contra, the petitioner No.1-Trust attributes the termination to reduction of number of students admitted in the course, resulting in paucity of funds and finally drawing curtains on the courses and the Institute itself, compelling them to put an end to services of the non-teaching staff. This stand of the management, which is put forth in the petitions needs to be analyzed.

5. It is the stand of the petitioners that since the year 2013-14, due to unavoidable and extraneous factors, including decline in the admission of students, poor performance by the teaching staff and conflicts within the staff members, driven by personnel agenda, the Institute started running into losses, which made it nearly impossible to continue the Institute. The data of the four Academic Years 2016-17 to 2019-20 is projected through the petition, which is stated to reflect the downfall in the admissions. Since there were less number of admissions and the revenue generated was inadequate, there resulted a huge deficit in the collection of revenue and the amount to be expended, on the salary of the teaching and non-teaching staff and this weighted out against the non-salary expenditure, which resulted into huge

loss is, what the petitions claim.

On account of the permissions being granted to open new Institutes for running the courses, which were started by the petitioner No.1-Trust, in the Marathwada region, also resulted in decline in the admissions in the petitioner-Institute. The claim staked in the petitions is that, it is not only the petitioner-Institute, but various Institutes in the Marathwada region, which were left with large number of vacant seats at the end of the admission process, as against the sanctioned intake and since the number of the students admitted was minimal in number, the expenditure for running the course was required to be borne by the management.

It is pleaded in the petitions that from the year 2013-14 to 2017-18, the Trust incurred huge expenditure to the tune of Rs.2,67,66,038/- approximately for the MCA course and Rs.2,34,06,204/- approximately towards running the MBA course.

6. The aforesaid circumstances, constrained the petitioner No.1-Trust to take steps for it's closure and in the meeting of the Trust held on 15/03/2018, a resolution was unanimously passed to close down the MIM from the Academic Year 2018-19. The resolution is placed on record at Ex-A to the petition.

Pursuant to the said decision taken by the Board of Trustees, a detailed proposal under Section 121 of the Maharashtra Public Universities Act, 2016 came to be forwarded

to the Vice Chancellor, Dr. Babasaheb Ambedkar Marathwada University for permission to close down the MIM. The proposal dated 24/04/2018 highlighted the statistical and financial record of the Institute for the last five years indicating downfall in the admission, inadequate revenue generation, which was insufficient to meet out the salary and non-salary expenditures, resulting into huge deficit. The deficit amount for the two courses was also highlighted in the representation.

Similarly, an application was also moved to the Higher and Technical Education of the Government of Maharashtra and a request was also made to the Admission Regulatory Authority on 05/01/2018, intimating it about the decision of the Trust taken in it's meeting dated 15/03/2018 to close down the MIM from the Academic Year 2018-19. It was also informed that the Trust requested the competent authority for closure of the Institute and, therefore, the Admission Regulatory Authority was requested not to allot seats for admission to the MCA and MBA courses in the MIM from the Academic Year 2018-19 and communication was also forwarded to the Commissioner, State Common Entrance Test Cell, Maharashtra State with a similar request. The aforesaid communications are also addressed to the Principal Secretary, Higher and Technical Education Department, Government of Maharashtra as well as the Director of Technical Education, Mumbai.

7. Upon the said correspondence, the Directorate of Technical

Education, Regional Office at Aurangabad directed the petitioner to submit an affidavit about the closure of Institute highlighting the responsibility of the infrastructure, staff, students and court cases, accordingly. The Chairman of the Trust filed an affidavit as desired, indicating that the infrastructure is developed by the Trust's own funds and there is no loan/grant received. As far as the staff is concerned, the affidavit stated that it shall be dealt with as per the terms and conditions of their services and it shall abide by any directions issued by any court in pending proceedings.

It is worth to mention that despite these communications requesting that the Institute shall not be listed in the admission process and no student be allotted seats in the Institute for the Academic Year 2018-19, the State Common Entrance Test Cell erroneously published the list of students, who were allotted admission for MBA course in the MIM on 05/07/2018. The petitioner, therefore, immediately entered into a correspondence with the Joint Director, Technical Education, Aurangabad Region as well as the Director of the Technical Education, Mumbai requesting to make necessary correction in the database / website at the earliest. In any case, since the students, who were allotted seats in the Institute of the petitioner-Trust, on gaining knowledge that the Institute is closed, sought admissions elsewhere. Thus, in the year 2018-19, not a single student was admitted in the petitioner-Institute.

