

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 419 OF 2025

1. Secretary, Dr. J.J. Magdum Trust
2. Principal, Dr. J.J. Magdum College of Engineering*Petitioners*

:Versus:

1. Shamala Rajaram Mahadik
2. Registrar, Shivaji University*Respondents*

WITH
WRIT PETITION NO. 421 OF 2025

1. Secretary, Dr. J.J. Magdum Trust
2. Principal, Dr. J.J. Magdum College of Engineering*Petitioners*

:Versus:

1. Prasad Ramchandra Kulkarni
2. Registrar, Shivaji University*Respondents*

WITH
WRIT PETITION NO. 422 OF 2025

1. Secretary, Dr. J.J. Magdum Trust
2. Principal, Dr. J.J. Magdum College of Engineering*Petitioners*

:Versus:

1. Ravindra Shivram Chougule
2. Registrar, Shivaji University*Respondents*

WITH
WRIT PETITION NO. 425 OF 2025

1. Secretary, Dr. J.J. Magdum Trust
2. Principal, Dr. J.J. Magdum College of Engineering*Petitioners*

:Versus:

1. Pooja Prasad Belagali
2. Registrar, Shivaji University*Respondents*

WITH
WRIT PETITION NO. 427 OF 2025

1. Secretary, Dr. J.J. Magdum Trust
2. Principal, Dr. J.J. Magdum College of Engineering*Petitioners*

:*Versus:*

1. Ajay Pravinchandra Shah
2. Registrar, Shivaji University*Respondents*

WITH
WRIT PETITION NO. 428 OF 2025

1. Secretary, Dr. J.J. Magdum Trust
2. Principal, Dr. J.J. Magdum College of Engineering*Petitioners*

:*Versus:*

1. Vijay Jaysingrao Khot
2. Registrar, Shivaji University*Respondents*

Mr. Dhairyasheel Sutar with Ms. Latika Kabad and Ms. Kavita D. Vijapure,
for the Petitioners in all Writ Petitions.

Mr. Avinash Belge, for the Respondent No.1 in all Writ Petitions.

CORAM : SANDEEP V. MARNE, J.

Judgment Resd. On : 20 January 2025.

Judgment Pron. On : 28 January 2025.

JUDGMENT :

1) These petitions are filed by the Management challenging the judgment and order dated 26 November 2024 passed by the Presiding Officer, Savitribai Phule, Pune Shivaji and Solapur University and College Tribunal, Pune University Campus, Pune-7 allowing the Appeals preferred by the Respondent-employees and setting aside the

impugned decision of the Petitioner-Management dated 12 April 2021. The Tribunal has further directed restoration of the Respondent-employees to their original post of Associate Professor w.e.f. 12 April 2021 with all consequential benefits.

2) Briefly stated, facts of the case are that Petitioner No.1 is a Trust registered under the provisions of Maharashtra Public Trusts Act, 1950. Petitioner No.2 is an Engineering College run by Petitioner No.1-Management. Respondent No.1 in each of the petitions joined the services of Petitioner No.2-College on various dates as Assistant Professor in various branches of Engineering on full time basis. As claimed by the Respondent-employees, the details of their initial appointments are as under:

WRIT PETITION NO.	NAME	DATE OF APPOINTMENT	DESIGNATION
419/2025	Shamala Rajaram Mahadik	5 April 2010	Assistant Professor (Electronics and Communication Engg.) (Full Time)
421/2025	Mr. Prasad R. Kulkarni	21 June 2008	Assistant Professor (Mechanical Engg.) (Full Time)
422/2025	Ravindra Shivram Chougule	24 November 2009	Assistant Professor (Civil Engg.) (Full Time)
425/2025	Pooja Prasad Belagali	13 July 2009	Assistant Professor (Electronics & Communication Engg.) (Full Time)
427/2025	Ajay Pravinchandra Shah	21 June 2008	Assistant Professor (Mechanical Engg.) (Full Time)
428/2025	Vijay Jaysingrao Khot	24 November 2009	Assistant Professor (Mechanical Engg.) (Full Time)

