



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4468 OF 2024

**G. H. Raison College of
Engineering**, Through its
Director Dr. Sachin Untwale,
Digdoh Hills, Hingana Road,
Nagpur – 440001.

.... **PETITIONER**

// **VERSUS** //

- 1) **Manisha Manohar Ingale**,
Aged about 35 years, Occ.-Service,
R/o. Flat No.503, Shantikant Apartment,
Sangharsh Nagar, Jaitala, Nagpur.
- 2) **Rashtra Sant Tukdoji Maharaj
Nagpur University**,
through its, Registrar.
- 3) **Joint Director of Technical
Education**, (Regional Office),
Government Polytechnic Campus,
Sadar, Nagpur.

.... **RESPONDENTS**

Mr. H. S. Chitaley, Advocate for the Petitioner.
Mr. Atul Mahajan, Advocate along with Mr. Pawan Sahare,
Advocate for the Respondent No.1.
Mr. Vivek Awachat, Advocate for Respondent No.2.
Mr. B. M. Lonare, Assistant Government Pleader for
Respondent/State

CORAM : SMT. M.S. JAWALKAR, J.

DATE ON RESERVING THE JUDGMENT : **08.04.2025**

DATE ON PRONOUNCING THE JUDGMENT : **09.05.2025**

JUDGMENT :

1. **RULE.** Rule made returnable forthwith.
2. Heard finally with the consent of the learned Counsel appearing for the parties.
3. Being aggrieved by the Judgment and order dated 06.05.2024, passed by the learned University and College Tribunal, Nagpur, in Appeal No. N-3/2022, the petitioner preferred this writ petition.
4. The facts in nutshell are as under:

Petitioner is an Educational Institute, wherein, respondent No.1 had applied for the post of Assistant Professor in Electronics and Telecommunication and was appointed on 01.06.2015. The respondent No.1 was on probation for a period of two years from 01.06.2015. On 10.06.2015, the respondent No.1, immediately after appointment moved an application with the Director of the petitioner/Institute, seeking maternity leave. In view of the reasons stated in the application, the petitioner/Institution granted six months maternity leave from 10.06.2015 to 09.12.2015 to respondent No.1. Thereafter, respondent No.1 also sought extension of maternity leave for another four months i.e.

up to 31.03.2016. The petitioner was gracious enough to extend the maternity leave. The respondent No.1 was informed that since her appointment she has throughout been on her maternity leave and therefore her probation period shall start afresh from 01.04.2016. The respondent No.1 issued a letter and expressed her gratitude to the petitioner for granting her maternity leave for an extended period of time and requested to induct her in the Electronics and Telecommunication Department. The petitioner informed the respondent No.1 time and again to register herself for pursuing Ph.D., but the respondent No.1 showed no inclination and that the petitioner was constrained to issue a letter and informed the respondent No.1 of the same. The respondent No.1 was throughout irregular in discharging her duties. She has not reported as and when required, she has not even registered for Ph.D, which is a prerequisite for her post to be permanent. The petitioner issued a letter dated 20.02.2018, for extension of probation period for one more year till 31.03.2019.

5. The respondent No.1 failed to discharge her duties as expected, despite of all the reminders. The petitioner terminated the respondent No.1 on 'unsatisfactory' grounds and an amount of Rs.51,792/- was deposited in her bank account in lieu of one

month's notice. Being aggrieved, the respondent No.1 filed an Appeal against the termination order passed by the petitioner/Institution before the learned University and College Tribunal, Nagpur, along with application for condonation of delay for filing an appeal. The learned Tribunal condoned the delay and on 06.05.2024, the learned Tribunal passed the Judgment and order and granted reinstatement to the respondent No.1 with 75% back wages. Hence, the aforesaid order is the subject matter of challenge in the present writ petition.

6. Learned Counsel for the petitioner contended that the learned Tribunal has failed to appreciate the fact that the petitioner/College is an autonomous and unaided institution and not a Government Institution. The petitioner being an autonomous institution is not bound by the guidelines of UGC, the same being directory and not mandatory on the petitioner. It is further submitted that the learned Tribunal has held that as per Clause 11 of the UGC Regulation dated 30.06.2010, the appointment of the respondent was automatically confirmed on completion of one year of probation period in absence of specific order of extension. It is further submitted that the appointment order clearly states that the probation period of the respondent

No.1 shall be for a period of two years, subject to further extension. The learned Tribunal has not even considered the contention of the petitioner that the respondent No.1 is bound by the appointment order, which is in a form of Contract between the petitioner and the respondent No.1.