Unfortunately, the Regional Joint Director, Technical

Institute, by its letter dated 10/07/2018 informed the petitioner that the permission of not admitting the students in the year 2018-19 in the MIM came to be rejected.

8. After this event and to be precise, on 11/07/2018, the University constituted a four-member committee to submit a report on the application made by the petitioner-Trust seeking closure of the Institute, after physically verifying the Institute.

The enquiry was conducted as directed by the local enquiry committee for continuation of the affiliation and it made the following observations:

“1. The institute has applied for closure of all MBA & MCA courses with effect from academic year 2018-19. The respective closure application has been sent to the University and the Director of Technical Education (DTE).”

The aforesaid event constrained the petitioner to file writ petition before the High Court challenging the letter dated 10/07/2018, refusing to permit the Institute, not to admit the students for the Academic Year 2018-19 and the said Writ Petition No.8378 of 2018 is still pending for consideration.

9. On the commencement of the Academic Year 2019-20 and since the earlier application for closure dated 24/4/2018 was not decided by the University and it was necessary to submit a

proposal before the cut-off date, the petitioner-Trust once again passed a resolution for closure of the said courses from the Academic Year 2019-20 in its meeting dated 30/07/2018. Again the same procedure was repeated by forwarding the proposal to the University as well as the Director of Technical Education, seeking closure of the MIM for the Academic Year 2019-20 on account of the shortfall of students. The University was apprised that the proposal for closure of the Institute shall be considered in view of Section 121 of the Maharashtra Public University Act, 2016 from the Academic Year 2019-20.

10. At this stage, AICTE/the Apex Body came into the frame of events and the Regional Officer of the AICTE forwarded a letter dated 29/09/2018 submitted by petitioner-Trust to the Advisor, AICTE, New Delhi for its information and necessary action.

Pursuant thereto, the Expert Visit Committee of the AICTE submitted its report to the AICTE, wherein it indicated that no intake is recommended in the MIM for the Academic Year 2019-20 and the observations of the Committee reads as under:

“Single digit admissions since 3 years and requested for closure. Request for State Government, DTE, AICTE for closure have been sent. So forwarded for AICTE for necessary action.”

The petitioner also forwarded online application to the AICTE for closure of the MIM in compliance of the necessary procedure.

11. The State Government acceded to the request of the petitioner for closure of the Institute and on 04/07/2019 issued a Government Resolution granting permission to close various Institutes and this included the course of MBA run by the said Trust's MIM with an intake capacity of 120 and MCA course with capacity of 60 students.

Thus, the State Government granted permission to close down the two courses run by the MIM, subject to certain conditions.

12. In the pending petition filed by the petitioner-Trust, the University submitted its report on 07/03/2020, recording that the number of admissions in the Institute in the Academic Year 2017-18 and in Academic Year 2018-19 are abysmally low and there was no single admission in the Academic Year 2019-20. The Report also referred to the fact that the State Government had granted permission to close the two courses of MBA and MCA run by the MIM. The Committee of the University therefore suggested that the possibility of handing over the Institute to any other Institute should be explored, else permission should be granted to close down the college/institution. The report of the fact finding committee

dated 07/03/2020, recommended its closure, by observing that the Institute has not obtained any grant from UGC, State Government or any Government Agency, for construction of building, salary, etc. It also mentioned that the management had taken the responsibility of the salary and dues payable to its staff and it also reported that for two consecutive years, 2017-18, the admissions were minuscule and in 2019-20, not a single student was admitted.

Upon happenings of this events, the petitioner Trust terminated the services of the respondents on 27/07/2020, directing the termination to come into effect from 30/07/2020 on account of the closure of MBA (FT & PT) and MCA courses.

13. This order of termination gave rise to institution of distinct appeals by the respondents before the University & College Tribunal at Aurangabad, seeking a declaration that the termination order is illegal and without any authority and praying that it should be quashed and set aside and the appellants be reinstated.