3) Respondent No.1 claim that their appointments have been approved by Respondent No.2-University and as per the 5th Pay Commission Recommendations and then prevalent Notification received by All India Council of Technical Education (AICTE), there were three cadres of teaching posts in Colleges viz. Lecturer, Assistant Professor and Professor. The AICTE towards implementation of recommendations of 6th Pay Commission issued Notification dated 5 March 2010 whereby the three categories were renamed and re-designated as Assistant Professor, Associate Professor and Professor. This is how the designation of '*Assistant Professor*' was revised as '*Associate Professor*'. Thus, in accordance with the Notification dated 5 March 2010, Respondents were re-designated as '*Associate Professor*' in Petitioner No.2-College.

4) It appears that the Respondents did not possess the qualification of Ph.D. at the time of their initial appointments. According to them, they had time upto 7 years to acquire the qualification of Ph.D. Respondents accordingly registered themselves for Ph.D. programmes. However, after noticing that the Respondents did not acquire the qualification of Ph.D. within 7 years of their appointments, Petitioner No.1 issued letter dated 19 January 2019 reverted the Respondents from the pay-scale of Associate Professor of Rs. 37400-67000 to the pay-scale of Assistant Professor of 15600-39100. It appears that, settlement was arrived as on 23 September 2019 between the Petitioners and Respondents under which the pay-scales were restored to original pay-scale of 37400-67000. However, by letter dated 18 February 2021, Petitioner No.1 once again reverted the Respondents to the pay-scale of Rs.15600-39100 alleging breach of terms of settlement by addressing correspondence with Respondent No.2-University. According to the Respondents, the real reason for reverting them to the scale of Assistant Professor was complaints made by them

to the University and AICTE relating to non-payment of regular salary since the year 2016 and correspondence addressed by the University and AICTE to the Petitioners in that regard. Respondents allege that when the issue of irregular payment of salary was taken up to the Minister of Higher Technical Education of Government of Maharashtra, he directed formation of Committee headed by the Joint Director, Technical Education for visiting the college. It is alleged that when the Committee was to visit the College on 23 February 2021, Petitioner No.1 informed the Respondents just a day before i.e. on 22 February 2021 that their pay-scales are reverted from that of Associate Professor to Assistant Professor. Thereafter, by letter dated 12 April 2021 Petitioners implemented the said decision by reducing the rank of the Respondents from Associate Professor to the rank of Assistant Professor and reduction in pay-scale from Rs.37400-67000/- to Rs.15600-39100/-. The Respondents were also informed that Rs.29,91,192/- lakhs paid in excess was adjusted against the salary arrears and the future payable salary.

5) Respondents accordingly approached the University-Tribunal challenging the impugned decision dated 12 April 2021 and seeking restoration of pay-scale of Associate Professor. The Appeals were resisted by the Petitioners by filing reply. The Tribunal has allowed the Appeals by common judgment and order dated 26 November 2024 allowing the Appeals and setting aside the impugned decision dated 12 April 2021. The Tribunal has directed the Petitioners to restore the Respondents to their original post of '*Associate Professor*' with all consequential benefits w.e.f 12 April 2021. The Tribunal has also directed award of costs of Rs.10,000/- in each of the Appeals in favour of the Respondents. Aggrieved by the judgment and order dated 26 November 2024 passed by the Tribunal, the Petitioners have filed the present petition.