7. It is further contended that the learned Tribunal ought to have appreciated that the respondent No.1 within ten days time of appointment had sought maternity leave for six months and then further it was extended for a period of another four months. The very purpose of the Probation period is to assess the employee on various aspects and enable the employer to arrive at a conclusion whether the appointee is worthy of getting a permanent post after analyzing her record and performance. It is submitted that the petitioner did not get any opportunity to assess and analyze the respondent No.1 and, therefore, the UGC Guidelines cannot be applied to the petitioner as such. The learned Tribunal ought to have considered the scheme behind formulation of provision of the probation period. Therefore, the aforesaid order passed by the Learned Tribunal needs interference by this Court and impugned order also needs to be set aside.

8. Learned Counsel for the petitioner relied on the following citations:

- (i) *Kalyani Mathivanan Vs. K. V. Jeyaraj & Ors., reported in (2015) 6 SCC 363,*
- (ii) *Dr. Jyoti Rani Vs. Board of Governors, Thapar Institute of Engineer and Technology, Patiala, C.W.P No.16610/2018, High Court of Punjab & Haryana at Chandigarh, decided on 05.03.2019,*
- (iii) *U. P. State Brassware Corpn. Ltd. & Anr. Vs. Uday Narain Pandey, reported in (2006) 1 SCC 479,*
- (iv) *Gurudevdatla Vksas Maryadit & Ors. Vs. State of Maharashtra & Ors., reported in (2001) 3 SCC 534,*
- (v) *Reserve Bank of India Vs. Peerless General Finance & Investment Co. Ltd., and Ors., reported in (1987) 1 SCC 424,*

9. Learned Counsel for the respondents contended that after appointment and joining of the appellant within 15 days she proceeded on maternity leave. The appellant joined on 01.06.2015 and proceeded on maternity leave on 10.06.2015, therefore, she did not even complete her probation period. The appellant was on leave almost till March, 2016. It is further submitted that in view of factual position that the appellant was on leave, she was given fresh appointment in terms of the appointment/probation order dated 19.03.2016. The appellant was asked to join on 01.04.2016. At the time of joining, the

appellant submitted a letter dated 01.04.2016 that she will work for the betterment of the students. Her probation period was extended upto 31.03.2019 by order dated 20.02.2018. The appellant has accepted the fresh appointment order and has not challenged the said orders. All these above facts were rightly taken into consideration by the learned Tribunal and passed an appropriate order which needs no interference and also needs to be confirmed.

10. Learned Counsel for respondent No.1 relied on the following citations:

- (i) Dr. Babasaheb Ambedkar Memorial Society, Chandrapur & Anr. Vs. Presiding Officer, University and College Tribunal, Nagpur & Ors., reported in 2018(2) Mh.L.J. 610,*
- (ii) Writ Petition No.5547/2017, Dr. Rajesh S/o. Manikraoji Naik Vs. The Principal, Renuka College, Besa, Nagpur and others, decided on 18.08.2022 and*
- (iii) Writ Petition No. 1459/2015, Ku. Ujwala Vijay Sukhdev Vs. The Presiding Officer, University and College Tribunal, Nagpur and others, decided on 02.11.2018.*

11. Heard both the parties at length. Perused impugned order and other documents placed on record and considered citations relied on by both the parties.

12. The petitioner is an Educational Institute, wherein, respondent No.1, has applied for the post Assistant Professor in Electronics and Telecommunication. The respondent No.1, was on probation for a period of two years from 01.06.2015. Appointment order is placed on record, in which, a specific condition is there that her appointment will be on probation of two years from 01.06.2015. It is also made clear that her performance, shall be assessed periodically and depending on the performance, the period may be extended. One of the condition is that during the tenure of service, the Management reserved the right to terminate the services of the appointee with or without reasons in case of poor performance/non-observance of organization policies. Accordingly, the respondent No.1 joined the services accepting the appointment order on 01.06.2015. Immediately thereafter, she moved an application on 10.06.2015, seeking maternity leave. Her application came to be allowed. However, again on 03.12.2015, the respondent No. 1, sought extension of maternity leave for another four months i.e. up to 31.03.2016. In response to this letter, Management informed to the respondent No. 1 vide its communication dated 19.03.2016, by which, though extension for maternity leave is granted, it was clarified that after joining as a professor, immediately within first

ten days, she proceeded on maternity leave and she will not be there till 31.03.2016.