The reliefs sought in the appeals came to be opposed by the Management by filing a detailed reply, highlighting the sequence of events and inviting the attention of the Tribunal to the permission of closure of the courses run by MIM by the State Government granted on 04/07/2019 from the Academic Year 2019-20. Apart, the shortfall and the deficit in the income, from the year 2016 to 2019 was also highlighted and it was

pleaded that the decision to terminate the services is taken by passing a resolution by the Board of Trustees of the Trust, unanimously in its meeting on 15/03/2018 and supplementary meeting dated 30/07/2018.

The Tribunal clubbed the ten appeals and decided the issues involved, in the backdrop of the arguments advanced.

14. On consideration of the rival contentions and appreciating the arguments of the appellants that the termination order is premature, the Tribunal observed that the appellants were terminated only because MCA and MBA courses were closed down and the order of termination does not indicate that the appellants are surplus non-teaching staff members. The Tribunal has held as under:

“20) Now, while dealing with the legality of impugned termination order, it can be said that, it is premature order. After going through the order, it emerges that, the appellants were terminated only because the M.C.A. and M.B.A. courses were closed down. This order does not show that, appellants are surplus non-teaching staff members. It cannot be ignored that the appellants were appointed by the trust and they were the employees of the trust. Their services were annexed with the trust and not with any particular course. Therefore, merely for the reason of closure of M.C.A. and M.B.A. courses, services of the appellants cannot be terminated. Even the permission given by respondent no.6 University to respondent no.1 trust to close down the M.C.A.-M.B.A. MIM institute cannot validate the termination order, dated 27.7.2020, for the simple reason that, permission for closure of college was given by the University on 3.12.2020 and

that order has prospective effect from 3.12.2020. Thus, only conclusion can be drawn that, termination order issued by respondent no.1 on 27.7.2020 is premature as well as illegal. Otherwise also Section 121(1) of the Universities Act provides that college or institute can be closed, only with the permission of the State Government and not with only permission given by the University. In the case at hand, permission to close the college with effect from 3.12.2020 was given by the University and not by the State Government. Therefore, respondent nos.1 and 2 cannot justify the termination of appellants under order, dated 27.7.2020.

21) Before parting with the judgment, I must mention that, though the learned counsel for the appellants placed reliance on the judgment, passed by the Hon'ble Bombay High Court in **Writ Petition No.8837 of 2015, on 8.12.2015 in Maulana Azad Educational Trust and others vs. Uzma Khanam Mirza Moin Ullah Baig and another**, the ratio of this authority is not at all applicable in the case at hand, because in that case, termination of the teacher was invalidated for the reason of non-compliance of Rule 28(1) of the M.E.P.S. Rules, 1981 i.e. one month notice prior to the termination. Such contingency does not arise in the case at hand.

22) Respondent nos.1 and 2 have not followed the principle, 'last come, first go'. Admittedly, respondent no.1 has retained two non-teaching staff members, who are junior to appellants. The reason assigned by respondent no.1 for retention of junior staff member is not acceptable. Even the balance sheet of trust filed in Appeal No. 35 of 2020 shows that financial condition of respondent no.1 is sound. Financial crisis of MIM college is not relevant as the appellants are employees of respondent no.1 trust. Thus, reason assigned by respondent no.1 as revenue deficit, due to reduced number of admissions, for termination is not acceptable."

15. In the wake of the aforesaid observations, the impugned

termination order dated 27/07/2020 was quashed and set aside and Respondent Nos.1 and 2 to the appeal (the petitioners herein) were directed to reinstate the appellants/employees within a period of three months, with a direction to the management to pay the arrears of salary, from the date of termination till reinstatement with benefit of continuity of service.

16. Learned senior counsel, Mr. Dhorde would submit that the petitioner-Trust is a minority Institution and it runs various Institutions and Colleges and amongst this, the MIM was one of the prestigious institute in Aurangabad, which was offering courses in MBA and MCA. Since the admission in the college was dwindling year after year and when it became unviable to run the Institute, the permission was sought to close the courses being run by the Institute. The permission was sought from the concerned Maharashtra Public Universities Act as well as from the State Government. He would submit that the State Government permitted closure of the MCA and MBA courses run in the MIM with effect from 04/07/2019 and the University has also permitted its closure on 03/12/2020.

