



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 2963-2964 OF 2016

STATE OF MAHARASHTRA

... APPELLANT

VS.

SUDHIR S/O MOTIRAMJI HIWARKAR & ORS.

... RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

1. These civil appeals, by special leave granted on 11th March, 2016, are directed against the judgment and order dated 7th October, 2015¹, passed by the High Court of Judicature at Bombay, Bench at Nagpur², allowing a writ petition³ of the first respondent⁴ as well as a subsequent order of dismissal of a review application⁵ of the Joint Director of Higher Education, Nagpur⁶, dated 12th January, 2016. While granting leave, the direction contained in paragraph 26 (iv) of the impugned judgment was stayed.

¹ impugned judgment

² High Court

³ Writ Petition No. 3081 of 2000

⁴ Sudhir

⁵ in Misc. Civil Application Stamp No. 208 of 2016

⁶ Joint Director

2. The factual matrix, confined to what is necessary for the disposal of the present appeals, is that Sudhir was appointed as a Lecturer in the Commerce Faculty of the third respondent⁷ (run by the second respondent⁸) in the academic session 1990-1991. The College was granted permission to operate strictly on a “no grant-in-aid” basis⁹. Following a series of earlier terminations and reinstatements, Sudhir was placed under suspension, and the Management of the Society initiated a departmental enquiry. Upon completion of the enquiry and after obtaining permission from the University, