

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1772 OF 2024

Mohd. Siddique Abbas Mulla .. Petitioner
Vs.

Dr. Ishaq Jamkhanawala Tibbia Unani
Medical College & Haji A.R. Kalsekar,
Tibbia (Unani) Hospital and Ors. .. Respondents

Mr. M.S. Adenwala, Advocate for the Petitioner.
Mr. Sutapa Sana, Advocate for Respondent Nos.1 and 2.
Mr. Akshay S. Pansare, i/by Mr. Sachindra B. Shetye, Advocates for
Respondent No.3.

**CORAM : SHREE CHANDRASHEKHAR &
MANJUSHA DESHPANDE, JJ**

DATE : 24TH JULY 2025.

PC. :

Seeking implementation of the writ Court's order dated 19th January 2021 passed in Writ Petition (Lodging) No.7631 of 2020 (*Dr. M. Ishaq Jamkhanawala Tibbia Unani Medical College & Haji A.R. Kalsekar Tibbia (Unani) Hospital & Anr. Vs. Mohammad Siddique Abbas Mulla and Anr.*), the present writ petition has been filed by an employee who was employed as a driver under the Dr. Ishaq Jamkhanawala Tibbia Unani Medical College & Haji A.R. Kalsekar, Tibbia (Unani) Hospital.

2. The facts of this case in short are that the petitioner being aggrieved by the order of termination dated 6th March 2017 filed a complaint before the Maharashtra University of Health Sciences on 3rd May 2019 and an order of reinstatement in service was passed on 17th March 2020. The said order was confirmed on 4th September 2020 in Complaint Appeal No.2 of 2019. The challenge raised before the writ Court to the said order came to be rejected with the following observations :-

“6. There is no substance in the submission of the petitioners. Every correspondence issued to

respondent no.1 by his employer has invariably been from petitioner no.1. The termination itself has been issued by petitioner no.1. So also, the identity-card held by respondent no.1, which forms part of the record of the case, showed him as an employee of petitioner no.1. Admittedly, even the salary of respondent no.1 came from petitioner no.1, though it is the petitioners' case that it was due to some understanding inter se between the petitioners. Anyway, considering that there is abundance of material to suggest that respondent no.1 was an employee of petitioner no.1, no fault can be found with the impugned decision of respondent no.2-University. The decision appears to have been taken after taking into account all relevant and germane material and without considering any irrelevant or non-germane material. The view expressed in the decision is clearly a possible view and does not merit any interference in the writ jurisdiction of this Court.”

3. The decision in Writ Petition (Lodging) No.7631 of 2020 was taken to the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No(s).26194/2020 and the said Special Leave Petition was dismissed in default on 3rd January 2023. Notwithstanding that, the petitioner was not reinstated in service and paid back wages. In the counter affidavit, the respondents have pleaded that on 23rd April 2024 a letter was written to the petitioner to tender the joining but he did not come forward. Similar letters are said to be issued by the respondent nos. 1 and 2 but the petitioner did not come forward and indulged himself into writing letters including to the Principal that he would take out contempt proceedings against him.

4. On a glance at the counter affidavit filed on behalf of the respondent no.1, we find that similar grounds have been raised to resist this writ petition as were taken in the previous proceedings. The learned counsel appearing for the respondent nos.1 and 2 has however endeavoured to persuade this Court to accept the explanation offered by the respondent nos. 1 and 2 why the petitioner was not reinstated in service and is not entitled to any relief. However, we are not inclined to accept the stand put-forth on behalf of the respondent nos.1 and 2. We need not repeat that a Court's order must be complied with all due diligence. Though this is an option open to the aggrieved party to challenge the order or seek review / clarification of the order of the Court but in no case any person or an Authority can be permitted to tinker with the order passed by the Court particularly the order of this Court in Writ Petition (Lodging) No.7631 of 2020. In "*S. Nagraj & Ors. v. State of Karnataka & Anr.*" 1993 Supp (4) SCC 595, the Hon'ble Supreme Court held as under :

"12.....Law on the binding effect of an order passed by a court of law is well settled. Nor there can be any conflict of opinion that if an order had been passed by a court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper. In Halsbury's Laws of England(Fourth Edn., Vol. 9, p. 35, para 55) the law on orders improperly obtained is stated thus:"The opinion has been expressed that the fact that an order ought not to have been made is not a sufficient excuse for disobeying it, that disobedience to it constitutes

a contempt, and that the party aggrieved should apply to the court for relief from compliance with the order.”Any order passed by a court of law, more so by the higher courts and especially this Court whose decisions are declarations of law are not only entitled to respect but are binding and have to be enforced and obeyed strictly. No court much less an authority howsoever high can ignore it. Any doubt or ambiguity can be removed by the court which passed the order and not by an authority according to its own understanding.”

5. What appears from the materials on record is that the first communication to the petitioner was addressed by the respondent no.1 on 23rd April 2024 asking him to tender joining. The next communication in this regard came from the respondent no.2 on 10th June 2024 and that was followed by other communications. On the other hand, the case pleaded by the petitioner is that on 1st May 2024 he appeared in the office of the respondent no. 1 and submitted an application that he shall be resuming his duty next day but he was not permitted to tender joining.

6. Since there is a dispute raised by the respondent nos.1 and 2 as regards the petitioner tendering his joining on 2nd May 2024, we hereby direct the respondent no.1 to accept joining of the petitioner forthwith. As regards the compensation to the petitioner on account of mental agony and harassment caused by the respondent nos.1 and 2 in not accepting his joining and paying back-wages, we have formed an opinion that these respondents have failed to explain why the petitioner was not permitted to tender his joining prior to 23rd April 2024, which was the first communication issued by the respondent no.1 to the petitioner. We are also alive to the situation that the proceedings taken out by the respondent nos.1 and 2 before the Hon’ble Supreme Court suffered from serious laches and inaction on their part and they were never vigilant to prosecute the matter. The Special Leave Petition was first dismissed in

default and then on merits after it was restored to the files. In the aforesaid circumstances, we are inclined to impose a cost of Rs.50,000/- to be paid to the petitioner along with his salary for the month of July 2025.

7. Writ Petition No.1772 of 2024 is thus disposed of.

[MANJUSHA DESHPANDE, J.]

[SHREE CHANDRASHEKHAR, J.]