17. The learned senior counsel would thus submit that the observations of the Tribunal, in the wake of the events which have occurred, where the two authorities i.e. the State Government, which has granted permission to run the courses

and the University, which has affiliated the courses, have acceded to the proposal of closure of the courses and since there are no resources with the Trust to bear the salary of the non-teaching staff, their services are put to an end. Dealing with the contention of the respondent-employees that some staff have been retained by adopting a pick and choose method, he submits that except three persons, including the accountants, who are necessary, for winding up the working of the institute are retained, else everyone is terminated by adopting the uniform procedure. According to the learned senior counsel, the finding rendered by the Tribunal that the termination is premature is absolutely erroneous and cannot be sustained particularly, when the Tribunal directs reinstatement of the appellants before it, without considering the financial position of the Trust, which compelled it to close down the courses on account of sharp decline in strength of the students.

18. Per contra, the learned counsel for the respondents would submit that the Tribunal has rightly appreciated the facts and law and is perfectly justified in setting aside the impugned termination order. He would submit that the appointment of the respondents was not by the Institute but it was by the petitioner No.1-Trust and since the Trust is running several other colleges and courses, the Trust ought to have absorbed them in its other colleges/institutions. By placing on record the information obtained from the General Secretary of the Society, the learned

counsel would submit that there are various posts, like that of senior clerk, junior clerk, lab assistant, lab attendant and library attendant, which are vacant in Maulana Azad College Rauza Bagh, Aurangabad and in Dr. Rafiq Zakaria College for Women, Navkhanda, Aurangabad, two posts of junior clerk, lab attendant, library attendant and one post of peon is available.

Another college belonging to the Turst i.e. Marathwada College of Education, Rauza Bagh, Aurangabad, also have three posts vacant, one each of senior clerk, junior clerk, and peon, is his submission. The vacancy position of Kamala Polytechnic (Pharmacy) Aurangabd run by the petitioner No.1-Trust is also placed on record, to indicate that one post of store keeper, one post of typist, two posts of lab attendant and one post of gardener, two posts of sweeper and one post of peon are vacant in the said Institute.

19. One more submission advanced is, that the teaching staff have been retained and paid the salary till date, but prematurely, before the AICTE, which is the Apex Body for the MBA and MCA courses being run by the Institute would accord their permission for closure, the closure is declared and the non-teaching employees are illegally terminated.

The learned counsel would rely upon a detailed affidavit filed on 22/07/2021, accompanied by the appointment orders of the respondents, the documents obtained by him under the RTI Act and also the Approval Process Handbook published by

AICTE relating to closure of institution and the chart reflecting the arrears of the 6th pay due to the respondent-employees.

20. In the background of the aforesaid facts, the impugned order passed by the School Tribunal deserves an adjudication and the two main issues would determine the outcome; whether the appointment of the respondents-employees is by the Trust and, on closure of a particular institute, whether the employees deserve an absorption in any other colleges/institutes run by the Trust and, secondly, whether the employees, whose services are terminated on closure of the course, are permanent or temporary employees, which make it imperative for the management to absorb them. Another ancillary point, which would determine the claim in the petitions, is whether the termination is premature since the final approval for closure by the AICTE is not yet accorded.

21. Petitioner No.1 is a minority Trust which runs MIM, where the respondents were recruited in different capacities like lab attendant, lab assistant, office assistant, peon, sweeper, accounts assistant, system administrator, etc.

The respondents by filing an affidavit dated 31/01/2022 has placed on record their appointment orders/letters along with a chart reflecting the date of first appointment as well as the subsequent appointment orders of continuation and the capacity, in which the appointments are effected.

The appointments order/experience certificates placed on record along with the said affidavit from page No.369, clearly reveal that the appointments were effected purely on temporary basis and in some cases for particular academic year, and in some cases, without mention of the said period. The various orders reflect that the appointments were purely on temporary basis, coupled with a stipulation that after expiry of the said period, the services shall be terminated without any notice. The appointment order of one of the respondents to the writ petition, Mr. Abar Khan as office assistant reflects that he was appointed on monthly consolidated payment of Rs.2,900/- without any allowance. His further appointment order of 2004 is also on a consolidated payment and is shown as continuation order. In the year 2009, he is placed as office assistant in the pay scale of Rs.4000-100-6,000/-.

