

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 1057 OF 2021

1) Bapurao Deshmukh Foundation,
Wardha, having its office at
Sevagram, Tahsil and District -
Wardha, through its Secretary,
Shri Suresh Bapuraoji Deshmukh,
Aged about 71 years,
R/o Vaishali Nagar, Wardha,
Tahsil and District Wardha.

2) Suresh Deshmukh College of
Engineering, Salukate, Wardha,
through its Officiating Principal
Shri Vilas Vinayakrao Sable,
Aged about 55 years, Occ.- Service,
R/o Vaishali Nagar, Wardha,
Tahsil and District Wardha.

.... **PETITIONERS**

VERSUS

Sumit Ramkrishna Vaidya,
Aged about 35 years,
R/o Behind Shriram Bakery,
Bhamtipura Road, Wardha,
Tahsil and District Wardha.

.... **RESPONDENT**

WITH

WRIT PETITION NO. 4288 OF 2021

1) Bapurao Deshmukh Foundation,
Wardha, having its office at
Sevagram, Tahsil and District -
Wardha, through its Secretary,
Shri Suresh Bapuraoji Deshmukh,
Aged about 71 years,
R/o Vaishali Nagar, Wardha,
Tahsil and District Wardha.

2) Suresh Deshmukh College of Engineering, Salukate, Wardha, through its Officiating Principal Shri Vilas Vinayakrao Sable, Aged about 55 years, Occ.- Service, R/o Vaishali Nagar, Wardha, Tahsil and District Wardha.

.... PETITIONERS

VERSUS

Pranjali Bhojraj Ulhe, Aged about 39 years, Occ. - Service, R/o C/o Ajay Deshmukh, Pradhan Colony, Wardha, Tahsil and District Wardha.

.... RESPONDENT

WITH

WRIT PETITION NO. 4289 OF 2021

1) Bapurao Deshmukh Foundation, Wardha, having its office at Sevagram, Tahsil and District - Wardha, through its Secretary, Shri Suresh Bapuraoji Deshmukh, Aged about 71 years, R/o Vaishali Nagar, Wardha, Tahsil and District Wardha.

2) Suresh Deshmukh College of Engineering, Salukate, Wardha, through its Officiating Principal Shri Vilas Vinayakrao Sable, Aged about 55 years, Occ.- Service, R/o Vaishali Nagar, Wardha, Tahsil and District Wardha.

.... PETITIONERS

VERSUS

Reena Sudhakar Satpute, Aged about 35 years, Occ.- Service, R/o C/o. Arun Wandile, Kejaji Chowk,

Gond Plot, Wardha, Tahsil and
District Wardha.

.... RESPONDENT

WITH

WRIT PETITION NO. 4290 OF 2021

1) Bapurao Deshmukh Foundation,
Wardha, having its office at
Sevagram, Tahsil and District -
Wardha, through its Secretary,
Shri Suresh Bapuraoji Deshmukh,
Aged about 71 years,
R/o Vaishali Nagar, Wardha,
Tahsil and District Wardha.

2) Suresh Deshmukh College of
Engineering, Salukate, Wardha,
through its Officiating Principal
Shri Vilas Vinayakrao Sable,
Aged about 55 years, Occ.- Service,
R/o Vaishali Nagar, Wardha,
Tahsil and District Wardha.

.... PETITIONERS

VERSUS

Madhuri Marotrao Pal,
Aged about 39 years, Occ.- Service,
R/o Near Murarka Layout, Wardha,
Tahsil and District Wardha.

.... RESPONDENT

WITH

WRIT PETITION NO. 4291 OF 2021

1) Bapurao Deshmukh Foundation,
Wardha, having its office at
Sevagram, Tahsil and District -
Wardha, through its Secretary,
Shri Suresh Bapuraoji Deshmukh,
Aged about 71 years,
R/o Vaishali Nagar, Wardha,
Tahsil and District Wardha.

2) Suresh Deshmukh College of Engineering, Salukate, Wardha, through its Officiating Principal Shri Vilas Vinayakrao Sable, Aged about 55 years, Occ.- Service, R/o Vaishali Nagar, Wardha, Tahsil and District Wardha.

.... **PETITIONERS**

VERSUS

Pravin Ramrao Lakhe, Aged about 46 years, Occ.- Service, R/o Near Shriniwas Colony, Sainagar, Wardha, Tahsil and District Wardha.