6) Mr. Sutar, the learned counsel appearing for the Petitioners would submit that the Tribunal has grossly erred in allowing the Appeals and directing restoration of pay-scales of the Respondents by ignoring the requisite qualifications for the post of Associate Professor prescribed by the AICTE. That possession of Ph.D. is a mandatory qualification for holding the post of Associate Professor under the faculty norms prescribed by the AICTE in the handbook published by it. That it was mandatory for the Respondents to acquire the qualification of Ph.D. within a period of 7 years and failure to acquire the said qualification will automatically results in loosing the position of Associate Professor. That the Tribunal has erroneously relied on AICTE Notification dated 5 March 2010 which has absolutely no application in the facts of the present case. That the Tribunal has erroneously considered reversion of pay-scales of Respondents as a penalty ignoring the position that reduction of pay-scales is a direct result of failure to acquire prescribed qualification for the post of Associate Professor within 7 years. He would submit that as per the AICTE Notification issued in 2008, possession of Ph.D. for holding the post of Assistant Professor in Engineering College is a mandatory requirement. Under the said Notification, stoppage of increment is to be resorted to only in case of candidates from Industry, professional experience in R & D and Patents. That the Respondents are not from Industry nor pose professional experience in R & D and patents. That therefore the concept of stoppage of increment is not applicable in their case.

7) Mr. Sutar, would submit at the very outset that the Tribunal has decided the Appeals without granting an opportunity of hearing to the Petitioners and that on 26 September 2024, when the Appeals were heard, none was present on behalf of the Petitioners.

However, after learning that 'No Arguments' order was passed and the Appeals were posted for judgment, an application was filed on 7 October 2024 by the Petitioners which was allowed by order dated 8 October 2024 subject to payment of costs of Rs.2,000/-. That despite approaching the Respondent-employees, the costs of Rs.2,000/- could not be paid to them due to their non-availability. That when the Appeals were called out for hearing on 11 November 2024, the Clerk representing the Management appeared before the Tribunal and sought adjournment for payment of costs. However, the said application was erroneously rejected by the Tribunal and the Appeals were closed and adjourned for judgment to 26 November 2024. He would submit that this is how the Appeals have been decided without grant of opportunity of hearing to the Petitioners and on this ground alone, the impugned orders are liable to be set aside.

8) Mr. Sutar would further submit that Respondents have otherwise created hurdle in smooth functioning of the College by repeatedly going on strike and conducting agitation instead of acquiring the requisite qualifications. He would therefore pray for setting aside the impugned judgment and orders passed by the Tribunal.

9) The petitions are opposed by Mr. Belge, the learned counsel appearing for the Respondent-employees. He would submit that the Tribunal has correctly considered the position that failure to acquire qualification of Ph.D. could, at the highest, result in stoppage of increments as per the repeated clarifications issued by AICTE vide Notifications dated 4 January 2016 and 20 May 2020. He would submit that the Petitioners have been recruited on the post of Assistant Professor, which post is merely re-designated as '*Associate Professor*'. That by reverting the Respondents on pay-scales of Assistant Professor,

they are actually reverted to the post of '*Lecturer*' on which they were never recruited. He would submit that there is no perversity in the findings recorded by the Tribunal and therefore there is no warrant for interference by this Court in extra-ordinary jurisdiction under Article 227 of the Constitution of India. He would pray for dismissal of the petition.

10) Rival contentions of the parties now fall for my consideration.

11) The short issue that arises for consideration is whether it is permissible for the Petitioner-Management to revert the Respondents from the position of '*Associate Professor*' to that of '*Assistant Professor*' on account of failure to acquire qualifications of Ph.D.

12) Respondents were initially reverted by the Petitioner-Management directly on the post of Assistant Professor vide various appointment orders which are produced by them alongwith their Appeals filed before the Tribunal. To illustrate, the Petitioner in Writ Petition No. 419/2025 (*Shamala Rajaram Mahadik*) came to be appointed vide appointment letter dated 5 April 2010 on the post of Assistant Professor in the Department of Electronics and Communication Engineering in Open Category w.e.f. 5 April 2010. Condition No.3 in the appointment order reads thus :

"3. Since, the recommendation is provisionally approved, subject to completion of Ph.D. within SEVEN YEARS, from this date of effect of order, you are required to adhere to it. If you do not attain the said qualification within such stipulated time period, then the Management of the college has the right to withhold further increments. This said condition in ONE OF THE MANDATORY conditions. Hence you are required to give such undertaking to the Management, binding yourself for completion of Ph.D. within this stipulated time period."