13. It is informed that her probation shall start fresh from the date of her joining the institute for further two years. She was directed to join on 01.04.2016, positively. Accordingly, she has joined duty on 01.04.2016. In her joining letter, she has extended her thanks for accepting all her applications regarding maternity leave and also for giving her opportunity to work with the Institution. It further appears that the respondent No.1 was directed by communication dated 20/04/2017 to register herself for Ph.D., which is mandatory to hold regular post as per UGC Guidelines. However, she has not given any action plan for Ph.D. registration as per direction. Considering the other conduct of the respondent No. 1 by letter dated 20.02.2018, her probation was extended by one year i.e. up to 31.03.2019.

14. The Management on 27.02.2019, terminated services of respondent No.1 with effect from 27.02.2019 on the ground of 'unsatisfactory performance', for which, there was warning earlier to her termination. The said termination was effected by depositing one month salary in lieu of one month notice. This

order of termination dated 27.02.2019, is challenged by the respondent No.1 by filing appeal on 16.03.2020 near about one year after termination.

15. It is vehemently argued by learned Counsel for petitioner that this application for condonation of delay itself ought not to have been entertained by the College Tribunal. The first reason put forth for condonation of delay appears to be that she was under impression that as per the Maharashtra Public Universities Act, limitation is of one year. Second reason is given that she was not having relevant documents. Third reason is given that husband of the appellant also lost his job in the month of April, 2019, and it was very difficult for them to meet the daily needs without their being any source of income.

16. It is submitted that the appellant in her application for condonation of delay submitted that she (respondent No.1) and her husband shifted to their native place to meet the daily expenses in the search of the job for the husband. It is submitted that in the month of February, 2020, she tried to contact her Counsel, who has informed her that appeal period is already over and there is delay of 353 days. Reply was duly filed by the

Management. Application is opposed as vague reasons given and reason that she was under impression cannot sustain as she has filed appeal through Advocate. Otherwise also, ignorance of law cannot be excused. All these contentions in application for condonation of delay are specifically mentioned in this matter, in view of the additional affidavit filed by the petitioner herein. The said additional affidavit filed as there was certain material discovered. Though, in application for condonation of delay, appellant therein stated that after her termination, she had shifted to her native place to meet the daily expenses and for search of job for her husband. In fact, she has registered herself for Ph.D. course with Vishveshvarayya National Institute of Technology, Nagpur, in the year 2022. However, on perusal of documents, it appears that those are subsequent to filing of appeal before the College Tribunal. However, this fact can not be denied that respondent No.1 applied to the Management for grant of permission for undertaking course of Ph.D. at NIT, Raipur, vide her letter dated 27.10.2018. The Management granted the respondent No.1 permission to join the Ph.D. course and had also sanctioned paid leave from 01.11.2018 to 13.11.2018. She was also asked to submit attendance certificate before joining of the

service. She had neither joined the Ph.D. course and has also not submitted any certificate of 10 days.

17. Be that as it may be, it is a fact that till she was in service, she has not made any effort to join Ph.D. course, as she was not NET/SLET/SET. Now challenge is to the order of College Tribunal to the effect that it was directed to reinstatement as well as 75% back wages. The said order of College Tribunal is passed on 06.05.2024. In view of the additional affidavit, the respondent No.1 was getting stipend of Rs.37,000/- in all. Therefore, granting of 75% salary with continuity of service will have to be tested on the ground that whether appellant was fulfilling eligibility criteria of regular Professor and secondly, whether she was earning during the period since when she is pursuing Ph.D. in VNIT, Nagpur. The main issue was whether the UGC Regulations or whether State Universities Act will prevail in case of conflict.

18. Learned Counsel placed reliance on judgment in ***Kalyani Mathivanan*** (supra), wherein, point was framed whether the UGC Regulations, 2010, are mandatory in nature and second whether in the event of conflict between the University Act and the Regulations framed thereunder and the UGC Regulation, 2010

the provisions of the UGC Regulation, 2010, would prevail or not.

After considering various provision of UGC Hon'ble Apex Court held as under:

“53. The aforesaid judgment makes it clear that to the extent the State legislation is in conflict with the Central legislation including subordinate legislation made by the Central legislation under Entry 25 of the Concurrent List shall be repugnant to the Central legislation and would be inoperative.