The appointment order of one Mr. Shaikh Anwaruddin, who was appointed as lab assistant also reflects that it was of a temporary nature for the academic year and his continuation is also purely on temporary basis. The order issued to him in the year 2001 reflects his appointment purely on temporary basis of consolidated payment of Rs.2900/-.

By order dated 26/02/2009 his services are continued as lab assistant in the pay scale of Rs.3200-85-4900.

These are some of the instances reflecting the manner in which the appointments of the employees are effected. The experience certificates cannot be relied upon since they are

obtained by the employees for their benefits and they do not reflect the real nature of their appointment, but record their satisfactory work.

One letter addressed by the Principal to the Chairman of the Trust seeks permission to appoint persons on daily wages and this include the post of computer operator at the rate of Rs.100/- per day and lab attendant, at the rate of Rs.75/- per day. The appointments are thus effected without following the due procedure and since the orders were issued under the signature of the Maulana Azad Educational Trust and the experience certificate was issued by the Director of MIM, it is manifest that the appointments are not made after following the due procedure of inviting applications, selection of the candidates and appointment in regular pay scale, as per availability of the posts in the institute.

22. As far as the service conditions of the respondents are concerned, they were initially governed by the Maharashtra Agriculture Universities and Affiliated College Standard Code (Terms & Conditions of Service of Non Teaching Employees) Rules, 1984, but thereafter, from the year 2010, in terms of the G.R. dated 2015/2010, they are governed by the Maharashtra Civil Services (Conditions of Services) Rules.

The said change is brought to the notice of the Principals of all Institutes affiliated to Dr. Balasaheb Ambedkar Marathwada University. The appointments of the respondents,

examined from any angle, do not fulfill the criteria for appointment to be made on permanent basis and, though the Trust is running a minority institution, they are not absolved from following the procedure for making permanent appointments in vacant post, without adhering to the procedure of advertisement, issuing appointment order in proper format, etc. The Trust which was specifically established for giving aid by way of donation out of the income / corpus of the Trust fund to the different charitable institutions, societies, organizations is bound to adhere to the norms of appointment and the due procedure. The respondents have failed to bring on record any material to show that they were appointed as regular employees, by following due procedure, on application being invited through open market. The appointment orders of the respondents clearly reflect that they were appointed on consolidated payment, on temporary basis, and merely because they have been working for a long period of time, do not clothe them with the benefits of permanent employees. The compilation of documents in the form of appointment orders/experience certificates merely reflect the convenience approach of the management and as per their sweet will, effecting promotions of the employees/respondents selectively but retaining them on consolidated payment without any permanency status affixed to them. Unfortunately, the respondents also never claimed such status, but assume to hold the posts permanently.

The aforesaid aspect has been completely ignored by the College Tribunal.

23. As far as the contention of the learned counsel for the respondents that the petitioner-Trust is their appointing authority and, therefore, on closure of the institute, they should have been absorbed in any other college/institute run by the Trust, since the learned counsel for the respondents has placed on record, the list of institutions run by the Trust and also the available vacancies, the said contention is specifically refuted by the petitioner-Trust by filing a rejoinder on 02/01/2022. It is specifically stated in the affidavit that Maulana Azad Educational Trust i.e. petitioner No.1 and Maulana Azad Education Society are two totally different entities, having different registration and separate constitution and by-laws. It is specifically pleaded in the affidavit that the Maulana Azad Education Society is running aided and some non-aided courses i.e. Maulana Azad College of Arts, Science and Commerce, (ii) Dr. Rafiq Zakaria College for Women, (iii) Marathwada College of Education and (iv) Kamala Nahru Polytechnic (Pharmacy). All these institutions are enlisted by the respondents in their affidavit stating that the vacancies are available in these institutions and they can be accommodated in the same. The affidavit filed by the Director of the Trust specifically avers that the information given to the effect that there are surplus posts in these institutions is incorrect and, according to the management, there are 13 surplus

employees working in Class III posts and 4 surplus employees working in Class IV posts and, as such, there are no vacancies available for accommodating the staff appointed by the petitioner-Trust. The clear-cut chart, giving the details of non-teaching staff of the unaided institutions and schools run by the petitioner-Trust is also placed on record as PV-I and this includes Model D. Ed. College, Model High School, Institute of Hotel Management, Y.B. Chavan College of Pharmacy and Rose Academy for Toddlers.