13) Thus, the appointment order was provisional subject to completion of Ph.D. within 7 years. It was specifically mentioned in the appointment order that upon failure to acquire the qualification of Ph.D. within 7 years, the Management had the right to withhold further increments. Respondent-Shamala Rajaram Mahadik was directed to submit an undertaking for completion of Ph.D. within the stipulated time. It appears that Respondent No.2-University granted approval to the select list prepared by the Selection Committee by letter dated 17 March 2010. In the column, 'type of approval', it was mentioned in the approval order that the same was granted with a condition of completion of Ph.D. within a period of 7 years.

14) In similar manner, all the other Respondents have also been appointed directly on the post of Assistant Professor. So far as the Respondent in Writ Petition No.421/2025 is concerned (*Prasad Rajaram Kulkarni*), he was appointed as Assistant Professor by order dated 21 June 2008 as per the revised service conditions Rules 2008. The appointment order dated 21 June 2008 made reference to the revised Service Conditions Rules 2008 in the handbook of AICTE. It appears that in the original appointment letter dated 21 June 2008, there was no condition for completion of Ph.D. within a period of 7 years. However, after receipt of approval from Respondent No.2-University, letter dated 5 April 2010 was addressed to him by adding the following conditions in the appointment order :

"The Management is pleased to inform you that, Shivaji University, Kolhapur have PROVISIONALLY APPROVED your recommendation made on the Post of ASSISTANT PROFESSOR on the specific condition of completion of your Ph.D. within SEVEN YEARS, from the date of your appointment. Accordingly, your said appointment is hereby regularized on TWO YEARS PROBATION, (which can be extended, if required) with present scale of pay from the date of your said appointment and execution of notarized undertaking to its effect. All the terms and conditions as specified in the order & undertaking so far, having been accepted/agreed by you shall remain unchanged."

15) In similar manner, all the Respondents have been appointed directly on the post of Assistant Professor. None of them were recruited on the post of Lecturer and subsequently re-designated as 'Assistant Professor'. It appears that after implementation of the recommendations of 6th Pay Commission, possibly in August 2010, the Respondents were re-designated as 'Associate Professors'. In this regard, letter dated 14 July 2018 is placed on record in one of the petitions under which the University referred to the AICTE Notification dated 13 March 2010, as well as the AICTE letter dated 29 May 2010 and accordingly directed the Principals of College to re-designate the post of Assistant Professor to that of Associate Professor. These Respondents are merely re-designated as Associate Professors and this is not a case involving promotion of Petitioners from the post of Assistant Professors to the post of Associate Professors.

16) Petitioners have relied upon AICTE Notification of January 2008 published in the handbook thereby prescribing the recruitment qualifications for the posts of Lecturer and Assistant Professor. So far as the post of Assistant Professor is concerned, recruitment qualifications are as under:

SR.NO	CADRE	PRESCRIBED QUALIFICATION & EXPERIENCE
2	<u>Assistant Professor</u> QUALIFICATION & EXPERIENCE FOR CANDIDATES FROM TEACHING	Ph.D. degree with the first class at Bachelor's or Master's level in the appropriate branch of Engineering/ Technology with 2 years experience in Teaching/Industry/Research at the level of Lecturer or equivalent. OR First Class at Master's level in the appropriate branch of Engineering/ Technology with 5years experience in teaching/Industry / Research at the level of lecturer or equivalent. Such candidates will be required to obtain Ph.D degree within a period of 7 years from the date of appointment as Assistant Professor. In the

	case of Universities/University departments and the institutions offering PG programmes/Research, Ph.D is a must. For candidates from Industry, Professional experience in R&D and patents would be desirable requirement failing which the increments will be stopped until Ph.D is earned. Candidates from Industry/ Profession with First Class Bachelor's degree in the appropriate branch of Engineering/ Technology or First Class Master's Degree in the appropriate branch of Engineering/Technology. And Professional work, which is significant and can be recognized as equivalent to Ph.D degree and with 2 years experience at a position equivalent to lecturer level would also be eligible.
	QUALIFICATION & EXPERIENCE FOR CANDIDATES FROM INDUSTRY & PROFESSION

