



JT / Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5424 OF 2014

The Vice President, Somaiya Trust and Anr. .. Petitioners

Versus

Dr. Pradnya d/o Gopalrao Giradkar, and Ors. .. Respondents

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- Mr. Lancy D'Souza a/w. Mr. K. K. Jadhav and Mr. J. K. Jadhav, Advocates for Petitioners.
 - Dr. Uday Warunjikar, Advocate appointed through legal aid a/w. Mr. Jenish Dinesh Jain, Advocate for Respondent No.1.
 - Ms. Swetabja Mondal, Advocate i/by Rui Rodrigues for Respondent No.2.
 - Ms. Vaishali Nimbalkar, AGP for Respondent No.3.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 25, 2025

JUDGMENT:

1. Heard Mr. D'Souza, learned Advocate for Petitioners; Dr. Warunjikar, Advocate appointed through legal aid for Respondent No.1; Ms. Mondol, learned Advocate for Respondent No.2 and Ms. Nimbalkar, learned AGP for Respondent No.3.

2. The present Writ Petition is filed by Petitioners to challenge the judgment and order dated 09.04.2014 passed by the Mumbai University and College Tribunal in Appeal No.34 of 2011.

3. By virtue of the impugned judgment, Tribunal has set aside order of dismissal from service imposed by Petitioners on Respondent No.1 and directed her reinstatement in alongwith further directions. Petitioners have challenged the order on its merits.

4. If Petition fails on merits Respondent No. 1 cannot be put to a greater loss because of the omission of Petitioners. Had Petitioners reinstated her she would have joined service and submitted her voluntary retirement resignation in compliance of the impugned order itself. She was precluded from doing so by Petitioners. Though she has not challenged the order, she was admittedly precluded from filing her voluntary retirement resignation as directed. Therefore it is incorrect to argue on behalf of Petitioners at the outset that she did not submit her voluntary retirement resignation in compliance of the impugned order which she could never had, since she was not reinstated and allowed to join service.

5. The facts in the present case are in a narrow compass.

5.1. Briefly stated, Respondent No.1 was appointed as Lecturer in Zoology in June – 1992 in Petitioners' College and was confirmed as Lecturer on 20.06.1994 after completing the probation period.

5.2. Petitioners' case against Respondent No.1 is that during tenure of her service with them until she was terminated by Petitioners in the year 2007 Respondent No.1 addressed several complaints and correspondence grieving about her placement, grades and monetary benefits due and payable to her as per her eligibility and filed complaints to that effect before the statutory Authorities leading to Petitioners dismissing her from service.

5.3. According to Petitioners on 03.06.2007, Respondent No.1 filed complaint for harassment against the then Principal of the College before the Mahila Ayog, Mumbai endorsing copy thereof to the Police Commissioner, Vice Chancellor and the Human Rights Commission.

5.4. This was followed by complaint dated 23.06.2007 to the Chairman, Women's Cell, Kalina University, Mumbai.

5.5. According to Petitioners above complaints were false accusations and allegations which brought disrepute to the College and its Principal. Hence the Governing body of the College appointed Shri M. P. Sadekar as Enquiry Officer to enquire into the conduct of Respondent No.1.

5.6. On 07.07.2007, Enquiry Officer issued charge-sheet to Respondent No.1 levying charge of "moral turpitude" for having made false and baseless allegations against the then Principal and bringing disrepute to the College as also the Management of the College of Petitioners.

5.7. On 11.07.2007, College received a communication from the Maharashtra State Commission for Women (Mahila Ayog) for submitting report on the complaint filed by Respondent No.1. Police complaint was thereafter filed on 13.07.2007 against the then Principal by Respondent No.1 and on 14.07.2007 statement of the

Principal was recorded by the Police.

5.8. On 20.07.2007, Respondent No.1 submitted her written statement of defence to the charge-sheet, *inter alia*, contending that the charges levelled against her were ambiguous and requested the enquiry to be held in abeyance until her complaint before the Maharashtra State Commission for Women was decided.

5.9. On 23.07.2007, the College Authorities filed a detailed reply to each of the allegations made by Respondent No.1 in her complaint to the Maharashtra State Commission for Women. On 24.07.2007, Enquiry Officer addressed a letter to the Respondent No.1 informing her that enquiry could not be kept in abeyance and fixed the hearing for enquiry on 30.07.2007. Respondent No.1 informed the Enquiry Officer that since her complaint was been enquired into by the Maharashtra State Commission for Women, she would not attend the enquiry on the scheduled date.

5.10. However, on 30.07.2007, enquiry was adjourned to 07.08.2007. On being intimated about the adjourned date, Respondent No.1 once again requested the Enquiry Officer not to proceed with the enquiry. The enquiry was thereafter adjourned to 27.08.2007. Despite having received notice of enquiry to be held on 27.08.2007, Respondent No.1 though reported for duty in the college at 07:00 a.m., did not attend the enquiry.

5.11. Once again the enquiry was postponed to 01.09.2007 and thereafter to 10.09.2007 and finally to 26.09.2007 to give a final opportunity to Respondent No.1 to attend the enquiry. On 29.09.2007, the Enquiry Officer after observing the conduct of absenteeism of Respondent No.1 and she not having attended the enquiry, declared the enquiry as concluded and on 20.10.2007 filed his report holding Respondent No.1 guilty of the charge of “moral turpitude”.

5.12. On 07.11.2007, Management of the College after considering the report of Enquiry Officer and accepting findings in the report forwarded it to Respondent No.1 and issued a Show-Cause Notice calling for her explanation as to why she should not face the penalty of dismissal from service in view thereof.

5.13. On 27.11.2007, Respondent No.1 informed the Petitioners that she was not bound to give any explanation to the Show-Cause Notice whereupon on 07.12.2007, penalty of dismissal was imposed on Respondent No.1 and she was dismissed from service.

5.14. On 11.02.2008, Respondent No.1 approached the Grievance Committee of the Mumbai University constituted under Section 57 of the Maharashtra Universities Act, 1994 (for short ‘**the said Act**’) instead of availing the statutory remedy of filing Appeal against her dismissal order as contemplated under Section 59 of the said Act. On

10.07.2008, the Grievance Committee recommended that since there were no serious irregularities observed *qua* Respondent No.1, Respondent No.1 be given minor punishment.