56. We have noticed and held that the UGC Regulations, 2010 are not applicable to the universities, colleges and other higher educational Institutions coming under the purview of the State Legislature unless the State Government wish to adopt and Implement the Scheme subject to the terms and conditions therein. In this connection, one may refer to Para 8(p)(v) of Appendix I dated 31-12-2008 and Regulation 7.4.0 of the UGC Regulations, 2010.

57. It is also not the case of the respondents that the Scheme as contained in Appendix I to the Annexure of the UGC Regulations, 2010 has been adopted and implemented by the State Government. It is also apparent from the facts that the University Act has not been amended in terms of the UGC Regulations, 2010 nor was any action taken by UGC under Section 14 of the UGC Act, 1956 as a consequence of failure of the University to comply with the recommendations of the Commission under Section 14 of the UGC Act, 1956.”

19. The Hon'ble Apex Court concluded that:

“62.1. To the extent the State legislation is in conflict with the Central legislation including subordinate legislation made by the Central legislation under

Entry 25 of the Concurrent List shall be repugnant to the Central legislation and would be inoperative.

62.2. The UGC Regulations being passed by both the Houses of Parliament, though a subordinate legislation has binding effect on the universities to which it applies.

62.3. The UGC Regulations, 2010 are mandatory to teachers and other academic staff in all the Central universities and colleges thereunder and the Institutions deemed to be universities whose maintenance expenditure is met by UGC.

62.4. The UGC Regulations, 2010 are directory for the universities, Colleges and other higher educational Institutions under the purview of the State legislation as the matter has been left to the State Government to adopt and Implement the Scheme. Thus, the UGC Regulations, 2010 are partly mandatory and is partly directory.”

20. In view of this provisions, it is clear that unless the Maharashtra Public Universities Act is amended, there is no substance in the argument that it would be governed by UGC.

21. The learned Counsel for respondent No.1, Shri Mahajan, relied on Writ Petition No. 5547/2017, wherein, this Court held in paragraph No. 8 as under:

“8. Per contra, it is the case of the teacher that, in view of regulations framed by UGC, the petitioner has become permanent after the lapse of one year. Clause 11.1 and 11.2 of UGC Regulations On Minimum Qualifications For Appointment Of Teachers And Other Academic Staff In Universities

And Colleges And Measures For The Maintenance of Standards In Higher Education 2010 reads as under:

"11.1. The minimum period of probation shall be one year, extendable by a maximum period of one more year in case of unsatisfactory performance.

11.2. The confirmation at the end of one year shall be automatic, unless extended for another year by specific order, before the expiry of the first year."

22. In view of these clauses 11.1 and 11.2, an employees is automatically confirmed at the end of one year unless extended for another year by specific order before the expiry of first year. However, it appears that the parties have not brought to the notice to the College Tribunal the judgment of Hon'ble Apex Court in ***Kalyani Mathivanan*** (supra).

23. Statute 53 of Nagpur University Act, 1974 reads as under:

"STATUTE-53

Statute Providing for the Confirmation of the Teachers in Affiliated Colleges.

1. This Statute may be called "Statute Providing for the / confirmation of teachers working in affiliated colleges."

2. This Statute shall come into force with effect from the date of the assent of the Chancellor.

3. For this Statute :-

(i) "Affiliated College" means a college affiliated to Nagpur University under Section 43 of the Nagpur University Act, 1974 and includes a College deemed to be affiliated college under Section 91 of the said Act, but shall not include a college managed and maintained by the State Government.

(ii) "Teacher" means a teacher working as such in an affiliated college as defined above and shall include the Principal, the Vice-Principal and Physical Education Teacher.

4. A Teacher shall subject to the procedure of Selection and appointment, be appointed in a clear vacancy in the first instance on probation for two years (24 months) from the date of his appointment, at the end of which he shall be confirmed on the expiry of which he shall either be confirmed or his services dispensed with, provided that notice of such confirmation or termination of services shall be given at least one month before the due date, in absence of which it shall be construed that he has completed the period of probation satisfactorily and that he is deemed to be confirmed in service:

Provided that if any teacher already in service has completed two years service temporary/probation in clear vacancy, he will be deemed to be a confirmed teacher.

Explanation: It is hereby clarified that clear vacancy means a vacancy which is not in a lien vacancy or leave vacancy and that vacancy/post is in vogue in the Institution for not less than four years."