17) Thus, the essential qualification for appointment on the post of Assistant Professor is Ph.D. degree with the first class at Bachelor's or Master's level in the appropriate branch of Engineering/ Technology with 2 years of experience in Teaching/Industry/Research at the level of Lecturer or equivalent. However, candidates with First Class at Masters level with 5 years of experience can also be considered for appointment as Assistant Professors subject to the condition that such candidates obtain Ph.D. degree within 7 years from the date of appointment as Assistant Professor. It is further provided that in cases of Universities/University Departments and the institutions offering PG programmes/Research, possession of Ph.d. qualification is mandatory. This would essentially mean that any Universities/University Departments and Institutions offering PG programmes/Research, candidates not possessing Ph.D. cannot be appointed as '*Assistant Professors*'. In respect of candidates drawn from Industry, it is provided that possession of professional experience in R

& D and patents is a desirable requirement failing which increments are to be stopped until earning of Ph.D.

18) There is no dispute to the position that Petitioner is not an University or an Department of University nor a Institute offering PG Programmes/research. Therefore, it is not the case of the Petitioners that possession of Ph.D. degree right since inception is an essential qualification for appointment as Assistant Professor in its College. Thus, in the Petitioner No.2-College, candidates with First Class at Masters level with 5 years of experience can be appointed as Assistant Professors subject to the condition of acquisition of Ph.D. degree within a period of 7 years.

19) There is no dispute to the position that none of the Respondents could acquire Ph.D. degree within 7 years of their respective appointments. The issue is the exact effect of failure to acquire Ph.D. degree within the prescribed period of 7 years. The Tribunal has relied upon AICTE Notification dated 4 January 2016 by which various clarifications are issued. One of the clarifications sought was about possible reversion of Assistant Professor (re-designated as Associate Professor) who are unable to complete Ph.D. in 7 years. The AICTE clarified as under :

SR.NO.		
53	Whether, Asst. Professor (Re-designated as Associate Professor w.e.f 1-1-2006), who are not able to complete the Ph. D in seven years from the date of Joining (Direct/ CAS) will be reverted back.	Such candidates will be required to complete Ph. D within 7 years from the date of Joining, failing which increments shall be stopped until Ph. D is earned.

20) Despite clear clarifications vide AICTE Notification dated 4 January 2016, it appears that further clarifications was sought for stoppage of annual increments until the Assistant Professor obtained Ph.D. degree. The AICTE clarified the said query vide Notification dated 20 May 2020 which reads thus :

Issues pertaining to Candidates upgraded with a condition of obtaining a Ph.D. within 7 years		
Sr .NO		
5	Whether the annual increments of Assistant Professors who are recruited or promoted under condition to obtain Ph.D. degree within seven years, should be stopped until he obtains Ph.D. degree and fulfill service condition as required under AICTE regulation 2010 and 2012?	Yes Such candidates were required to complete Ph. D. degree within 7 years from the date of joining, failing which increments shall be stopped and forfeited until Ph.D. degree is acquired. The annual increments, without notional increments, shall resume from the date of obtaining Ph.D. degree, subject to fulfillment of other service conditions.

21) Thus, the AICTE has clearly clarified that the candidates who are unable to complete Ph.D. within 7 years from the date of joining as Assistant Professor need not be reverted from their re-designated position of Associate Professors to that of Assistant Professor but their increments are required to be stopped until the Ph.D. is earned. In the light of the above clear clarification, the action of the Petitioner-Management in seeking to revert the Respondents from the position of Associate Professor to Assistant Professor is clearly arbitrary.

