

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

WRIT PETITION NO. 9132 OF 2024

G.K. Gujar Memorial Charitable
Trust and Anr.

...Petitioners

V/s.

Abhijeet Shivaji Suryawanshi and
Ors.

...Respondents

**WITH
WRIT PETITION NO. 13175 OF 2024**

G.K. Gujar Memorial Charitable
Trust and Anr.

...Petitioners

V/s.

Mrs. Sneha Mohanrao Patil and
Ors.

...Respondents

**WITH
WRIT PETITION NO. 13177 OF 2024**

G.K. Gujar Memorial Charitable
Trust and Anr.

...Petitioners

V/s.

Shri ShriGurunath Vivek Shinde
and Ors.

...Respondents

**WITH
WRIT PETITION NO. 13172 OF 2024**

G.K. Gujar Memorial Charitable

...Petitioners

Trust and Anr.

V/s.

Santoshkumar Ashok Lawate and
Ors.

...Respondents

**WITH
WRIT PETITION NO. 13171 OF 2024**

G.K. Gujar Memorial Charitable
Trust and Anr.

...Petitioners

V/s.

Vishal Narayan Gandhe and Ors.

...Respondents

**WITH
WRIT PETITION NO. 13170 OF 2024**

G.K. Gujar Memorial Charitable
Trust and Anr.

...Petitioners

V/s.

Nilesh Suresh Bagal and Ors.

...Respondents

**WITH
WRIT PETITION NO. 13179 OF 2024**

G.K. Gujar Memorial Charitable
Trust and Anr.

...Petitioners

V/s.

Karntikumar Kalyanrao Bhosale
and Ors.

...Respondents

**WITH
WRIT PETITION NO. 13180 OF 2024**

G.K. Gujar Memorial Charitable
Trust and Anr.

...Petitioners

V/s.

Rohit Tanaji Waghmare and Ors.

...Respondents

Mr. N.V. Bandiwadekar, *Senior Advocate with Mr. Shailesh Chavan, Mr. Swapnil Vighne and Mr. Aniket Phaphale i/b. Mr. Milind Deshmukh for the Petitioners.*

Mr. C.G. Gavnekar *with Mr. Ashutosh Gavnekar and Mr. Rohit Parab for Respondent No.1 in WP/9132/2024, WP/13170/2024, WP/13179/2024, WP/13180/2024, WP/13175/2024, WP/13177/2024, WP/13171/2024 and WP/13172/2024.*

Ms. Snehal Jadhav, *AGP for Respondent-State in WP/9132/2024, WP/13170/2024, WP/13179/2024, WP/13180/2024, WP/13175/2024, WP/13177/2024, WP/13171/2024 and WP/13172/2024*

CORAM : SANDEEP V. MARNE, J.

Dated : 18 February 2025.

P.C. :

1) These Petitions are filed by the Petitioner-Management challenging the common judgment and order dated 22 April 2024 passed by the Presiding Officer, Savitribai Phule, Shivaji and

Solapur University and College Tribunal, Pune (**College Tribunal**) allowing the Appeals filed by the Respondent-Teachers and setting aside their termination with further direction to the Petitioners-Management to reinstate them on their original posts with all consequential benefits including backwages.

2) I have heard Mr. Bandiwadekar, the learned senior advocate appearing for the Petitioners and Mr. Gavnekar, the learned counsel appearing for the Respondents- teachers.

3) Perusal of the impugned judgment and order passed by the learned Presiding Officer of the College Tribunal would indicate that the termination of the Respondent-Teachers is set aside essentially on two grounds viz., failure to conduct departmental enquiry and non-adherence to the provisions of Section 121 of the Maharashtra Public Universities Act 2016 (**Universities Act**).

4) So far as the first reason of failure to conduct departmental enquiry is concerned, I am not in agreement with the findings recorded by the College Tribunal that it was mandatory for Petitioners-Management to conduct departmental enquiry in terms of Statute 211 of the University Statutes before resorting to termination of services of the Respondent-teachers. This is not a case where allegation of misconduct is levelled against them, which would mandate conduct of a departmental