24. Learned Counsel for respondent relied on judgment of this Court in **Writ Petition No. 1459/2015 Ku. Ujwala Vijay**

Sukhdeve (supra). Learned Counsel for respondent relied on the same wherein, paragraph No. 24 reads as follows :

*“24. Upon the order of termination of service being set aside, grant of reinstatement follows but the contentious issue remains regarding entitlement of other benefits including grant of back wages. In the case of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others**, reported in (2013) 10 SCC 324, upon analysis of the law pertaining to grant of back wages, the Hon'ble Supreme Court has culled out propositions pertaining to the said issue. The relevant portion of the said judgment reads as follows:*

38.1.....

38.2.....

38.3.....

38.4.....

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned court or tribunal will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.”

25. However, the facts involved in the said matter was different, the petitioner therein, was appointed on 26/07/2006 and her probation period of 2 years came to an end on 25/07/2008. However, the communication from the Management issued on 30/07/2008, extending her probation by one year and after one year of extension, her services came to be terminated. The claim of the petitioner was that after period of two years, she has completed probation period and deemed to be confirmed in the service. In view of the fact that there was no notice of extension of probation one month before expiry of probation, she has acquired the status of deemed confirmed lecturer.

26. In the present matter, the petitioner was appointed on 01/06/2015 on probation of two years, however, immediately thereafter, the applicant availed maternity leave of about ten months. She was put on probation afresh for two years, from 01/04/2016. Thus, her probation period would have been expired on 31/03/2018, however, she was duly communicated on 20/02/2018, about her extension of probation for one more year till 31/03/2019. As such, there is no case for deemed

confirmation for non extension of probation period, prior to one month before completion.

27. Though Statute 53 provides for confirmation of the teacher in Affiliated College, this Court has not considered that it has provided probation for two years from the date of appointment. There is no amendment in respect of probation in the Maharashtra Public Universities Act. Moreover, even in 11.1 the minimum period of probation is prescribed as one year and extendable by a maximum period of one more year in case of unsatisfactory performance.

28. It is submitted by learned Counsel for petitioner that minimum period is prescribed as one year, however, probation can be for more than one year and is extendable thereafter, maximum period of one more year. Therefore, word 'minimum' as used permits to put the employee on probation for two years also.

29. The College Tribunal while adjudicating on this point, whether the appellant was qualified to appoint as a Professor. It is observed by learned College Tribunal that Ph.D. is not the qualification required for posting of Professor. It is submission of

respondent No.1 that the Ph.D. qualification is required for the person who is likely to be appointed on the post of Associate Professor or Professor or Principal/Director and not for Assistant Professor. Thus, it can be seen that the judgment passed by the learned College Tribunal has not specifically mentioned, what would be the eligibility criteria or educational qualification on which respondent wants to rely.

30. Learned College Tribunal relied on the notification dated 22.01.2010, issued by AICTE (Pay Scales Service Conditions and Qualifications for the Teachers and Other Academic Staff in Technical Institutions (Degree) Regulations, 2010, which reads as under:

*“(a) Assistant Professor/Associate Professors/
Professors in Technical institutions*

(iii) Assistant Professors possessing Master's degree in the relevant branch / discipline as defined for technical education shall be eligible for the AGP of Rs. 7,000 after completion of 5 years service as Assistant Professor.

(iv) Assistant Professor who do not have Ph.D. or a Master's degree in the relevant branch / discipline of a program shall be eligible for the AGP of Rs. 7,000 only after completion of 6 years' service as Assistant Professor.”

31. Learned Counsel for petitioner drawn my attention to clause 3.3.0 & 3.3.1 UGC Regulation, 2010. There is specific qualifications has prescribed in **guidelines 4.4.1** of Assistant Professor.

32. Learned Counsel for respondent submitted that the AICTE will govern the appointment in Technical Institutions. However, on perusal of notification of 22.01.2010, of AICTE, its Regulation are called as All India Council for Technical Education (Pay Scales, Service Conditions and Qualifications for the Teachers and other Academic Staff in Technical Institution (Degree) Regulation, 2010. It appears that College Tribunal interpreted clause (a) sub-clause (iii) and (iv) of the AICTE notification and held that it does not in any manner indicate that Ph.D. is necessary for confirmation of services. It is also held that Ph.D. qualification is required to the person who is likely to be appointed on the post of Associate Professor or Professor or Principal/Director and not for Assistant Professor.