22) There is yet another reason why reversion of Respondents from the position of Associate Professor to Assistant Professor is impermissible. As observed above, the Petitioners have not been

promoted from the post of Assistant Professor to the post of Associate Professor. It is merely re-designation and not a vertical or upward movement incurring. The post of Lecturer has been redesignated as Assistant Professor. Thus by reverting the Respondents as Assistant Professors, they would actually be reverted as Lecturer, that is the post on which they were not even recruited. It is well settled position of law that a person cannot be reverted below the position on which he is initially recruited. Therefore, it is otherwise impermissible for the Petitioner-Management to revert the Respondents to the position of Assistant Professor, which is merely a re-designated post of Lecturer. This appears to be the reason why the AICTE has rejected specific query about effecting such reversion to the post of Assistant Professor and has instead directed stoppage of increments until acquisition of Ph.D. qualification.

23) In my view, the Tribunal has rightly appreciated the above position while setting aside the impugned decision of the Petitioner-Management. The findings recorded by the Tribunal do not suffer from the element of perversity nor in its order the Tribunal has not acted within the bounds of its jurisdiction. Therefore, there is no warrant for interference by this Court in exercise of extra-ordinary jurisdiction under Article 227 of the Constitution of India.

24) Before proceeding to the merits of the case, it would be first necessary to quickly deal with the point of denial of opportunity to the Petitioners to present their case by the Tribunal. It appears that, Petitioners have been extremely casual in defending the Appeals before the Tribunal. On account of repeated failure on the part of the Petitioners to argue the Appeals, the Tribunal was left with no alternative but to pass '*No argument*' order on 26 September 2024. Petitioners filed application dated 7 October 2024 for recall of 'no

argument' order. The Tribunal showed indulgence and passed order dated 8 October 2024 recalling the '*No argument*' order subject to payment of costs of Rs.2,000/- to be paid by the Respondents with a clear condition that payment of costs shall be condition precedent to argue the Appeals. Petitioners were further warned that they must remain present on the next date of hearing and argue the Appeals and that no further adjournment would be granted. Despite, such clear order, Petitioners once again exhibited negligence and did not pay costs of Rs.2,000/- to the Respondents. When the Appeals was listed on 11 October 2024, a vague application was filed by the Petitioners that since the authorised person of the Petitioners was required for approval, the cheques for costs could not be signed and therefore they sought time to pay costs to the Respondents vide application dated 11 November 2024. The Tribunal arrived at the conclusion that Petitioners were merely whiling away time and were extremely negligent in not even paying costs as directed by the Tribunal vide order dated 8 October 2024 though period of one month had expired. The Tribunal is right in rejecting the application dated 11 November 2024 by order passed on 11 November 2024. In the above circumstances, the Tribunal has proceeded to decide the Appeals by considering the reply filed on behalf of the Petitioners, as well as the documents available on record. In my view therefore no error can be traced in the approach adopted by the Tribunal in proceeding to decide the Appeals in absence of arguments on behalf of advocate of the Petitioners. More important is the fact that even on 11 November 2024, the advocate of the Petitioners were absent before the Tribunal. Thus, apart from failure to deposit costs of meager amount of Rs.2,000/- despite passage of one month, Petitioner's Advocate was otherwise unavailable on 11 November 2024 to argue. I therefore do not find any serious error on the part of the Tribunal in proceeding to hear and decide the Appeals on merits in absence of Petitioner's advocate.

25) Nonetheless, I have again granted full opportunity of hearing to Mr. Sutar and have considered the entire submissions canvassed by him which are being dealt with in paragraphs to follow. Therefore, no prejudice is otherwise caused to the Petitioners on account of absence of their advocate at the time when the appeals were argued. Resultantly, I do not find any palpable error in the common judgment and order passed by the Tribunal. The petitions are devoid of merits. They are accordingly **dismissed** without any further order as to costs.

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[SANDEEP V. MARNE, J.]