5.15. On 02.08.2008, Petitioners' Management pointed out that the Grievance Committee of the University had no jurisdiction since Respondent No.1 was dismissed from service and as such directions given by the Grievance Committee were void and non-enforceable.

5.16. Being aggrieved, Respondent No.1 filed Writ Petition No.97 of 2010 in this Court which was disposed of by order dated 18.06.2010 directing Respondent No.1 to adopt alternate efficacious remedy to redress her grievance against the dismissal order.

5.17. On 14.07.2010, Respondent No.1 filed Statutory Appeal No.34 of 2011 before the Mumbai University and College Tribunal alongwith Application for condonation of delay. On Nil.09.2011, delay was condoned and Appeal was registered. On 09.01.2012, Petitioners filed written statement to oppose the challenge to the dismissal order.

5.18. During hearing before the Mumbai University and College Tribunal, Respondent No.1 expressed her willingness to opt for voluntary retirement. Since Petitioners' College where Respondent No.1 was employed as Lecturer was fully aided by the State Government, the Mumbai University and College Tribunal directed Respondent No.1 therein to implead the College as Respondent to the

Appeal proceedings filed by her.

5.19. Though the College was impleaded as party Respondent in the Appeal proceedings, it did not file any appearance, neither it participated in the Appeal proceedings.

5.20. On 06.02.2013, the Mumbai University and College Tribunal passed judgment and order allowing Respondent No.1's Appeal No.34 of 2011 and set aside the dismissal order of Respondent No.1. Being aggrieved, Petitioners filed Writ Petition No.3312 of 2013 in this Court. On 30.07.2013, after hearing both parties and by consent of the parties, this Court set aside the judgment and order dated 06.02.2013 passed in Appeal No.34 of 2011 and remanded the matter back to the Mumbai University and College Tribunal for fresh adjudication. Both parties were thereafter heard by the Mumbai University and College Tribunal resultantly leading to passing of the impugned judgment dated 09.04.2014 whereby statutory Appeal No.34 of 2011 filed by Respondent No.1 was once again allowed and order of dismissal from service passed by Petitioners against Respondent No.1 was set aside. Direction for her reinstatement was passed alongwith direction to Respondent No.1 to apply for VRS Scheme within three months thereafter and direction to Petitioner to consider the same and issue relieving letter to her for her future employment and for getting terminal benefits under VRS Scheme as per Rules and procedure

alongwith backwages in the revised scale and regular salary from the date of the order upto the date of her relieving letter.

6. The above judgment and order dated 09.04.2014 passed by the Mumbai University and College Tribunal is the subject matter of the present Writ Petition. Admittedly Petitioners nor the College reinstated the Respondent No.1 Petitioner chose to challenge the impugned judgment and filed present Writ Petition on 06.05.2014. Petition was admitted on 16.08.2016 and interim relief of stay of impugned judgment was passed by this Court. Petition was pending hearing and final disposal in this Court all along, but during the interregnum on 31.05.2022 Respondent No.1 passed her retirement age of superannuation.

7. *Prima facie*, there is no dispute about the aforesaid immediate facts as they are borne out from the record. Before I advert to the submissions made by the learned Advocates for the respective parties, it would be worthwhile to refer to the directions contained in the impugned judgment passed by the Mumbai University and College Tribunal appended at page No.23 of the Writ Petition which are relevant for consideration of this Petition due to subsequent developments. They read as follows:-

“1) Order of dismissal dated 7.12.2007 and punishment impugned in this Appeal is hereby quashed and set aside and Appellant shall be deemed to have been reinstated with continuity in service from the date of this order and for payment of salary in revised scale with direction to make an application/representation under VRS Scheme as above within

three months and the same shall be considered by Respondent Nos.2 & 3 for issuing her relieving letter for getting employment in future elsewhere, and for getting terminal benefits under VRS as per rules and procedure.

2) Appellant shall be entitled to claim back wages in revised scale from July 2010 and regular salary from the date of order till issuance of relieving letter by Respondent Nos.2 & 3 as above.

3) Parties to file compliance report on record under intimation to the Office of Respondent No.4.

4) Appeal is partly allowed in the above terms and disposed of with no order as to costs."

8. From the above, it is seen that the Mumbai University and College Tribunal has set aside the order of dismissal dated 07.12.2007 and passed further directions that Respondent No.1 shall be deemed to have been reinstated with continuity in service from the date of the order for payment of salary in the revised scale with direction to Respondent No.1 to make application/representation under VRS Scheme within three month of her reinstatement and the said Application under the VRS Scheme shall be considered by Petitioners for issuing her the relieving letter for getting employment in future elsewhere and for getting terminal benefits under VRS Scheme as per Rules and procedure. Further direction pertained to Respondent No.1 being entitled to claim backwages in revised scale from July 2010 and regular salary from the date of said order till issuance of relieving letter by Petitioners.

9. Petitioners admittedly did not reinstate Respondent No. 1. Hence none of the further directions were complied with or could be complied with either by the Respondent No.1 or Petitioner or the

Respondent No.3, resultantly affecting the Respondent No. 1. Petition was admitted in 2016 and the impugned order was stayed. Respondent No. 1 in the meanwhile crossed her age of superannuation on 31.05.2022. Hence the above intervening circumstances need consideration for adjudicating the present Petition in the interest of justice and the facts of this case. If justice has to be done it has to be delivered in letter and spirit rather than consider the challenge to the impugned judgment and adjudicate the same and as a consequence thereof leave the Respondent No.1 to the mercy of the legal system / vagaries of fate.

10. The reason for highlighting the operative part of the impugned judgement and the supervening circumstances is because the Petition has been heard finally now in July – 2025 and in the interregnum, Dr. Warunjikar informs the Court that Respondent No.1 has crossed the age of superannuation in 2022 as she is 63 years old today thus shattering her dreams and prospects of future service which she could have opted for had she been reinstated and relieved as per the impugned judgment.

