

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION NO.37 OF 2021

Satish V. Ratnaparkhi ...Petitioner

Versus

University of Mumbai ...Respondents
Through its Registrar & Ors.

WITH

CONTEMPT PETITION (ST) NO.94264 OF 2020

Satish V. Ratnaparkhi ...Petitioner

Versus

University of Mumbai, ...Respondents
Through its Registrar & Ors.

WITH

CONTEMPT PETITION (ST) NO.19644 OF 2023

Satish V. Ratnaparkhi ...Petitioner

Versus

Dr. Bhirud, ...Respondent
I/C Registrar, University of Mumbai

Mr. Satish V. Ratnaparkhi-Petitioner, in person.

Mr. Ram S. Apte, Senior Counsel i/b Mr. Ashutosh Kulkarni
a/w Mr. Gaurav Sharma & Harshal P. Nahata, for the
Respondent(s).

**CORAM : MADHAV J. JAMDAR, J.
DATED : OCTOBER 06, 2023**

JUDGMENT:

1. Heard Mr. Ratnaparkhi, the Petitioner in person and Mr.
Apte, learned Senior Counsel appearing for the Respondents.

2. It is the contention of the Petitioner that the Respondents have violated the Order dated 16th December 2019 passed in Writ Petition No.12761 of 2019, the Order dated 15th May, 2020 passed in Interim Application in Writ Petition No.12761 of 2019 as well as the Order dated 28th February 2023 passed in Writ Petition No.12761 of 2019 with Interim Application No.3093 of 2022. It is the contention of the Petitioner that his service is continued by the interim Orders passed by this Court till the Order dated 28th February 2023 passed by a learned Single Judge by which the Petition has been disposed of and, thereafter, till the decision of the Performance Review Committee i.e. the decision dated 11th August 2023. It is his further contention that, although he has completed 62 years as on 30th September 2020, his service is held to be continued till 11th August 2023 and, therefore, he should be paid his salary for the period from 1st October 2020 till 11th August 2023.

3. It is the contention of Mr. Apte, learned Senior Counsel appearing for the Respondents that the Petitioner was working as Director of Alkesh Dinesh Mody Institute for Financial and Management Studies, University of Mumbai (for short "**the Institute**"). The age of superannuation is 62 years and the Petitioner has been paid his salaries till 30th September 2023 i.e. the date of superannuation (62 years). He submitted that by the

said Order dated 28th February 2023, a learned Single Judge has held that the Petitioner is entitled to continue in service until the date of 65 years subject to the performance assessment of the Petitioner by the Performance Review Committee. He submitted that by the said Order dated 28th February 2023, it has been specifically directed that if the Petitioner is found fit for being continued till the age of 65 years then he be continued in service until the age of 65 years. It is his further contention that the Performance Review Committee in the meeting held on 11th August 2023 has unanimously decided not to recommend the Petitioner's extension as he did not respond to certain points as per the Review format and for reasons stated in the said report. It is the contention of Mr. Apte, learned Senior Counsel that in view of the said Performance Review committee's report, the service of the Petitioner cannot be extended beyond 62 years. He also submitted that upto the age of 62 years of the Petitioner entire salary and said service dues are paid to the Petitioner. Learned Senior Counsel therefore submitted that the Respondents have not violated the Orders passed by this Court.

4. Before consideration of the rival submissions, it is necessary to set out certain factual aspects.

- (i) The Petitioner's date of birth is 1st October 1958.
- (ii) The Petitioner was appointed as Professor-cum-Director of

the Institute on 8th February 2012.

(iii) The Petitioner was removed as Director of the Institute by the Order dated 20th November 2014 but continued as Professor.

(iv) As the Petitioner was completing age of 60 years on 30th September 2018, the University by communication dated 13th August 2018 notified the said date of retirement of the Respondent.

(v) The Petitioner filed Appeal No.11 of 2018 before the Mumbai University and College Tribunal at Mumbai (for short the “**Tribunal**”) challenging the said communication dated 13th August 2018 and the said communication was accordingly stayed by the Tribunal.