24. In the wake of the aforesaid rival claims, it can be apparently seen that the appointment of all the respondents is not effected on permanent post and since no vacancies are available in the institutes run by petitioner No.1-Trust, the respondents cannot be absorbed. It is not the case that they are declared surplus, as what has been assumed by the respondents, but their services are required to be terminated by petitioner No.1 on account of the closure of the institute and the closure was a result of less number of admissions of the students in the MIM, running the three courses and it was not financially viable to run the courses for few students, where the financial burden was required to be totally shouldered by the management and, therefore, after passing a resolution for closure of the courses, the closure is effected.

The contention of the respondent that the appointments were effected by the Trust and, therefore, on closure of the

particular course, they ought to have been accommodated in some other institutes run by the management is, therefore, not acceptable and, the contention deserves to be rejected.

25. The second leg of the argument of the respondents being that the permission of the AICTE is not yet obtained and, therefore, the termination is premature also deserve to be tested in the light of the facts, which have been placed on record through the petition.

Petitioner No.1 which was running MIM had sharp decline in the admissions for the MBA and the MCA courses, since the Academic Year 2017-18 and a request was made to the concerned authorities not to allot the students for the Academic Year 2018-19 and this decision was taken pursuant to the resolution dated 15/03/2018 passed in the meeting of the Board of Trustees.

26. The application came to be preferred to the University, to which the institute was affiliated, seeking permission for closure as contemplated under Section 121 of the Maharashtra Public Universities Act. The reason cited for closure was the financial position of the institute on account of the decline in number of students. Similarly, the Higher & Technical Education Department of the Maharashtra was also approached, with a request not to allot students for the Academic Year 2018-19 and the request was also forwarded to the Admission Regulatory

Authority and also to the State Entrance Test Cell. However, the same came to be rejected for the said year, which constrained the petitioner to approach the High Court.

In any case, the request was again renewed for the Academic Year 2018-19 and the University constituted a four member-Committee to visit the institute and submit it's report before taking a final call on the application submitted by the petitioner for closure of the MIM. Considering the report of the Committee to be favourable, the University permitted it's closure by order dated 03/12/2020, in terms of the report of the Committee appointed under the Chairmanship of M.A. Lokhande and the closure is permitted subject to an undertaking submitted by the institute to the University that after closure of the college, the approved teaching and non-teaching staff shall be provided with an alternative or they shall be duly paid their wages and other ancillary benefits as per rules. Subject to this undertaking, the institute is directed to be closed from the date of passing of the order.

27. The State Government approved the closure of the institute and the courses run under it's aegis, by order dated 04/07/2019 and the order issued under the signature of Dy. Secretary of Higher and Technical Education Department permitted closure of the institute, in the wake of the reduction in strength of students. The permission was granted, subject to the condition that the teaching and non-teaching staff shall be paid their

wages, compensation and other financial benefits due to them. The permission also contemplated accommodation of students in other institutes, if they desire so. It is only after following the procedure and, particularly, after the permission of the State Government was granted on 04/07/2019, the termination orders were issued to the respondents specifically citing the reasons that on account of continuous reduction in admissions and consequent monetary loss suffered by the management, the courses of MBA (Full Time), MBA (Part Time) and MCA are required to be closed and, for which, the management has received necessary approval after completion of due procedure. The termination order was issued, on account of closure of the courses and it also offered compensation, including arrears of salary and gratuity as well as the notice pay, payable to the concerned employee.

28. The question for consideration is whether the termination is premature, awaiting the approval from the AICTE.

The subsequent facts brought on record by the petitioners, is an order passed by the Division Bench of this court on 20/08/2021 in distinct writ petitions, which were pending and, while making reference to it's earlier order dated 06/03/2020, where directions were issued to the University to cause an inspection on the continuation of affiliation and closure of the institution, the court recorded that two Committees were constituted for the said purpose. The University informed the

court that there were no students admitted and, there was no educational activity and, therefore, the University had approved closure of the institution. Leaving the question open as to whether Section 121 of the Maharashtra Public Universities Act, 2016 would be applicable to the process for approving closure of the institution, the court recorded that the No Objection Certificate was already submitted to the Government by the University.