11. Petitioners are duly represented by Mr. D’Souza. Dr. Warunjikar appointed through the Legal Aid a/w Jainish Jain is espousing the cause of Respondent No.1. Mr.Rodrigues and Ms. Mondal appear for the College and Ms. Nimbalkar appears for the State – Joint Director of Higher Education. Learned Advocates have all

addressed the Court on feasibility of implementation of the directions contained in the impugned judgment as on today considering the fact that Respondent No.1 has crossed her retirement age. Keeping this aspect in mind, the Petition is decided on its merits. Ms. Nimbalkar appears for the State – Joint Director of Higher Education.

12. Mr. D'Souza, learned Advocate appears for the Petitioners / Educational Institution – College and has made following submissions:-

12.1. He would submit that Mumbai University and College Tribunal (for short '**the Tribunal**') failed to appreciate the fact that any enquiry pending before the Maharashtra State Women Commission (for short '**the State Commission**') would hold no bar against Petitioners for holding a domestic enquiry during pendency of any such proceedings before the State Commission and therefore any reference to pendency of proceedings before the State Commission cannot come in the way of the statutory enquiry proceeded with by Petitioners against Respondent No.1.

12.2. He would submit that the Tribunal failed to consider that Respondent No.1 was unable to *prima facie* substantiate her allegations and insinuations against the then Principal of the College and Management in her pleadings and proceedings and therefore she was not entitled to any relief whatsoever as awarded by the Tribunal and deserved the punishment of dismissal.

12.3. He would submit that the Tribunal failed to consider the fact that despite repeated opportunities given to Respondent No.1 to attend enquiry proceedings before the Enquiry Officer which were duly acknowledged by her, despite which she did not choose to remain present or participate in the enquiry proceedings and therefore, the final order of reinstatement was completely contrary to the conduct of Respondent No.1. He would submit that even though Respondent No.1 duly attended the College on all dates when the enquiry before the Enquiry Officer was fixed, she did not choose to remain present for the enquiry in order to substantiate her allegations in the complaint and therefore in that view of the matter, her complaint ought not to have been considered at all by the Tribunal.

12.4. He would submit that regarding allegations of pending dues of Respondent No.1, Petitioners pointed out that the delay in payment of her arrears was due to delay in receipt of the same from the Office of Joint Director of Education and she was duly informed about the same and therefore the said allegation cannot be held against Petitioners.

12.5. He would submit that though it was case of Respondent No.1 that enquiry should proceed only after her complaint filed with the State Commission was investigated by the said Commission, the Petitioners filed a detailed reply to the allegations in the complaint

before the State Commission. However the Commission did not investigate further into the complaint neither any enquiry was held by the State Commission with respect to the complaint. Hence according to her, she ought to have attended the enquiry before the Enquiry Officer.

12.6. He would submit that *prima facie* reading of the scandalous and defamatory allegations made by Respondent No.1 against the then Principal of the College, it would clearly lead to damaging the reputation of the Principal as also the Management of the College and therefore such an act of Respondent No.1 was not in consonance with the code of conduct of a teacher and was derogatory in nature to the status and dignity of the status of the teacher.

12.7. He would submit that charge against Respondent No.1 was extremely serious in the nature of amounting to moral turpitude and bringing disrepute to the institution which imparts education to scores of students and which was a reputable educational institution.

12.8. He would therefore persuade the Court to consider the defence of the College and accordingly set aside the impugned judgment and order.

13. *PER CONTRA*, Dr. Warunjikar, learned appointed Advocate through the legal aid to espouse the cause of Respondent No.1 has made the following submissions:-

13.1. He would submit that Respondent No.1 did not encounter any difficulty with respect to the Management or the Principal until 2002. He would submit that every Lecturer working in the College after completion of the period of eight years was entitled to be placed in the Senior scale and thereafter on completion of further eight years of service in the Selection grade. Similarly all those Lecturers holding M.Phil degree were entitled to the benefit of one additional increment. He would submit that these were statutory rights accruable to every teacher. He would submit that in order to approve placement of a Lecturer in the Senior scale and thereafter to the Selection grade, procedure of assessment is prescribed including conducting enquiry of the candidate by the Assessment Committee and there was also requirement of completion of three refresher courses. He would submit that Respondent No.1 admittedly completed the three refresher courses and was due for promotion, but post 2002, she was denied promotion by the Petitioners without any reason whatsoever.

13.2. He would submit that the then Principal one Dr. Hande took charge as Principal of the College in 2002-2003 and since that time every attempt was made by him to harass and humiliate the Respondent No.1 and deny her the legitimate benefit in service. He would submit that after a series of issues and incidents Respondent No.1 had no alternative left than to file a written complaint about the then Principal's conduct with the State Commission as also approach

the Grievance Committee of the University for redressal of her grievances and seeking justice.

13.3. He would submit that seeking statutory entitlement and benefit which is due and required to be conferred upon Respondent No.1 cannot be attributed and equated to the charge rather much serious charge of moral turpitude which has been alleged by the Petitioners. He would submit that the said charge of moral turpitude is not only grievous but completely disproportionate to the admitted facts in the present case. He would submit that filing of Complaint with the State Commission did not go down well with the Petitioner and they responded with the alleged charge of moral turpitude as a counterblast.

13.4. He would submit that all that Respondent No.1 demanded from the Management of Petitioners was her entitlement and nothing more strictly in accordance with law. He would submit that the same was denied to her by Petitioners and she was discriminated upon hence when her repeated requests fell on deaf ears she had no option but to file the written complaint. He would submit that the Grievance Committee of the University itself held that punishment meted out to Respondent No.1 was illegal and disproportionate as against the charge of moral turpitude levelled by the College against her.

13.5. He would submit that after completion of her first eight

years of service there was total reluctance on the part of Petitioners to confer Senior scale grade and thereafter selection grade to Respondent No.1. He would submit that recommendation of the Grievance Committee of the University were approved by the Chancellor of the University and vide letter dated 31.03.2005 Petitioners were directed to comply with the directions contained therein which have not been complied with till date. He would submit that despite specific directions issued by the Grievance Committee of the University to Petitioners by letter dated 04.12.2006, the said directions were also not implemented and Respondent No.1 was denied timely promotion and other benefits.