(vi) The said Appeal No.11 of 2018 filed by the Petitioner came to be allowed by the Order dated 6th December 2018 passed by the learned Tribunal. The operative part of the said Order dated 6th December 2018 reads as under :-

“ORDER

(a) Appeal No.11 of 2018, is allowed in terms of prayer clause (a) thereof and the **impugned order dated 20th November 2014, of removal / taking away the charge from the Appellant of the post of Director of Alkesh Dinesh Mody Institute of Financial and Management Studies, University of Mumbai (Exhibit B) stands quashed and set aside, and the Respondent is directed to reinstate / hand over the charge of the post of**

Director of the said Institute to the Appellant within a period of two months, and the Interim Order passed in M. A. No. 27 of 2018, on 28th September 2018, stands confirmed.

(b) In view of the aforesaid order, nothing survives in Misc. Appl. No. 11 of 2017, and therefore, same stands disposed off.

(c) Parties to bear their own costs.

(d) Office to communicate the aforesaid judgment and order to the parties in writing accordingly.”

(Emphasis added)

(vii) Pursuant to the above Order dated 6th December 2018 of the learned Tribunal, the Petitioner was reinstated as Director on 14th February 2019.

(viii) In the meanwhile, the Management Council of the University passed a resolution dated 29th January 2019 by which it was decided that the retirement age of all the Directors of the University Institutes would be 60 years.

(ix) In view of the said decision of the Management Council of the University, letter dated 21st February 2019 was addressed by the University to the Petitioner relieving him as Director as he had already attained the age of 60 years.

(x) The said letter dated 21st February 2019 was challenged by the Petitioner by filing the Appeal No.4 of 2019 before the learned Tribunal and the same has been allowed by passing the Order

dated 20th September 2019. The operative part of the said Order dated 20th September 2019 reads as under :

“ORDER

(a) Appeal No.04 of 2019, is allowed in terms of prayer clause (a) thereof, and the **impugned letter / order dated 21st February 2019, issued by the Respondent thereby retiring / compulsorily retiring the Appellant pre-maturely or removing him under the guise of ‘retirement’ from the post of Professor cum Director of the Alkesh Dinesh Mody Institute for Financial & Management Studies, University of Mumbai, stands quashed and set aside, and the Respondent is directed to reinstate / continue the Appellant on the aforesaid post within the period of two months.**

(b) However, the prayer (d) made by the Appellant, in the present Appeal, is rejected.

(c) Statements made by both the Learned Counsels for the respective parties, in respect of status quo on 15th March 2019, in Misc. Appl. No. 03 of 2019, stands merged in the present Appeal and said Misc. Appl. stands disposed off accordingly.

(d) Parties to bear their own costs.

(e) Office to inform the aforesaid judgment / order to the parties in writing accordingly.”

(Emphasis added)

(xi) The University of Mumbai challenged the said Order dated 20th September 2019 passed by the learned Tribunal by filing Writ Petition No.12761 of 2019. In the said Writ Petition, a

learned Single Judge by the Order dated 16th December 2019 passed an ad-interim Order. The relevant paragraphs of the said ad-interim Order i.e. paragraphs 8 and 9 are reproduced herein below for ready reference :

“8. Issue involved in the Writ Petition may require further deliberation but at the same time, **court is mindful of the fact that Tribunal after due deliberation had clearly taken the view that service of the Respondent should continue till the age of 65 years** and that order/letter dated 21.02.2019 which had prematurely retired the Petitioner, is illegal and unsustainable.

9. In the circumstances and balancing the interests, it is made clear that **Respondent shall be allowed to continue as Director of the Institute and paid his salary etc.. Functioning of the Respondent as Director of the Institute shall, however, be subject to outcome of the writ petition.**”

(Emphasis added)

(xii) It appears that the said clause 9 of the interim Order dated 16th December 2019 has not been complied with and, therefore, the present Petitioner who is the Respondent in the said Writ Petition No.12671 of 2019 took out the Interim Application and a learned Single Judge passed the following operative Order on 15th May 2020:-

“i. **The Petitioner University shall forthwith pay the dues of the Applicant / Respondent from 16th December,**

2019 until 15th May, 2020, on or before 19th May, 2020,
by depositing the same in the bank account of the
Applicant / Respondent, the details of which are already
available with the Petitioner University.

ii. **The Petitioner University shall also continue to
make payments on or before 5th day of each month to the
Applicant / Respondent, until any further orders are
passed by this Court or by the Hon'ble Supreme Court,
varying or discontinuing such payment.**

iii. The Interim Application is accordingly disposed
off.”