.... **RESPONDENT**

WITH

WRIT PETITION NO. 4292 OF 2021

1) Bapurao Deshmukh Foundation, Wardha, having its office at Sevagram, Tahsil and District - Wardha, through its Secretary, Shri Suresh Bapuraoji Deshmukh, Aged about 71 years, R/o Vaishali Nagar, Wardha, Tahsil and District Wardha.

2) Suresh Deshmukh College of Engineering, Salukate, Wardha, through its Officiating Principal Shri Vilas Vinayakrao Sable, Aged about 55 years, Occ.- Service, R/o Vaishali Nagar, Wardha, Tahsil and District Wardha.

.... **PETITIONERS**

VERSUS

Aniket s/o Vijaykumar Bhoyar, Aged about 32 years, Occ.- Service, R/o Near Adarsh High School,

Hariramnagar, Pulgaon, Tahsil-Deoli,
District Wardha.

.... RESPONDENT

WITH

WRIT PETITION NO. 4293 OF 2021

1) Bapurao Deshmukh Foundation,
Wardha, having its office at
Sevagram, Tahsil and District -
Wardha, through its Secretary,
Shri Suresh Bapuraoji Deshmukh,
Aged about 71 years,
R/o Vaishali Nagar, Wardha,
Tahsil and District Wardha.

2) Suresh Deshmukh College of
Engineering, Salukate, Wardha,
through its Officiating Principal
Shri Vilas Vinayakrao Sable,
Aged about 55 years, Occ.- Service,
R/o Vaishali Nagar, Wardha,
Tahsil and District Wardha.

.... PETITIONERS

VERSUS

Bhawana Jaywant Chilke,
Aged about 35 years, Occ.- Service,
R/o Near Sahakarnagar, Sainagar,
Wardha, Tahsil and District Wardha.

.... RESPONDENT

Mr. S.K. Bhoyar, Counsel for the petitioners,
Mr. P.N. Shende, Counsel for the respondents.

CORAM : ROHIT B. DEO, J.
DATED : 16th FEBRUARY, 2022

ORAL JUDGMENT :

Heard. **Rule.** With consent, the petitions are heard finally.

2. These petitions involve common facts and are heard together and decided by this common judgment.

3. The petitions are preferred by Bapurao Deshmukh Foundation, Wardha, which is a society registered under the Societies Registration Act, 1960 and Suresh Deshmukh College of Engineering, Salukate (collectively referred to as the 'management') assailing the common judgment dated 03-3-2020 rendered by the University and College Tribunal, Nagpur (Tribunal) in Appeal N-3/2019, Appeal N-4/2019, Appeal N-7/2019, Appeal N-9/2019, Appeal N-10/2019, Appeal N-23/2019 and Appeal N-24/2019. The appeals are preferred by the Assistant Professors assailing their termination vide order dated 26-4-2018.

4. The Tribunal was pleased to allow the appeals holding that the termination of the appellants is illegal and was pleased to grant the appellants relief of reinstatement with back-wages. The relief of back-wages is qualified with the rider that the entitlement to back-wages shall be the period from the date of the termination till the closure of the Engineering College after receiving the requisite permission/s from the competent authority. In Appeal N-4/2019, Appeal N-7/2019, Appeal N-23/2019 and Appeal N-24/2019 the relief of back-wages is

moulded appropriately and since the appellants had secured alternate employment after the termination, the management is directed to pay the difference or shortfall *vis-a-vis* the emoluments earned while the appellants were working after the termination, and the back-wages which are otherwise payable.

5. Facts are broadly admitted. The management followed the due process of law and appointed the appellants as Assistant Professors on probation for period of two years pursuant to permission accorded by the Nagpur University. However, the management perceived that in view of drastic reduction in admissions to the Engineering College, the institution would not be in a position to bare the economic burden of the salaries payable. The management contends that the society in its meeting held on 15.09.2017 resolved to close down the college and to apply to the University and the State Government for necessary approval. Even according to the management, it was only in view of the resolution to close down the college that the appellants – Assistant Professors were terminated from service. The management contends that an application is submitted to the University on 29.01.2018 seeking approval of permission to effect closure of the Engineering College from the academic year 2018-19, and an application is also submitted to All India Council for Technical Education (AICTE) for

permission to close down the Engineering College from the academic year 2018-19.