enquiry. Petitioner is an unaided college and once the teaching staff is rendered surplus on account of reduction of intake capacity, Petitioner has undertaken the exercise of relieving the excess teaching staff. Thus, relieving of excess teaching staff is not attributable to any conduct of such teaching staff, but is necessitated essentially on account of reduction of intake capacity. Petitioner is not an aided college, where the surplus teaching staff would have a right of absorption in other management. Therefore, upon closure of a faculty or department or a course, the management of unaided college cannot be saddled with liability to bear the expenditure towards salaries of surplus teaching staff. If the view taken by the Tribunal about need to conduct departmental inquiry is accepted as correct, the management of a private unaided college will be required to retain and pay salaries to its teachings staff even after closure of the entire college. Therefore, the real test before the Tribunal was whether there is lawful closure effected so as to justify the ouster of alleged surplus teaching staff. Conduct of disciplinary inquiry therefore was not warranted when relieving of teaching staff is not attributable to any misconduct. In my view therefore, the first reason of failure to conduct departmental enquiry before relieving the services of Respondent-Teachers as recorded by the Tribunal cannot be sustained.

5) So far as the second reason for interfering in the termination orders is concerned, the same relates to non-adherence to the provisions of Section 121 of the Universities

Act. It appears that the College Tribunal has recorded a finding of fact that permission of the State Government was not obtained for closure of the concerned division/reduction of intake capacity. Section 121 of the Universities Act provides thus:

121. Closure of affiliated college or recognized institutions.-

- (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 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.

6) Though the entire college or institution has not been closed under sub-section (1) of Section 121, Mr. Bandiwadekar does not seriously dispute the position that provisions of Section 121 of the Universities Act are also applicable for closure of faculties, courses of studies or satellite centers. Thus, for reduction of intake capacity for mechanical engineering branch from 120 to 60 as well as for closure of entire mechanical engineering branch through direct second year entry, provisions of Section 121 of the Universities Act would clearly apply and it was mandatory for the Petitioner-Management to secure prior permission of the State Government. It appears that before the College Tribunal, Petitioner-Management produced permissions granted by the University on 29 September 2022 and permission granted by All India Council for Technical Education (**AICTE**) on 29 April 2019. Now before me, copy of Government Resolution dated 4 July 2019 is placed on record alongwith the compilation of documents, under which the State Government has granted

permission for closure of colleges/courses or reduction of intake capacity for various institutions. So far as Petitioner is concerned, its name appears at serial Nos. 289 and 290 of Annexure-A to the GR and it appears that the State Government has approved reduction of intake capacity from 120 to 60 in respect of mechanical engineering faculty. Similarly for mechanical engineering course of direct second year entry, the entire course is permitted to be closed. It appears that there is nothing on record to indicate that Government Resolution dated 4 July 2019 was brought to the notice of the College Tribunal. In my view therefore an opportunity needs to be granted to the Petitioners-Management to invite attention of the College Tribunal to the Government Resolution dated 4 July 2019, as the same *prima facie* indicates grant of permission by the State Government for closure of courses / reduction of intake capacity within the meaning of sub-section (1) of Section 121 of the Universities Act.

7) Mr. Gavnekar would submit that mere reduction in intake capacity or closure of a particular course could not have *ipso facto* result in termination of 8 teaching staff. He would submit that as per the AICTE norms, the student-teacher ratio is 20:1 and that therefore College Tribunal is required to undertake an enquiry into the exact number of teachers required for the Mechanical Engineering course so that services of at least some of the teaching staff can be protected. In my view this aspect also

needs to be decided by the College Tribunal in the remanded proceedings.

8) Mr. Gavnekar has submitted that the permission of the University was issued on 29 September 2022 after effecting termination of the teaching staff. In my view even this aspect can be gone into by the College Tribunal while deciding the remanded Appeals.

9) In my view therefore the Appeals deserve to be remanded for fresh decision before the Tribunal in the light of the Government Resolution dated 4 July 2019. Rival parties would be free to canvass their submissions about the exact effect of Government Resolution dated 4 July 2019.

10) Petitions accordingly succeed partly, and I proceed to pass the following order:

- (i) Judgment and order dated 22 April 2024 passed by the College Tribunal is set aside. Appeals are remanded for being decided afresh in the light of Government Resolution dated 4 July 2019 as well as by taking into consideration the observations made by this Court in the present order.
- (ii) All rights and contentions of parties, except the contention relating to non-holding of departmental

enquiry, are expressly kept open to be agitated before the College Tribunal.

- (iii) Parties shall appear before the College Tribunal on 3 March 2025 and obtain further directions for fixing date(s) of hearing of the Appeals.
- (iv) Considering the fact that Appeals are pending since long, the College Tribunal is requested to decide the same in an expeditious manner.

11) With the above directions, Petitions are partly allowed and disposed of.

[SANDEEP V. MARNE, J.]