13.6. He would submit that in July – 2005, Respondent No.1 got sanction for Faculty Improvement Programme (for short '**FIP Scheme**') from UGC whereby she could complete her research work on a prestigious project of wildlife studies at Tadoba Park, Chandrapur. He would submit that in order to obtain sanction from UGC, her Application was required to be routed and endorsed through the College Principal. He would submit that since the Principal was annoyed because of the complaint filed by Respondent No.1 before the University Grievance Committee, he did not forward the Application despite her repeated requests made to him. He would submit that when Petitioners held interview for placement on 10.03.2006, during the course of said interview, Respondent No.1 was humiliated by

members of the Selection Committee on her approaching the Grievance Committee of the University with her complaint. He would submit that though Respondent No.1's Ph.D registration was granted by Respondent No.1, her Application for FIP Scheme Fellowship to the UGC was not forwarded by the then Principal by adopting a vindictive attitude despite Respondent No.1 repeatedly approaching the Principal and the Management with a fervent request to forward her FIP Scheme Fellowship application by letters dated 09.07.2004, 17.08.2004 and 23.08.2004.

13.7. He would submit that since no steps were taken by the Petitioners to forward her Application for FIP Scheme Fellowship to the UGC, Respondent No.1 was constrained to file complaint with the Grievance Committee on 01.09.2004. He would submit that Respondent No.1 suffered extensively at the hands of Petitioners in as much as despite Petitioners giving assurance letters dated 16.12.2004 and 20.12.2004 to Respondent No.1, as a matter of fact under the Xth UGC grant, Respondent No.1 was entitled for FIP Scheme for 24 months and as the said UGC plan was supposed to end on 31.03.2007, Respondent No.1 repeatedly requested Petitioners to endorse and submit her Application as early as possible but the then Principal of the College did not take any steps in submitting the Application resultantly leading to complete frustration of the entire research work of Respondent No.1.

13.8. He would submit that Respondent No.1 approached Petitioners by letters dated 15.01.2005 and 24.01.2005 only after which Petitioners through the Principal of the College after much delay forwarded the Application to the UGC and FIP Scheme was sanctioned belatedly by UGC in favour of Respondent No.1 from July – 2005 for a period of 21 months. He would submit that the result of the aforesaid delay was that Respondent No.1 lost benefit of Xth UGC Scheme for ten months i.e. from July – 2004 to March – 2005 due to withholding of the Respondent No.1's Application by Petitioners.

13.9. He would submit that Respondent No.1 faced the above loss because there was no facility for extension of the same as per UGC Rules. He would submit that Respondent No.1 filed five written Applications dated 13.02.2006 (two Applications), 23.01.2007, 10.03.2007 and 21.03.2007 seeking extensions from the Petitioners for the UGC Scheme but the same were outrightly rejected by Petitioners by letter dated 29.03.2007 which compelled Respondent No.1 to rejoin her duty on 02.04.2007. He would submit that after she rejoined the College on 02.04.2007 by Application dated 03.04.2007 Respondent No.1 requested the Petitioners to recommend her case for extension since her field work was not completed. However the same was not done by the Petitioners resultantly leading to Respondent No.1 filing the complaint before the Grievance Committee in April – 2007 once again.

13.10. He would submit that copy of the complaint was also submitted to the Management on 16.04.2007 wherein it was categorically substantiated and pointed out that the aforesaid repetitive vindictive actions of the College Principal resultantly frustrated the rights of the Respondent No.1 and therefore she had no option than to file the complaint with the Maharashtra State Commission for Women.

13.11. He would submit that in the aforesaid scenario, the academic and mental fatigue and loss incurred by Respondent No.1 was such that in view of her joining her duty on 02.04.2007 in the College, UGC refused to grant extension to her on the ground that she had joined her duty and left the field work incomplete. He would submit that the College had granted Senior scale promotion to Respondent No.1 and she realized her arrears of salary of Senior grade but benefit of Selection grade was not granted to her due to the high handed action of the then Principal against whom she had filed complaints.

13.12. He would submit that the overall reaction of the aforesaid actions resultantly led the Petitioners to institute the enquiry against Respondent No.1, resultantly leading to passing of the impugned judgement and order which was also once again not implemented by Petitioners due to their highhanded action without having any regard to Court's orders.

13.13. He would submit that charge of moral turpitude is a very serious charge and it is completely disproportionate to the complaints which have been filed by the Respondent No.1 which are substantiated on the basis of relevant record.

13.14. He would submit that Respondent No.1 has filed substantial documentary evidence in the form of Annexure - 1 to Annexure – 65 which are part of the record before the Tribunal which have been taken cognizance of at the time of passing of the impugned judgment and have been discussed extensively in its judgment by the Tribunal. He would therefore submit that here is a case before the Court of Respondent No.1 having substantiated her entire case on the basis of cogent documentary evidence which cannot be faulted with and which is *prima facie* admitted on the basis of correspondence between the parties whereas on the other side Petitioners have come to the Court with absolutely no evidence whatsoever to substantiate their allegations of Respondent No.1 having been alleged of the charge of moral turpitude.

13.15. He would therefore submit that the impugned judgement passed by the Tribunal deserves to be upheld but considering the fact that Petitioners have not reinstated the Respondent No. 1 and now that she has retired and passed her age of superannuation, appropriate directions are required to be passed by the Court to give Respondent

No. 1 absolute and entire benefit in accordance with law. He would submit that due to non-reinstatement by Petitioners all further directions in the impugned judgement have been rendered infructuous thus depriving the Respondent No. 1 of her legitimate right of seeking future employment as stated in the judgment until her retirement.