(Emphasis added)

Thus, what has been directed by a learned Single Judge by the
said Order dated 15th May 2020 is that the Petitioner- University
shall forthwith pay the dues of the present Petitioner from 16th
December 2019 until 15th May 2020 on or before 19th May 2020
by depositing the same in the bank account of the present
Petitioner. It is further directed that the Petitioner-University
shall also continue to make payments on or before 5th day of each
month to the present Petitioner until any further Orders are
passed by this Court or by the Hon'ble Supreme Court varying or
discontinuing such payment.

(xiii) On 5th August 2020, the Petitioner was reinstated on the
post as Director of the Institute.

(xiv) As the Petitioner was attaining the age of 62 years on 1st

October 2020, the University issued letter recording that the Petitioner would be superannuated as Director w.e.f. 30st September 2020 as he had not complied with the requirements about the performance review as per the Government Resolution dated 5th March 2011.

(xv) Thereafter, again the matter was moved before a learned Single Judge by the present Petitioner by filing the Interim Application No.3093 of 2022. A learned Single Judge by the Order dated 5th May 2022 recorded the statement of the learned Counsel of the University of Mumbai that salary of the Petitioner was deposited in his bank account upto September, 2020 i.e., the date on which the Petitioner attained the age of 62 years and further recorded that therefore, the contention of the Petitioner that despite there being specific directions to pay the salary, the Petitioner-University is not paying the same, cannot be accepted. The said Order dated 5th May 2022 reads as under :

“In furtherance of oral directions issued by this Court today in the first session, the learned counsel for the Respondent-University has produced **photocopy of the statement of account of Respondent, indicating that upto September, 2020 salary is deposited in his Bank Account.**

2. In view thereof, this Court is of the opinion that, the **contention of the learned Advocate for the Respondent that despite there being specific directions**

to pay the salary, the Petitioner-University is not paying it, cannot be accepted at this stage.

3. Place the Petition for admission on 30th June, 2022.

Ad-interim relief, if any granted earlier, to continue till the next date.”

(Emphasis added)

(xvi) Thereafter, the said Writ Petition No.12761 of 2019 was finally disposed of by the Order dated 28th February 2023 passed by a learned Single Judge. Paragraph 20 of the said Order are the operative directions. The said paragraph 20 reads as under :

“20. In view of the above observations, discussion and findings Writ Petition is dismissed with the following directions:-

- (i) Order dated 20.09.2019 passed by the Tribunal in Appeal No. 4 of 2019 is upheld;
- (ii) Interim order dated 15.05.2020 is confirmed.
- (iii) It is held that GR dated 12.07.2016 does not supersede GR dated 05.03.2011;
- (iv) **Respondent is entitled to continue in service until the age of 65 years;**
- (v) **The Performance Review Committee for performance assessment of the Respondent be constituted within a period of 4 weeks from today and if Respondent is found fit for being continued till the age of 65 years, the decision of the Performance Committee be taken within two weeks thereafter and conveyed to the Respondent and the Respondent be so**

appointed;

- (vi) **Management Council Resolution dated 20.01.2019 cannot be made applicable to the Respondent No.1's case."**

(Emphasis added)

(xvii) It is significant to note that the Petitioner filed Review Petition No.30 of 2023 seeking review of the Order dated 28th February 2023 passed in Writ Petition No.12671 of 2019. It was the contention of the Petitioner that his age of superannuation is 65 years and the same is without undergoing any performance review / performance appraisal / performance assessment. The said contention has been rejected by the Oder dated 18th April 2023 passed by the learned Single judge in Review Petition No.30 of 2023. The said Order dated 18th April 2023 reads as under :

- “1. Heard Mr. Ratnaparkhi, Petitioner-in-Person.
2. The present Review Petition has been filed for seeking review of the judgment / order pronounced on 28.02.2023 in Writ Petition No. 12761 of 2019.
3. The judgment / order dated 20.09.2019 passed by the learned Mumbai University and College Tribunal at Mumbai (for short “**the Tribunal**”) in Appeal No. 4 of 2019 has been upheld by this Court and the interim order dated 15.05.2020 has been confirmed. In that view of the matter, consequential directions have been issued in the aforementioned judgment / order passed by this Court. Adequate reasons have also be given by this Court in the said judgment / order.

