

Prajakta Vartak

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

**WRIT PETITION NO. 7338 OF 2012
WITH
CIVIL APPLICATION NO. 79 OF 2016**

Shri. Bhujgonda Bhau Patil)
687, E-Ward, Shahupuri,)
Second Lane, Kolhapur) **..Petitioner**

Vs.

1. The Chairman/Secretary of Institution)
Shree Acharya Ratna Deshbhushan)
Shikshan Prasarak Mandal, Acharya)
Vidyanand Sanskruti Bhavan, 7E)
Bhausingaji Road, Kolhapur)

2. The Principal,)
Mahaveer Mahavidyalaya)
7-E, Bhausingji Road, Kolhapur)
(Vaishali Parisar))

3. The Director of Higher Education)
Maharashtra State Central Building,)
Pune – 411 001.)

4. The Joint Director of Higher Education)
Kolhapur Region, Kolhapur)

5. The Presiding Officer,)
Pune/Shivaji/Solapur University and)
College Tribunal, Pune University Campus)
Ganesh Khind, Pune – 411 007.)

...Respondents

Mr. S. S. Patwardhan with Ms. Mrinal Shelar for Petitioner.
Mr. Surel Shah for Respondent Nos.1 and 2.
Mr. S. D. Rayrikar, AGP for State/Respondent Nos.3 and 4.

CORAM : G.S. KULKARNI, J.
DATE : JANUARY 12, 2023

Oral Judgment :

1. Rule returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. Heard Mr. Patwardhan, learned counsel for the petitioner, Mr. Shah, learned counsel for the respondent nos.1 and 2 and Mr. Rayrikar, learned AGP for respondent nos. 3 and 4.

3. Challenge in this petition filed under Article 227 of the Constitution is to an order dated 03 August, 2011 passed by the learned Presiding Officer, Pune/Shivaji/Solapur University & College Tribunal (for short, "University Tribunal"). By the impugned order, it has been observed that all the issues under the execution petition as filed by the petitioner have been held and that the petitioner is receiving his pension and that the petitioner's entitlement under the judgment and order dated 26 August, 2002 rendered by the University Tribunal on his appeal (Appeal No.20 of 1999) stands satisfied.

4. Mr. Patwardhan, learned counsel for the petitioner has submitted that the petitioner, who was removed from services, had preferred the appeal in question before the University Tribunal. He succeeded in his

appeal in terms of the following directions of the University Tribunal in its judgment and order dated 26 August, 2002 :-

“ **ORDER**

1. Appeal is allowed and disposed off. There shall be however, no order as to the costs of the parties in this appeal.

2. The order of removal dated 29.5.1999 stands hereby set aside and the findings recorded in the regular enquiry held by Mr. P. J. Rananavare are hereby ordered to be set aside on account of the illegal nature of ultimately inflicted punishment.

3. Appellant is hereby held as to have retired on his superannuation on 31.5.1996 as if without any such background of departmental enquiry and therefore, he shall be entitled to receive his entire salary and allowances till his date of superannuation and naturally would be entitled all the arrears of salary and wages as a result of Pay Commission either 4th Pay Commission or 5th Pay Commission as the case may be, which had incidentally occurred during the career of this appellant because of the pendency of the enquiry despite his retirement on superannuation. It is further made clear that the appellant shall be entitled to all his salary and wages as undated on account of various pay revisions even for the suspension period. The pension amount naturally shall be fixed of this appellant only after having given him all the benefits accrued to him on account of 4th Pay Commission as well as 5th Pay Commission as the case may be.

4. As per oral request of learned Counsel Mr. D. S. Joshi for Respondent Nos.1 & 2, this judgment is stayed in its operation till 30.9.2002 in order to facilitate the Respondent Nos. 1 & 2 to take up the matter before the appropriate forum of the Hon'ble High Court either in its writ jurisdiction or otherwise.”

5. It is submitted by Mr. Patwardhan that such order passed by the University Tribunal was assailed by the respondent-management before this Court in Writ Petition No.1357 of 2003 which came to be dismissed by a Co-ordinate Bench of this Court by its judgment and order dated 27 February, 2003. This judgment and order passed by this Court was assailed by the respondent-management by approaching the Supreme

Court in Civil Appeal No.250 of 2004 which came to be disposed of by judgment and order dated 03 December, 2009 passed by the Supreme Court. After the proceedings were decided by the Supreme Court in favour of the petitioner, the petitioner moved an execution application initially on 24 June, 2011 when the University Tribunal passed an order on the execution application referring to the issues which would fall for consideration in the execution proceedings. However, as pointed out by Mr. Patwardhan, surprisingly by the impugned order, the learned Presiding Officer of the University Tribunal in paragraph 6 observed that except for pension, all the issues were decided in the order dated 24 June, 2011. The observations of the University Tribunal in that regard in paragraph 6 of the impugned order are required to be noted which read thus:-

“6. After the matter was decided by the Supreme Court on 3rd December, 2009, the Execution Petition was taken up for disposal. The issues raised by both the parties, recorded in Exhibit 1-A on 22nd November, 2010, were decided after hearing both the parties. The order deciding these issues is incorporated in Rojnama dated 24th June, 2011. The only issue which now remains to be decided is whether the execution petitioner is entitled to interest at the rate of 12% per annum on the amount which became due from time to time and was not paid on the due date.”

6. Such an impression as observed in paragraph 6 has been carried forward by the learned Presiding Officer when the following observations are made in paragraph 13 that all other points raised by the parties are already decided and no point remained to be decided in the execution proceedings :-

“13. All other points raised by the parties are already decided. No point remains to be decided in this Execution Petition. Amount of pension admissible to petitioner is properly decided by the competent authority and the payment of pension has commenced even during the pendency of this Execution Petition. There is no material on record to show that payment of provisional pension was withheld on account of malice or negligence, isolating the petitioner alone for any such delay. Payment of amount due after fixation of Pension, was made to the petitioner as per directions of the Tribunal during pendency of the Execution Petition. The present Execution Petition is, therefore, disposed of with a direction that Pension as fixed be regularly paid to the petitioner.”

7. Mr. Patwardhan, on the above conspectus, would submit that the above findings as rendered by the Presiding Officer of University Tribunal in the impugned order are ex facie contrary to the record when the University Tribunal observes that all the issues under the execution petition stand decided. He has submitted that except for the payment of pension, none of the other benefits which have accrued and entitled to the petitioner are granted to the petitioner. Mr. Shah would intend to argue to support the order, however, he is not in a position to support the observations as made in paragraphs 6 and 13 of the impugned order. In my opinion, if except for pension the other entitlements/claims of the petitioner under the judgment and order dated 26 August, 2002 rendered by the Tribunal have not been granted to the petitioner, in that event, certainly there were further issues to be decided by the Presiding Officer in the execution proceedings.

8. In the above circumstances, the impugned order would be required to be set aside in so far as it does not decide the other benefits/

entitlement as conferred on the petitioner vide order dated 26 August, 2002 passed by the learned Presiding Officer of University Tribunal. The learned Presiding Officer is accordingly directed to hear the parties on all such issues and pass appropriate final orders, on the execution proceedings. All contentions of the parties on the execution proceedings are expressly kept open.

9. Needless to observe that as the proceedings are quite old, the learned Presiding Officer is requested to take up the execution proceedings at the earliest and pass final order within a period of three months from today. If the petitioner has any issue in regard to the quantum of the pension, the petitioner is free to move an appropriate application in that regard before the University Tribunal and the same be decided on its own merits.

10. Rule is made absolute in the above terms. No costs.

[G.S. KULKARNI, J.]