The learned counsel for the State Government also admitted the said fact and reiterated before the court that even the State Government has granted permission for closure of the institute.

In the wake of the aforesaid prevailing situation, when there were no students and the entire educational activity had come to a halt for more than two years and there was no income to the institution and the salaries are not paid to the staff, in absence of any income, the writ petitions came to be disposed off with a direction to the AICTE to consider the proposal for closure of the institute, on the basis of necessary documents.

29. In furtherance of the said directions, on 26/08/2021, the Chairman of the petitioner-Trust forwarded a communication to the AICTE, New Delhi, concerning the application for closure and also forwarding, the no objection granted by the State Government on 24/08/2021 as well as the report of the University approving the closure, with a request to grant

permission for closure of MIM, Aurangabad, at the earliest. The said communication is placed on record by the learned senior counsel, Mr. Dhorde.

30. Pertinent to note that the All India Council for Technical Education (AICTE) is a national level advisory body for technical education, which is responsible for proper planning and coordinated development of a technical education system throughout the country. In the handbook published by the AICTE, the procedure is prescribed for closure of the institute, but it can be apparently seen that from the Academic Year 2018-19, the petitioners are in the process of closing the courses run by the MIM for the reasons already referred to, and in the process, the necessary permissions from the State Government and the University is obtained. The permission from the AICTE is not a prerequisite for closure of the courses run by the MIM, though the permission is required to be obtained and the handbook of AICTE would reveal that the permission will be granted only after the NOC is granted by the State Government and the affiliating University. This process being completed and, in the wake of the directions issued by the High Court on 20/08/2021, the AICTE is bound to consider the application.

However, till all the formalities are completed, the petitioners cannot be directed to continue the courses as they are already closed from the Academic Year 2018-19 and, in the absence of any source of income being available to the college,

to run the show, a decision was taken to terminate the services of the non-teaching staff, who have no work to be offered, since the institute, no more run any course. The decision of the petitioner-Trust in terminating the services of the employees will have to be looked at from this angle and, particularly when the claim in the petition, is that they have no independent resources to continue the services of the respondents, since there are no admissions and the college was not in receipt of any grant in aid.

31. As against the aforesaid right of the management to terminate the services of it's employees when the course itself is discontinued, when the right of the respondent-employees is to be considered, it is worth to note that the services of the respondent-employees from the year 2010 are governed by the Maharashtra Civil Services (Conduct) Rules, 1972. The said Rules do not contain any provision for absorption of the government servant and particularly, in a situation where the employees are temporary and not permanent. In absence of any right of absorption being available in the respondents, the Tribunal has clearly erred in holding that the respondents have been declared surplus, which is not the actual assessment of the situation. There is a closure of the courses run by the institute on the ground of downfall in the number of students and by following due procedure, the course is discontinued and necessarily, the institute which was only running the three courses, has also stopped functioning and the petitioner-Trust is

not obliged to absorb the respondents in its other institutes, which is run by a distinct Trust than the petitioner-Trust and even in these institutes, there are no vacancies. Therefore, no right has accrued in the respondents to continue their services, which were temporary in nature, on closure of the course/institute run by the petitioner-Trust.

The Tribunal has clearly erred in facts and also on law, in declaring the termination of the respondents to be illegal on the ground that the decision was taken prematurely and also on the ground that the employees have been declared surplus and they are entitled for absorption.

Since the impugned judgment passed by the Tribunal is flawed on both these counts, it is liable to be quashed and set aside. Necessarily, the writ petition deserves to be allowed by setting aside the impugned judgment and order.

The petitioners shall however, ensure that they abide by the undertaking submitted to the University as well as to the AICTE in the form of affidavit undertaking the responsibility of the payments due to the respondent-employees, within a period of three months from today. Rule is made absolute in the above terms.

[SMT. BHARATI DANGRE, J.]