14. Ms. Nimbalkar, learned AGP would submit that the issue revolving around the impugned judgement pertains to omissions and actions between the private parties concerned. She would submit that considering the fact that Respondent No.1 has now passed her age of retirement in service, this Court shall consider the fact that if the impugned judgement is upheld and if this Hon'ble Court is inclined to give any benefit to her beyond the date of the impugned judgement, then the said benefit be directed to be paid by the Petitioners and not by the State Government even though the post on which Respondent No.1 was appointed was a sanctioned post. This she would vehemently submit is in view of the Petitioners not having reinstated the Respondent No. 1 as directed by the Tribunal leading to frustration of the further directions in the impugned judgment. She would submit that the State Government therefore cannot be foisted with liability of payment of backwages to Respondent No.1 if the impugned judgement is upheld and if any further directions are given in view of the impugned judgment's directions being frustrated and the Respondent No.1 attaining the retirement age. She would submit that this is so

because the impugned judgement categorically restricts relief of payment of wages to Respondent No.1 only upto the year 2014 and not thereafter but certainly subject to compliance of the other directions contained therein. In support of her submissions, she has referred to and relied upon the following two decisions in support of her above submissions:-

- (i) *Educational Society, Tumsar and Ors. Vs. State of Maharashtra and Ors.*¹ and
- (ii) *Rajapur Shikshan Prasarak Mandal Ratnagiri Vs. State of Maharashtra and Ors.*².

15. I have heard Mr. D'Souza, learned Advocate for Petitioners; Dr. Warunjikar, Advocate appointed through legal aid for Respondent No.1; Ms. Mondol, learned Advocate for Respondent No.2 and Ms. Nimbalkar, learned AGP for Respondent No.3 and with their able assistance perused the records of the case. Submissions made by them have received due consideration of this Court.

16. In the present case admittedly the post on which Respondent No. 1 was appointed is a sanctioned post. College is fully aided by the Government. There is no dispute about the same. The order passed by Tribunal is *prima facie* clear and unambiguous. The said order can be deciphered and broken down into two parts. Part I directs reinstatement of Respondent No. 1 subject to which Part II of the order

¹ (2016) 3 SCC 512.

² Writ Petition No.757 of 2016 decided on 18.04.2018.

kicks in. Part II of the order is omnibus and requires Respondent No 1 to give her resignation under VRS within a period of two months from the date of her reinstatement followed by further consequential directions as stated therein. When the said order is read, it is clear that unless and until Respondent No. 1 is reinstated by Petitioners there is no question of Respondent No. 1 being in a position to give her resignation under the VRS as directed. Though it is vehemently argued by Mr. D'Souza that Respondent No. 1 did not give her resignation despite the directions in the impugned order, it is seen that she could not have given her resignation unless being reinstated by Petitioners. Once Petitioners admittedly failed to reinstate Respondent No. 1, all further directions were frustrated.

17. The question before the Court is whether Respondent No.1 could be put to loss if the Petition fails, because of the omission of the Petitioners to act in the first instance. This question can be answered in the affirmative if the Petition fails. Petitioners chose not to reinstate her and hence have challenged the impugned judgement. Respondent No.1 has not challenged the impugned order, rather it was her stand in the previous round of litigation before the Tribunal that she will opt to resign. Therefore in the present facts she was precluded from resigning despite the order of Tribunal. Therefore it is incorrect for Petitioners to argue before me that she never submitted her VRS resignation.

18. The submissions on facts made by learned Advocates at the Bar have been noted herein above. On the merits of the case *qua* challenge to the impugned judgment, it is seen that the Grievance Committee of the University itself held that the punishment meted out to Respondent No. 1 was not only illegal but completely disproportionate as against the allegation of moral turpitude levelled against her. While recording the submissions made by Dr. Warunjikar as also the facts which are alluded to hereinabove, it is *prima facie* seen that Respondent No. 1 was denied co-operation by the then Principal of the Petitioners College which led her to filing the complaints. It is seen from the record that such co-operation was not only in respect of one singular incident with which she was aggrieved but with respect to multiple issues during the tenure of the then Principal which affected the Respondent No.1. First and foremost denial of non-conferment of Senior scale grade and Selection grade to Respondent No. 1 by Petitioners is *prima facie* writ large on the face of record despite there being a specific direction to Petitioners by the University in its letter dated 31.03.2005. Petitioners however did not comply with the said directions. Thus denial of timely promotion and all consequential benefits go along with Senior scale grade and Selection grade and not giving timely benefit would undoubtedly have its impact on Respondent No. 1 leading to she seeking redressal. That apart in July 2005 it is seen that Respondent No. 1 was unable to

complete her research work under the Fellowship Improvement Programme - FIP Scheme and could not take benefit of the entire tenure of the said scheme due to delay on the part of the Principal in forwarding and endorsing her Application through the proper channel despite her repeated requests and without any reason. The only reason ascribed for the delay as lamented by her was because of her complaint filed against the then Principal before the University Grievance Committee as he was annoyed. It is seen that her Application was not endorsed, signed and forwarded despite her repeated requests made to him which is borne out from her written applications.

19. It is seen that Respondent No. 1 addressed specific letters dated 09.07.2004, 17.08.2004 and 23.08.2004 making requests to forward her Application for the FIP Scheme, still the same was not done by the Principal and Petitioners. Resultantly Respondent No. 1 lost out on substantial time to the extent of 10 months between July 2004 to March 2005 due to the delay in forwarding her Application by Petitioners. Even after completion of her FIP programme, it is seen that Respondent No. 1 filed 5 back to back written Applications 13.02.2006 (two Applications), 23.01.2007, 10.03.2007 and 21.03.2007 seeking extension from the Petitioners for the UGC Scheme but the same was outrightly rejected by Petitioners by letter dated 29.03.2007 which compelled Respondent No.1 to rejoin her duty in the Petitioner College

on 02.07.2007. It is seen that as a result of Respondent No. 1 rejoining her duty in College and not securing extension from Petitioners to complete her research work, UGC refused to grant any extension to her on this very ground that she had joined her duty in College and there was a break in the field work. That apart one of the other principal grievance of Respondent No. 1 was about she having been denied benefit of Selection grade and arrears of her salary for which she filed the Complaint. When Respondent No. 1 was subjected to the aforesaid difficulties which are clearly borne out from the record on the basis of the documentary evidence placed before the Tribunal during the tenure of then Principal, it was legitimate on her part to have filed her grievances in the form of Complaint before the Competent Authority. In this background the action of Respondent No. 1 of filing Complaints for securing her legitimate entitlement and dues with respect to her work and job with the Petitioners cannot be equated by any stretch of imagination with the serious charge of moral turpitude. In a singular line by levelling the allegation of “moral turpitude” for the above actions Petitioners have stated that they suffered a loss of reputation and therefore invoked the severest charge of “moral turpitude” against Respondent No. 1 and dismissed her from service. There is not a single pleading on record on behalf of Petitioners which gives explanation for the delays caused by which Respondent No.1 was aggrieved.