33. It appears that the College Tribunal mislead itself by misinterpreting the AICTE Regulation, 2010, under the heading,

pay structure for different categories of teachers and equivalent position. It is mentioned Clause (a) Assistant Professor/Associate Professor/ Professor in Technical Institution. This clauses is nothing but pay structure for different categories. The Assistant Professor who are already in service, their pay band is decided considering their length of service. Even Clause (iii) and (iv) referred in the judgment of the College Tribunal, both the clauses provides about entitlement for Assistant Professor who has already put in service of five years, though not having Ph.D. degree, is entitled for annual grade pay of Rs.7,000/-. The Assistant Professor who do not have Ph.D. or Master's Degree in the relevant branch and who has put in service of six years, he would be entitled for annual grade pay of Rs.7000/-. Thus, it does not prescribe any qualification of Assistant Professor.

34. On perusal of UGC Guidelines, 2010, Clause 3.3.1 reads as under:

“3.3.1. NET/SLET/SET shall remain the minimum eligibility condition for recruitment and appointment of Assistant Professors in Universities/ Colleges/Institutions.

Provided however, that candidates, who are or have been awarded a Ph. D. Degree in accordance with

the University Grants Commission (Minimum Standards and Procedure for Award of Ph.D. Degree) Regulations, 2009, shall be exempted from the requirement of the minimum eligibility condition of NET/SLET/SET for recruitment and appointment of Assistant Professor or equivalent positions in Universities /Colleges/Institutions.”

35. If Clause 4.4.1 of UGC 2010 is perused, it is mandatory for appointment to have clear the NET conducted by UGC, CSIR or similar test accredited by the UGC like SLET/SET. Clause (iii) of 4.4.1 grants exemption from NET, SET etc. if the candidate have been awarded Ph.D degree accordance with the UGC. The UGC in paragraph No. 3.9.0 directed the period of time taken by candidates to acquire M.Phil and/or Ph.D. Degree shall not be considered as teaching/research experience to be claimed for appointment to the teaching positions. The qualification prescribed for Assistant Professor is applicable to Arts, Humanities, Sciences, Social Sciences, Commerce, Education, Languages, Law, Journalism and Mass Communication.

36. However, Clause 4.4.6.1. (page 158) provides minimum qualification for appointment of teaching faculty in Universities and Colleges, Engineering and Technology Discipline. For Assistant Professor first class Master's degree in the

appropriate branch of engineering and technology is essential and it is desirable teaching, research industrial and/or provisional experience in the reputed organization. There is nothing on record to show that the respondent No.1 is having first class master's degree in the appropriate branch of engineering as per clause 4.4.6.1 (page 158) of petition. Even if it is considered that Ph.D. is not requisite qualification for appointment of Assistant Professor, still master's degree in the appropriate branch of engineering in first class is necessary.

37. Learned Counsel for petitioner relied on ***Dr. Jyoti Rani*** (supra), in the said matter, the petitioner (Dr. Jyoti Rani) claims that she is deemed to be confirmed in terms of Regulations 11.1 to 11.5 of the "UGC Regulations 2010" which provide the initial period of probation of one year and deemed to be confirmed if no order of extension of probation in service is passed. The petitioner further claims that it is obligatory on the part of the University to issue an order of confirmation to the incumbent within 45 days of completion of probationary period after due process of verification of satisfactory performance.

38. The Punjab and Haryana Court in ***Jyoti Rani*** (supra)

relied on the judgment of Hon'ble Apex Court in ***High Court of MP versus Satya Narayan Thavar 2001(7) SCC 161***, the Hon'ble Supreme Court has held as under:

“ 11.....Other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such "extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry order of termination has not been passed. The last line of cases is where though under the rules maximum period of probation is prescribed, but the same require a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor the person concerned has passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired.”

39. Learned Counsel for petitioner vehemently submitted that the College Tribunal illegally granted full back wages. He relied on judgment in ***U.P. State Brassware Corpn. Ltd.***(supra). The Hon'ble Apex Court in paragraph Nos. 22 & 27 held as under :

“22. No precise formula can be laid down as to under what circumstances payment of entire back

wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the UP Industrial Disputes Act

27. In *Hindustan Tin Works (P) Ltd. v. Employees* this Court merely held that the relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It, therefore, does not lay down a law in absolute terms to the effect that the right to claim back wages must necessarily follow an order declaring that the termination of service is invalid in law”

40. Even if, the employee is reinstated the full back wages cannot be allowed automatically or mechanically only because an order of termination is found to be unsustainable.