6. According to the management, while vide communication dated 19.07.2018 the University did permit the closure of the Engineering College from the academic year 2018-19, a condition was imposed that the financial dues of the employees shall be settled.

7. The Assistant Professors whom the management terminated pending closure of the Engineering College preferred separate appeals under Section 81 of the Maharashtra Public Universities Act, 2016.

Broadly, all the Assistant Professors who approached the Tribunal have similar, if not identical narrative, which is that since they are appointed on probation after following due process of law and the discharge of duty was impeccable and the appointments were approved by University, the termination is grossly illegal. The Assistant Professors contended that the Engineering College cannot be closed down since the regulations of the AICTE and the University contemplate prior permission or approval for the contemplated closure. The Assistant Professors then contended that the services are terminated without notice or payment of salary in lieu of notice and that malice in law is writ large.

In all fairness, the management did not dispute that the

appointment of the Assistant Professors was after following due process of law, after seeking approval of the University, and on probation for two years. The management did not dispute that the Assistant Professors were terminated vide order dated 26.04.2018. However, the management claimed that since the Assistant Professors were on probation and the termination is not stigmatic, the management is well within its right in terminating the Assistant Professors. The other submissions of the management are already noted in paragraph *supra*.

8. The Tribunal recorded a finding, and rightly so, that the order of termination is bad in law. Section 121 of the Maharashtra Public Universities Act, 2016 reads thus:

121. (1) No management of an affiliated college or recognized institution shall be allowed to close down the affiliated college or recognized institution without prior permission of the State Government.

(2) The management desirous of closing down the college or recognized institution shall apply to the university on or before the first day of August of the preceding year, stating fully the grounds for closure, and pointing out the assets in the form of buildings and equipment, their original cost, the prevailing market value and the grants so far received by it either from the University Grants Commission, the State Government or from public funding agencies.

(3) On receipt of such an application, the Academic Council shall cause to make inquiries as it may deem fit, to assess and determine whether the affiliated college or recognized institution be permitted to effect the closure. The Academic Council may

examine whether the closure should be avoided by providing necessary assistance or taking over the college or institution by the university or transferring it to another management.

(4) If the Academic Council decides to recommend the closure, it shall prepare and submit to the Management Council, a report on the extent of damages or compensation to be recovered from the management for the assets created utilizing the funds provided by the University Grants Commission, the State Government or other public funding agencies.

(5) The Academic Council shall, with prior concurrence of the Management Council and approval of the State Government decide whether the affiliated college or recognized institution be permitted the closure.

(6) The university may transfer the college or a recognized institution to another management with prior approval of the State Government and after following the procedure prescribed in that behalf.

(7) The procedure to effect the closure shall be in phases, to ensure that the students already admitted to the affiliated college or recognized institution are not affected, and that the first year shall be closed first and no new admissions shall be effected. The procedure to phase out the closure shall be such as may be prescribed.

(8) The procedure for closure of affiliated colleges, or recognized institutions, referred to in sub-sections (1) to (7) shall, mutatis-mutandis apply in the case of closure of faculties, courses of studies or satellite centres.

9. Even according to the management, as on the date of the termination, the application submitted to the University seeking permission for closure, was pending. The report of the expert

committee of the University, which according to the management was received in July, 2018, recommends that the closure may be permitted only after settling all financial dues and legal liabilities and after scrupulously following the procedure laid down by AICTE for closure of the institution. The report notes that the salary of the existing staff is unpaid.

10. While the management avers in the memo of petition that the Nagpur University has permitted closure of the Engineering College vide communication dated 19.07.2018, it is apparent that what is communicated is the report or the recommendation of the committee which observes that the closure may be permitted subject to payment of dues of the staff and further subject to following the procedure laid down by AICTE.

11. While the petitioners contend that the conditional approval or recommendation of the expert committee is challenged in Writ Petition 930/2020, it is irrefutable, that as on the date of the termination neither the University nor the State Government nor the AICTE had approved the closure. Indeed, even as on date, there is no approval for closure of the Engineering College granted by the State Government or the AICTE and the recommendation of the expert committee of the

University at best is an in principle approval subject to the fulfillment of the condition to settle the dues of the employees.

12. Considering the irrefutable factual position, I do not see any error in the findings recorded by the Tribunal.

13. The petitions are dismissed.

JUDGE

adgokar/nsn