20. The charge of moral turpitude is often invoked in the context

of criminal law and *prima facie* indicates an element of dishonesty or moral depravity in the conduct which is alleged. If by the simple standard the charge of moral turpitude is to be applied to the actions of Respondent No. 1, then by no stretch of imagination can it be said that her actions were dishonest or unjust. Neither the action of Respondent No. 1 in the aforementioned facts can be equated with a severe crime like theft, fraud, forgery which are often cited as examples of crime involving moral turpitude. Filing a Complaint with the Grievance Committee of the University or filing the Complaint against the Institution for redressal of rights in the Tribunal or before the Mahila Ayog cannot be equated as to contend having very serious consequences on the Institution. Complaints if filed have to be met with and adjudicated. The action of Respondent No. 1 of filing the aforesaid complaints for her entitlement nowhere comes close to the charge of moral turpitude so as to signify the level of she or her actions being described as wicked, deviant behavior constituting an immoral, unethical, or unjust departure from ordinary social standards such that it would shock a community and cause loss of reputation to the Petitioners. It is undoubtedly true that Respondent No. 1 filed complaints but it needs to be seen that those complaints were directed against the Authorities for her legitimate entitlement and concerns which were directly in proportion with her job duty with the Petitioners. It needs to be mentioned that Respondent No. 1 is a highly

educated intellectual lady having high educational qualifications and with such background if she is deprived of her legitimate right of achieving further distinction or accolades *qua* the Faculty Improvement Programme through her research work under the UGC grant or her Senior grade or Selection grade and / or her arrears and if she complains about the delay which is detrimental to her prospects and if the same is deprived to her, her filing of complaints of harassment in my opinion cannot be equated with a charge of moral turpitude against her. Hence the Petition in my opinion has to fail.

21. In that view of the matter, what is significant to note is the fact that even though the Tribunal may have passed the impugned order giving the twin directions as deciphered by this Court as part I and part II herein above, what was important for the Petitioners was to have reinstated Respondent No. 1 for her to have an honourable exit. If Respondent No. 1 was not reinstated at all there is no question of any expectancy of her resignation under the VRS as delineated in the order of Tribunal. Respondent No. 1's reinstatement not having been done virtually gives a completely different dimension to the adjudication of the present case especially now since she has passed her retirement age.

22. Petitioners have filed the present Petition to challenge the order of Tribunal. For the reasons mentioned herein above, I am not

inclined to accept the Petitioners case of disturbing the order passed by the Tribunal but the peculiar facts and circumstances in the present case require interference of this Court especially because the Petitioners have not complied with the order of reinstatement so as to enable the Respondent No. 1 to file her VRS Application. Though the Petition was filed in the year 2014 by Petitioners, the order dated 02.05.2016 states that Respondent shall not take any coercive steps against the Petitioners based on the impugned order till the next date. Thereafter Petition was admitted on 16.08.2016 and interim order was passed in terms of prayer clause (b). Thus the impugned order was stayed only on 16.08.2016 by this Court at the time of admitting the Petition. Petition is heard today and is decided. After the stay granted by this Court on 16.08.2016 it was naturally not expected from Petitioners to have reinstated Respondent No. 1 but from the date of the impugned judgment dated 09.04.2014 upto 16.08.2016, admittedly there was no stay of the impugned order by this Court. This factum will also have to be considered by the Court since it is prayed for by Dr. Warunjikar that Respondent No. 1 has in the interregnum during the pendency of the Petition retired rather attained the age of superannuation sometime in the year 2022. He would submit that in view of Respondent No. 1 not having been reinstated, there was no question of she giving her resignation letter under VRS. Dr. Warunjikar may be right in his submissions but on and form

16.08.2016, the impugned judgment & order of tribunal has been stayed by this Court. Between 2014 and 2016, Petitioners did not take any efforts to stay of the said order rather record of the Court *prima facie* shows that attempts were made by the parties to reconcile their dispute but no amicable settlement could be arrived at between the parties.

23. In this case it is an admitted position that the Respondent No. 1 was working against a sanctioned post and was a permanent employee. There is no ambiguity about the same. If the post is sanctioned by the State Government and the Education Department and if the said employee is terminated and subsequently the termination is set aside and he is reinstated, then the liability of payment of his salary and wages is that of the State Government. Learned Advocate for Respondent No.1 and the AGP have drawn my attention to the decision of the Supreme Court in the case of *Educational Society, Tumsar (first supra)*. In that case the facts were that the services of the Respondent No.1 were terminated by the Institution which was a fully aided institution to the extent of 100% by the State of Maharashtra. Such aid includes the element of salaries that are payable to the teacher and other staff employed by the School alongwith all statutory benefits. The termination order was challenged by the Respondent No.1 therein before the School Tribunal and it was set aside with a direction to reinstate the Respondent No.1 and with a

direction of payment of wages. Thereafter the order of the School Tribunal was upheld by the High Court as the Institution and Respondent No. 4 entered into a settlement and the Institution agreed to abide by the terms of the settlement. The direction of the School Tribunal attained finality and the Respondent No.1 was to be paid back wages. The issue before the Supreme Court was that who is to ultimately bear the financial burden, whether the institution is supposed to pay the back wages out of its own pocket or is it to be paid by the State Government from the grant which is granted to the school. Though in the aforementioned decision of the Supreme Court, it was ultimately decided and directed that the Supreme Court will not interfere with the decision of the High Court which was arrived at after a compromise between the parties, while arriving at that decision, the Supreme Court made certain crucial observations and rendered certain findings which come to the aid of Respondent No. 1's case herein. Those findings are returned in paragraph No. 11 of that decision and are reproduced *verbatim* herein below:-

“11. We have considered the aforesaid submissions of the learned counsel for the parties and have gone through the statutory provisions. It cannot be denied that as per the normal principle, whenever a terminated employee of an aided school challenges the termination and termination is held to be illegal by a competent judicial forum/court and order is passed for payment of back wages, etc., the Government is supposed to bear the said burden. The reason for the same is that such back wages or any other payment are in the nature of salary for the intervening period or other compensation in lieu thereof which is to be paid to the employee who would have earned these benefits had he remained in service. In that eventuality, obviously, the

Government/Education Department would have paid those benefits in terms of financial aid provided to such a school. However, if there is a specific provision contained in any statute which contains contrary position, then such provision would prevail upon the aforesaid general rule. Likewise, if there is any administrative order which is contrary to the aforesaid general rule, the said administrative order shall prevail as in that situation, it would be treated that the aid is given subject to the conditions contained in such administrative order.”

