



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2709 OF 2024

1. The Principal,
Vaidyanath College,
Parli Vaijanath,
Dist. Beed.
 2. The President,
Jawahar Education Society,
Parli-Vaijanath,
Dist.Beed
 3. The Secretary,
Jawahar Education Society,
Parli – Vaijnath, Dist.Beed
- ..Petitioners

vs.

1. Joint Director,
Higher Education, Aurangabad Division,
Aurangabad
 2. Bapurao Sopanrao Waghmare, died,
by L.Rs. 2/1. Vaishali Bapurao Waghmare
and others
- ..Respondents

Mr.V.V.Bhavthankar, Advocate for petitioners
Mr.S.D.Ghayal, Addl. G.P. for respondent no.1
None present for respondent nos.2/1 to 2/3

CORAM : AJIT B. KADETHANKAR, J.
DATE : MARCH 11, 2026

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally with the consent of learned counsel for the parties.

2. Heard Mr.Vivek Bhavthankar, learned counsel for the petitioners. On the last occasion, nobody had appeared for the respondent nos.2/1 to 2/3. In the morning session, this matter was called out. However, as nobody appeared for the contesting respondent nos.2/1 to 2/3, the matter was kept in the second session. In the second session also, no one has caused appearance for the said respondents.

3. It is the case of the petitioners that one Bapurao Sopanrao Waghmare happened to be an employee appointed by the petitioner no.2 in the petitioner no.1 - college as Senior Lecturer. Pursuant to some criminal prosecution having been lodged against said Bapurao Waghmare, he came to be suspended and subsequently, was terminated. It is the case of the petitioners that criminal prosecution was lodged against Bapurao as his wife committed suicide. In the trial, the learned Sessions Court held Bapurao Waghmare guilty of the offence and accordingly convicted him. A Criminal Appeal came to be filed by Bapurao Waghmare in

this court. During pendency of the appeal, Bapurao Waghmare died. His legal representatives, i.e. present respondent nos.2/1 to 2/3 got themselves arrayed as legal representatives of the appellant in the Criminal Appeal. Upon hearing the parties, this court allowed the appeal and acquitted Bapurao Waghmare. In the meantime, during his livelihood, he had filed an appeal before learned Presiding Officer, University and College Tribunal, at Aurangabad and challenged the order dated 18.11.2008 thereby dismissing the appellant. The appeal was registered as Appeal No.BAMU/12/2008 whereby the suspension and termination imposed by the management was under challenge. The appeal went unprosecuted by the appellant therein. The appeal remained pending. After demise of Bapurao, an application came to be filed by the present respondent nos.2/1 to 2/3 before learned Tribunal for impleading themselves as legal representatives of Bapurao. The petitioners opposed that application and pointed out that no procedure is followed by the applicants therein for getting themselves arrayed as legal representatives of deceased Bapurao. The applications at Exh.A-17 and A-21 were for condonation of delay, setting aside abatement and taking applicants on record as legal representatives of appellant – Bapurao Sopanrao Waghmare. These applications came to be allowed on 08.03.2024. As against those applications, the petitioners are before this court.

2. Mr.Bhavthankar, learned counsel for the petitioners, would submit that the learned Presiding Officer has not at all considered the reply filed by the petitioners in response to the applications filed by the respondent nos.2/1 to 2/3. He would further submit that the applications were for condonation of delay of ten years and for setting aside the abatement of the appeal. Yet, without giving appropriate reasons and without recording objections of the petitioners, the applications came to be allowed. Mr.Bhavthankar has taken me to page no.22 (Exh.C) of the Writ Petition compilation which is a Misc. Civil Application filed by the applicants therein, whereby a prayer was made to incorporate the names of the applicant nos.1-A to 1-C/present respondent nos.2/1 to 2/3 on record as legal representative of deceased Bapurao. Mr.Bhavthankar would then refer to page no.28 of the Writ Petition compilation which an additional affidavit filed by the deponents i.e. present respondent nos.2/1 to 2/3. On perusal of both the documents it is evident that in fact only one application was on record and that was for getting incorporated the applicants therein as legal representatives of the deceased Bapurao. There is nothing on record before me to indicate that an application or a prayer was made for condonation of delay or and for setting aside the abatement of the appeal. The additional affidavit at page no.28 can

definitely not be termed as an application. It does not contain any prayer. In view of this, Mr.Bhavthankar, learned counsel for the petitioners is justified in arguing that learned Presiding Officer of the Tribunal ought to have considered the objection raised by the petitioners. May it be.

3. In my considered view, the application filed by the respondent nos.2/1 to 2/3 before the learned Presiding Officer of the Tribunal was a bona fide one. What lacks is the formality in filing the applications. It is not in dispute that the deceased Bapurao was thrown out of the service on account of criminal prosecution that was filed against him. It is also a matter of record that this court acquitted Bapurao. It is also not disputed that the legal representatives of the deceased Bapurao have right to claim the payable service benefits in the capacity of legal representatives. The appeal before the University and College Tribunal remained pending because the Criminal Appeal was also pending in this court. This has been observed by learned Presiding Officer while passing the impugned order. The appeal was kept on *sine die* list vide order dated 11.08.2010 till decision in the Criminal Appeal that was pending in this court. Consequent to disposal of the Criminal Appeal No.548 of 2003 on 14.06.2022, the application was moved by the

present respondent nos.2/1 to 2/3. However, considering the objection raised by Shri Bhavthankar in the present Writ Petition as also taking into consideration the bona fides of the respondent no.2/1 to 2/3, I deem it appropriate to pass the following order:-

- (i) The Writ Petition is allowed.
- (ii) The impugned order 08.01.2024 passed by learned Presiding Officer, University and College Tribunal, Aurangabad, in Appeal No. BAMU No.12/2008 is set aside.
- (iii) Respondent nos.2/1 to 2/3 are permitted to file an application for bringing themselves on the record of learned Tribunal as legal representatives of deceased Bapurao in Appeal No. BAMU No.12/2008. They are also permitted to file applications for condonation of delay as also for setting aside the abatement. Upon filing such applications, learned Presiding Officer, University and College Tribunal shall hear the parties and pass appropriate order.
- (iv) Registry to serve a copy of this order on respondent nos.2/1 to 2/3.
- (v) Rule is made absolute in the above terms.

[AJIT B. KADETHANKAR, J.]

.....

KBP