4. The Review Petition has been filed on the ground that once it is held that the service conditions of the Petitioner are governed by AICTE Regulations, the Regulations of the State as approved by the UGC cannot be made applicable to the Review Petitioner. Review Petitioner states that in that case it is his right to continue in service upto the age of superannuation under AICTE service conditions without undergoing any performance review / performance appraisal / performance assessment. According to Review Petitioner the consequential directions given for performance review / appraisal / assessment of the Review Petitioner is therefore an error apparent on the face of record and should not have been given. Adequate reasons are given for the above findings. It cannot be construed as an error apparent on the face of record. If the Review Petitioner is not satisfied, the said finding can be challenged by him by filing the Appeal. Review is not maintainable.

5. The Writ Petition is disposed of by a detailed judgment / order giving adequate reasons for applicability of the AICTE service conditions in consonance with the State Government Resolution dated 05.03.2011. The review is sought on the ground that the judgment passed is incorrect. This cannot be a ground for review.

6. No case is made out to exercise the review jurisdiction.

7. Review Petition is therefore dismissed.”

(Emphasis added)

5. In the light of above factual position, it is to be ascertained whether any contempt is committed by the University of Mumbai of the Order dated 16th December 2019 passed in Writ Petition No.12761 of 2019, the Order dated 15th May, 2020 passed in Interim Application in Writ Petition No.12761 of 2019 as well as the Order dated 28th February 2023 passed in Writ Petition No.12761 of 2019 with Interim Application No.3093 of 2022.

6. Cumulative effect of all the above referred Orders, namely the Orders dated 20th September 2019, 16th December 2019, 15th May 2020, 5th May 2022, 28th February 2023 and 18th April 2023 is that the Petitioner is entitled to continue in service until the age of 65 years subject to the decision of the Performance Review Committee continuing the services of the Petitioner till the age of 65 years. Otherwise the Petitioner is entitled to be in service upto the age of 62 years. As already set out herein above, the Performance Review Committee in its meeting held on 11th August 2023 has decided not to recommend the extension of the Petitioner's tenure.

7. Thus, it is clear that the Order dated 16th December 2019 as well as the Order dated 15th May 2020 are required to be read in the light of the Order dated 5th May 2022 passed by a learned Single Judge, the final Order dated 28th February 2023 passed in the Writ Petition No.12761 of 2019 as well as the Order dated 18th

April 2023 passed in Review Petition No.30 of 2023. By reading of all these Orders, it cannot be held that the Petitioner is entitled to the salary even after attaining the age 62 years when the Performance Review Committee has not recommended his continuation. Therefore, it cannot be said that the University has violated the aforesaid Orders. Accordingly, all the Contempt Petitions are required to be dismissed.

8. However, Mr. Ratnaparkhi is right in contending that by the Order dated 28th February 2023, a learned Single Judge directed constitution of the Performance Review Committee within a period of four weeks and to take decision within two weeks thereafter. The said Order dated 28th February 2023 is complied with by 11th August 2023. It is the contention of Mr. Apte, learned Senior Counsel appearing for the Respondent that there is delay as the Petitioner has filed Review Petition, however, even considering that aspect, there is delay in complying with the said Order. Apart from that the Orders dated 15th May 2020 and 5th May 2022 clearly show that the Respondents have not paid the salary in time as directed by this Court. In view of that, Mr. Apte, learned Senior Counsel, on instructions, voluntarily makes a statement that the Respondents are ready and willing to make a payment of Rs.1,00,000/- to the Petitioner. The said cost of Rs.1,00,000/- is to be deposited in the account of the Petitioner on

or before 13th October 2023.

9. Although the Contempt Petitions are not entertained for the above reasons, it is clarified that, the Petitioner can independently challenge the legality and validity of the decision taken by the Performance Review Committee and / or the decision of the University not to recommend extension and continuation of the Petitioner's tenure/service upto the age of 65 years and all contentions in that behalf are kept open.

10. Accordingly, the Contempt Petitions are disposed of subject to above.

[MADHAV J. JAMDAR, J.]