24. It is held by the Supreme Court that whenever the terminated employee of the aided school challenges termination and the said termination is held to be illegal by the competent judicial forum / Court and order is passed for payment of backwages, etc., the Government is supposed to bear the said burden. It is clarified by the Supreme Court that such backwages or any other payment are in the nature of salary for the intervening period or other compensation in lieu thereof which is to be paid to the employee who would have earned these benefits had he remained in service. Thus, it is clear that had Respondent No. 1 being reinstated, she would have submitted her resignation and got her benefits from the Government and she could have considered her future prospects until retirement. Respondent No.1's benefits would have come from the State Government and not from the Management considering that Petitioners' institution before me is a fully aided Institution. Therefore it cannot be argued by the State Government that liability of salary and back wages is that of the Institution.

25. In the above facts, it cannot lie in the mouth of the

State Government to state that they shall not pay the backwages and dues to Respondent No. 1 and the liability is that of the Petitioners' Institution since they did not reinstate her. State Government can invoke appropriate action against the Petitioners as available to it in law. However in the peculiar facts of the present case, it is seen that since Petitioners did not reinstate Respondent No.1, she could not file her VRS resignation. Hence after clearing all dues of the Respondent No.1, if the State Government desires to recover any amount from the Petitioners due to the Petitioners omissions, liberty can be given to the State Government to recover the same in accordance with law. Respondent No.1 cannot be allowed to suffer the ignominy of the system any further.

26. In the above background, I am required to adjudicate and determine the present case. For the reasons which are mentioned herein above insofar as the impugned judgment & order passed by the Tribunal is concerned, I am of the opinion that the said judgment cannot be faulted with principally but subject to it being moulded appropriately in view of the peculiar facts of this case. However benefit under the said judgment is required to be given to Respondent No. 1 and that benefit can only be given if the said order is moulded appropriately especially in view of the subsequent events discussed above. Having upheld the judgment and order of the Tribunal to the above extent and having arrived at a finding that Petitioners did not

carry out their obligation under the said order despite the Petition remained pending in this Court for a period of two years until stay was granted in terms of prayer clause (b) on 16.08.2016, Respondent No.1 cannot be made to suffer the consequences. In the meanwhile she has attained superannuation age on 31.05.2022. I am therefore inclined to accept the submission made by Dr. Warunjikar to extend the benefit of the order in view of non-reinstatement of Respondent No. 1 upto the date of her superannuation. In that view of the matter, the Writ Petition is disposed of by giving the following directions:-

- (i) Impugned judgment and order dated 09.04.2014 passed by the Presiding Officer, Mumbai University and College Tribunal, Mumbai in Appeal No. 34 of 2011 is upheld and confirmed to the extent of reinstatement of Respondent No.1 subject to modification and further directions contained hereinunder;
- (ii) In view of Respondent No. 1 having passed her retirement age on 31.05.2022, Petitioners are directed to notionally reinstate Respondent No. 1 within a period of one week from the date of passing of this order and she shall notionally be continued to be shown as Petitioners' employee upto 31.05.2022;
- (iii) The direction of Respondent No.1 filing her VRS

resignation as directed in the impugned judgment and order of the Tribunal i.e. 09.04.2014 is redundant, infructuous and therefore quashed and set aside;

- (iv) It is directed that the period of service of Respondent No. 1 will be reckoned from the date of her joining till 31.05.2022 i.e. the date of her retirement and she will be entitled to and eligible to all service benefits till 31.05.2022 and she shall be deemed to be retired from service on 31.05.2022.
- (v) The Petitioners shall prepare the complete service book of Respondent No.1 upto the date of her deemed retirement i.e. 31.05.2022 and forward the proposal to the concerned authorities i.e. Respondent No.3 herein along with a chart showing Respondent No.1's wages and allowances that she would have drawn had she continued in service upto 31.05.2022, alongwith her updated service book and all other relevant documents and all service benefits, retirement benefits, other benefits etc. due and payable to Respondent No.1 within a period of four weeks from today for seeking scrutiny and requisite sanction from the Respondent No. 3;

(vi) All concerned Competent Authorities and the Respondent No. 3 are directed to scrutinize the said proposal received from Petitioners and they shall sanction the said proposal within a period of four weeks of receipt of the same from the Petitioners under intimation to Respondent No.1;

(vii) Respondent No. 3 - Joint Director of Higher Education is thereafter directed to clear all retirement dues and admissible arrears of wages as directed by this order within a period of four weeks from the date of receipt of sanction to the proposal from the Competent Authority in the Respondent No. 1's bank account under advice to her;

(viii) The State Government - Respondent No. 3 i.e. Joint Director of Higher Education is directed to pay simple interest @ 7% p.a. on the entire amount of arrears due and payable from 01.06.2022 till the date of payment received by Respondent No.1 on the entire arrears amount receivable by Respondent No.1;

(ix) The Respondent No. 3 - Joint Director of Higher Education is directed to pay the aforesaid entire outstanding amount of arrears due and payable to

Respondent No. 1 for and on behalf of the Joint Director of Higher Education and the Education Department within a period of four weeks as directed hereinabove positively without any delay whatsoever. The said amount shall be deposited in the bank account of the Respondent No. 1. Bank details of Respondent No.1 are already there with the Petitioners and the State Government. If not, the same shall be conveyed by Respondent No.1 to Petitioners and Respondent No.3;

- (x) Recovery of the amount paid by the State Government to Respondent No.1 if so desired shall be effected against the yearly grant due and payable to Petitioners' Institution in future or if the State Government desires to recover the dues and backwages which have been directed to be paid to Respondent No.1 by this order from the Petitioners' Institution, liberty to do so is given to the State Government strictly in accordance with law, but under no circumstances the State Government shall not deposit the full amount of dues and backwages as per the proposal submitted by Petitioners calculated till the date of payment in the bank account of the Respondent No. 1 as directed by this order.

