

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 19028 OF 2024

Yashwant Shikshan Sanstha, through
the President and Ors.

....*Petitioners*

: *Versus* :

Suhas Dnyandeo Khambe and Ors.

....*Respondents*

Mr. Gajanan M. Savagave, *for the Petitioner.*

Mr. C.G. Gavnekar with *Mr. Ashutosh Gavnekar and Mr. Rohit Parab, for Respondent No.1.*

Mr. S.D. Rayrikar, *AGP for Respondent Nos.2 and 3-State.*

CORAM : SANDEEP V. MARNE, J.

Dated : 12 March 2025.

P.C. :

1) The petition challenges the judgment and order dated 26 June 2024 passed by the Presiding Officer, Savitribai Phule, Pune, Shivaji and Solapur University and College Tribunal, Pune (*College Tribunal*) allowing Appeal No.18/2017 filed by Respondent No.1 and directing the Petitioner-Management to pay backwages for the period from 20 November 2017 till the date of attaining the age of superannuation i.e. 30 September 2023 with all consequential benefits in addition to imposition of costs of Rs.10,000/-.

2) I have heard Mr.Savagave, the learned counsel appearing for the Petitioner-Management and Mr.Gavnekar, the learned counsel

appearing for Respondent No.1-Teacher, Mr. Rayrikar, the learned AGP appearing for Respondent Nos.2 and 3.

3) I have also gone through the findings recorded by the Tribunal in the impugned judgment and order, as well as the relevant records of the case filed alongwith the petition.

4) Perusal of the findings recorded by the Tribunal would indicate that the main reason for setting aside the punishment of dismissal from service imposed on Respondent No.1 is failure on the part of the Enquiry officer to grant opportunity of cross-examination to Respondent No.1. It appears that the Petitioner-Management examined two witnesses who were presented for cross-examination by Respondent No.1. Perusal of the proceedings of enquiry would indicate that the enquiry was adjourned from time to time in order to enable Respondent No.1 to cross-examine the Management witnesses. On account of failure on the part of Respondent No.1 to avail the opportunity of cross-examination, '*no cross*' order was passed on 15 September 2017. Respondent No.1 got '*no cross*' order set aside and requested for grant of opportunity to cross-examine the witnesses. Thereafter, the enquiry was apparently held on 26 September 2017, 27 September 2017, 28 September 2017 and 3 October 2017. Except conduct of partial cross-examination on 23 September 2017, it is seen that the defence representative of Respondent No.1 was absent on other dates of enquiry. It is therefore more than apparent that Respondent No.1 was whiling away time under the garb of absence of his defence representative on various dates. In such circumstances, it cannot be held that the Petitioner-Management did not afford opportunity of defence to Respondent No.1. In my view, therefore award of 100% backwages to Respondent No.1 was clearly unwarranted.

5) It appears that Respondent No.1 was serving in the Petitioner-Institution since 1 August 1996 and has rendered substantial years of service. For the services actually rendered, he must be paid pension and other pensionary benefits. However, considering the conduct of Respondent No.1 in deliberately avoiding to cross-examine the Management witnesses, award of 100% backwages to Respondent No.1 was clearly unwarranted. Respondent No.1 has retired from service on 30 September 2023 and would earn all pension and pensionary benefits on account of his dismissal order being set aside, at the same time, the Petitioner-Management cannot be saddled with liability to pay 100% backwages for a long period of more than six years. In that view of the matter, reduction of backwages to 25% would serve the ends of justice. Accordingly, Respondent No.1 shall be entitled to only 25% backwages from 20 November 2017 to 30 September 2023. The Management shall however send a proposal for pension and pensionary benefits in respect of Respondent No.1 by treating him in continuous service till 30 September 2023. I accordingly proceed to pass the following order :

(i) Judgment and Order dated 26 June 2024 passed by the Presiding Officer, College Tribunal is modified to the extent that Respondent No.1 shall be entitled to 25% backwages for the period from 20 November 2017 to 30 September 2023.

(ii) Respondent no.1 shall be deemed to be in service till the date of his superannuation of 30 September 2023 and shall be paid all pension and pensionary benefits accordingly.

(iii) The Petitioner-Management shall pay the amount of 25% backwages to Respondent No.1 on/or before 30 April 2025. The Management shall forthwith send a proposal to the Competent Authority for payment of pension and pensionary benefits to

Respondent no.1 who shall proceed to decide the same in an expeditious manner.

(iv) The direction of the Tribunal for imposition of costs is set aside.

6) With the above directions, the petition is **partly allowed and disposed of.**

[SANDEEP V. MARNE, J.]