41. Learned Counsel for respondent placed reliance on ***Dr. Babasaheb Ambedkar Memorial Society*** (supra), wherein, it is held by this Court in paragraph No. 5 as under :

“5.Any provision made in this behalf by the State Government prevails over any statute, ordinance, regulation or rule made under the Maharashtra Universities Act and accordingly, the provisions made in such statutes, ordinances, regulations or rules, as the case may be, which are inconsistent with the provisions of the code prescribed by the State Government, are invalid.

Besides this provision, there are regulations prescribed under the University Grants Commission Act, 1956 ("UGC Act"). The UGC Act was enacted by the parliament under Entry 66 List 1 of Schedule VII to the Constitution to make provisions for coordination and determination of standards in Universities. A University Grants Commission ("UGC") has been established under this Act. One of the functions entrusted to the UGC under the UGC Act is to provide for and recommend measures necessary for improvement of University education and advise universities upon actions to be taken for the purpose of implementing such recommendations. The UGC has been empowered to make regulations consistent with the UGC Act and Rules made thereunder. Defining qualifications that should be required of persons to be appointed to the teaching staff of Universities and Colleges affiliated to them and their service conditions including their confirmation etc. are matters covered by section 26(1)(e) and (g) of UGC Act, for which the UGC may make regulations. The UGC has, accordingly, framed regulations called the University Grants Commission (minimum qualifications for appointment of teachers and other academic staffs in universities and colleges and other measures for the maintenance of standards in higher education) Regulations, 2010 ("Regulations"). These Regulations apply to every University established or incorporated by or under a Central Act, Provisional Act or State Act and every institution including a constituent or an affiliated college recognized by the Commission in consultation with the University under Clause (f) of section (2) of the UGC Act. These Regulations have come into effect on 30th June, 2010. The Regulations provide for a minimum period of probation of one year (Clause 11.1) extendable by a maximum period of one more year in case of unsatisfactory performance. The Regulations provide (Clause 11.2) that confirmation at the end of one year shall be automatic, unless extended for another one year by a specific order passed before

the expiry of the first year. It is, thus, clear that on and from 30th June, 2010, the provisions concerning probation and confirmation contained in the regulations apply to the second petitioner-college. Statute 53, or any appointment order made thereunder by the second petitioner, has to make way for the provisions made in this behalf by the Regulations. Accordingly, the confirmation of respondent No. 2, at the end of one year, i.e. on 1st August, 2011 (respondent No. 2 having been appointed on 30th July, 2010), was automatic. Since there was no extension for further one year by any specific order in her case. Respondent No. 2 having, thus, been automatically confirmed, there is no question of termination with effect from 17th July, 2012 on the ground of unsatisfactory performance during the period of her probation.”

42. It is his contention that any Statute Ordinance, Regulation or Rule made under the Maharashtra University's Act contrary to the UGC Guidelines, the UGC Guideline will prevail. However, as held in **Kalyani Mathivanan** (supra), there has to be the adoption of an amendment in the State University Act. Even as per guideline 11.1 and 11.2 of UGC, 2010, it is provided minimum period of probation shall be one year. So there is no limit prescribed for appointing an employee on probation for more than one year.

43. Learned Counsel for petitioner relied on **Gurudev datta Vks Maryadit** (supra), in support of his contention that the

provision, wherein, minimum period of one year is prescribed cannot be interpreted by giving any other meaning. In the matter referred above Hon'ble Apex Court held that:

“26. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences.”

44. Learned Counsel for petitioner relied on ***Reserve Bank of India*** (supra), wherein, it is held in paragraph No.33 as under :

“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are Important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the

glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context.”

45. In view of the judgment in ***Kalyani Mathivanan*** (supra), wherein, it is duly considered whether UGC guidelines are mandatory or directory. There is no consideration by the College Tribunal to the judgment in ***Kalyani Mathivanan*** (supra) passed by Hon'ble Apex Court. Even in the judgment passed by Single Judge in Writ Petition No. 5547/2017, the judgment of the Hon'ble Apex Court in ***Kalyani Mathivanan*** (supra), was not brought to the notice of the Court, therefore, has not considered. In the appeal filed before the College Tribunal, the appellant has not made it clear that how she is qualified to be appointed as Assistant Professor in Electronics and Telecommunication Engineering Department. Moreover, it is held by College Tribunal that she is having requisite qualification to be appointed as an Assistant Professor in Electronics and Telecommunication Engineering Department. There is no question of her confirmation in the said post, if guideline 1.1.1 of UGC 2010 is perused, it is