(xi) Petition is disposed of in the above terms.

27. In view of the above, to the extent of the above directions, the impugned judgement dated 09.04.2014 stands modified and rest of the judgement is upheld and confirmed.

28. Though the State Government is not a direct party before the School Tribunal, it is infact represented by the Respondent No.3 being the Joint Director of Higher Education of the State Government. Hence, under the directions and observations of the Supreme Court in the case of *Educational Society, Tumsar and Ors (first supra)*, it is the primary liability of the State Government to pay the entire and full backwages of the Respondent No. 1, which shall be done by the State Government as directed in this judgment.

29. In a very recent decision delivered on 14.07.2025 of the Supreme Court in the case of *Vikram Bhalchandra Ghongade Vs. The Headmistress, Girls High School and Junior College, Anji (Mothi), Tah. And Distt. Wardha and Ors.*³ the Supreme Court has in paragraph No.7 observed as under:-

“7. It must be observed that a teacher in an aided school for all practical purposes is akin to a post under the State Government. Pertinent is the fact that the posts in aided schools are either sanctioned by the Government or approved in accordance with the Rules and pay and allowances are also paid by the Government. The aided school teachers are also entitled to some of the conditions of service as are applicable to Government teachers, with entitlement of pension, provident fund and gratuity as applicable, in accordance with the Rules

³ 2025 INSC 824

brought out under Article 309 of the Constitution of India. Though strictly speaking the teachers may not be holding a post under the State Government, it is akin to a post under the State Government, at least for the monetary benefits of pay and allowances, while in service, as also pension and other benefits on retirement.”

30. The Supreme Court has further in paragraph No.9 observed that a person entering service though has a normal expectation on attaining the age of superannuation but there are vagaries of fate which would make it otherwise. The Petitioner in the present case has been a victim of the vagaries of fate as is evident in the facts and circumstances of the present case which is seen from the omission of the Petitioner and the unfortunate timeline in the present case.

31. The amplitude of this Court of superintendence under Article 227 of the Constitution of India while considering the impugned orders passed in such proceedings is very wide and this Court has the power to even vary and mould the directions contained in the orders passed by the Court below in the interest of justice. Hence it is the primary liability and duty of the State Government to comply with the directions given by the Court in the first instance in case of aided posts.

32. In the present case it is seen that Respondent No.1 has been at the mercy of the system and Petitioners and in that view of the matter, the State Government duly represented by the Joint Director of Higher Education cannot take advantage of the same. *Prima facie*, it is an admitted position that Petitioners failed to honour and adhere to

the directions contained in the impugned order regarding reinstatement of Respondent No. 1. In the first instance that itself was a massive failure on the part of Petitioners since it completely frustrated not only the order of the Tribunal but also jeopardised the future prospects of Respondent No.1. I say this because the consequential actions directed in the Tribunal's order were clearly contingent upon the Petitioners reinstating the Respondent No. 1. For no fault of Respondent No. 1, she not having been reinstated led to the inevitable consequences. Resultantly Respondent No. 1 could not plan her future prospects which was specifically observed as a reason by the Tribunal in the impugned order had she been relieved in 2014 itself. As a consequence of this, Respondent No. 1 has consequently passed her superannuation age while waiting for the present Petition to be heard and decided. All this was only because Petitioners challenged the impugned order passed by the Tribunal and obtained a stay thereon in the year 2016 after almost more than 2 years. As a consequence of the aforesaid facts which are admitted facts on record Respondent No. 1 suffered immensely and therefore considering that this Court has come to the conclusion that from all counts Respondent No. 1 has been wronged, the impugned order passed by the Tribunal deserves to be upheld but moulded and modified to the extent of the directions contained in this judgement as delineated herein above. Hence the aforesaid directions in paragraph No.26 have been passed

by this Court.

33. It is seen that the Supreme Court in the opening remark in its judgment dated 30.10.2023 in the case of *Pradeep Mehra Vs. Harijivan J. Jethwa (since deceased thr. lrs.) and Ors.*⁴ has observed as follows in paragraph No. 1:-

“1. This appeal before us shows how the execution proceedings under order XXI of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘CPC’), are being delayed, and the process is being abused in the execution proceedings, to the peril of the helpless decree holder.

As long back as in 1872 (when the CPC of 1859 was in operation), it was observed by the Privy Council that, “the difficulties of a litigant in India begin when he has obtained a decree”⁵. The situation, we are afraid, is no better even today.”

34. I dare say, the situation is no better even after 154 years after the aforesaid judgment of the Privy Council delivered in 1872 and if the observations made therein are considered.

35. The Writ Petition stands disposed of with the above directions.

36. This Court appreciates the aid and assistance rendered by Dr. Warunjikar and Mr. Jenish Jain, learned Advocates appointed through Legal Aid to represent and espouse the cause of Respondent No.1. Their fees shall be released by the Legal Aid Department on production of a server copy of this order and due compliance as per law.

⁴ 2023 INSC 958

⁵ Raj Durbhunga Vs. Maharajha Coomar Ramaput Sing, 1872 SCC Online PC 16 : (1871-72) 14 Moo IA 605 at page 612

37. All parties shall act on a server copy of this judgement.

[MILIND N. JADHAV, J.]

38. After this judgment is pronounced in Court learned AGP appearing on behalf of Respondent No.3 – Joint Director of Higher Education seeks stay of this judgement to enable the State to challenge the same. Considering her request, the judgement is stayed for a period of 4 weeks from today.

[MILIND N. JADHAV, J.]

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