specifically mentioned that for Engineering and Technology, Pharmacy and Management/Business Administration, the Norms/Regulations formulated in consultation with (AICTE) All India Council for Technical Education. As such, 4.4.6.1 specifies that, to be appointed as an Assistant Professor in Colleges Engineering and Technology Discipline, essential is first class master's degree in the appropriate branch of Engineering and Technology. The petitioner has not claimed anywhere that she did post graduation in first class and in the appropriate branch of Engineering and Technology Discipline. Moreover, if termination order is perused, it was simply on unsatisfactory performance. Even if, it is held that Ph.D. is not required, still it is not satisfactorily established by the respondent No.1, how she is qualified to be appointed as an Assistant Professor in view of Clause 4.4.6.1. It is contended by respondent that the judgment of ***Kalyani Mathivanan*** (supra), would not be made applicable in the present set of facts, as in the said matter State of Tamilnadu has not adopted UGC guidelines. However, in Maharashtra also there is no amendment to the Maharashtra Public Universities Act and the Regulations and Notifications would govern the services of the professors and other junior designation. Admittedly, the College is autonomous and not receiving any grant from UGC.

46. My attention is drawn to the UGC guideline 7.4.0 (page 187), which reads as under:

“7.4.0. The Universities/State Governments shall modify or amend the relevant Act/Statutes of the Universities concerned within 6 months of adoption of these Regulations”

47. The Universities/State Governments shall modify or amend the relevant Act/Statute of the Universities concerned within 6 months of adoption of these regulations. However, there is no such modification by the State of Government in the Maharashtra Public University's Act or any modification by the University. In fact, it is not necessary to assign any reason while terminating the services of probationer. As respondent availed maternity leave of ten months, immediately after her appointment, there could not be any assessment of her performance and therefore, fresh order issued in respect of probation commencing from 01/04/2016. Her probation was extended for another one year, which was duly accepted by the respondent No. 1. Letter dated 20/02/2018 whereby, period of probation is extended is very specific that she has called for gathering work but she has not reported, she has not registered for Ph.D. Negligence is reported in handling work at many places.

She was informed to execute responsibility and task assigned to improve performance and deliver. There is no challenge to this letter and she has accepted her extension of probation. She has also signed clearance form. The appeal is filed after one year, though there was no sufficient cause shown by the respondent No.1, the delay was condoned. It appears that though respondent was granted permission as per her request to pursue Ph.D. from NIT, Raipur, and even granted leave from 01/11/2018 to 13/11/2018, it appears that she has not joined to NIT, Raipur, and document placed on record shows that she has registered herself to VNIT, Nagpur, for her Ph.D. From documents at page 130 and 132, it makes clear that she has published some papers while pursuing her Ph.D. in VNIT Nagpur. However, there is no information what was the date of her joining at VNIT. Though, it appears that petitioner, Management has applied for the information under Right to Information Act, the information with regard to Manisha Ingale, respondent No.1 about her joining date at VNIT, however, there is no information placed on record.

48. The Joint Director has not filed reply, whether State has adopted UGC Regulations and Statutes by way of amendment. As such, after going through the documents placed on record and

citations relied on, I am satisfied that due procedure is followed by the Management before terminating the services of the respondent No.1. Her performance was not satisfactory as per the petitioner. It is not the case that there was any bias against the respondent No.1. If the documents on record are perused, she was given maternity leave immediately after joining the duties for about ten months. As her performance could not be assessed, the fresh order of probation issued in favor of respondent No.1 for two years which she has duly accepted and even extended thanks for giving her opportunity by the Management. Even she was granted permission to pursue her Ph.D. from NIT, Raipur, and as per her request one month leave is also granted. If there was any bias or personal grudge against respondent No.1, Management would not have granted such opportunities to the respondent No.1 to improve her performance. As such, there is no illegality in the order passed by the Management, petitioner, terminating the services of respondent No.1. The College Tribunal has also not discussed why appellant respondent No.1 is entitled for 75% back wages. In fact, in view of the above finding recorded by me, the respondent No.1 is not entitled for any back wages. Accordingly I proceed to pass the following order:

ORDER

- i) The Writ Petition is allowed.
- i) The impugned order dated 06/05/2024, passed by the University and College Tribunal, Nagpur, in Appeal No. N- 3/2022, is hereby quashed and set aside.
- ii) The order of termination dated 27/02/2019 of responding No.1, is hereby confirmed.

Writ Petition stands disposed of.

(SMT. M.S. JAWALKAR, J.)

Jayashree...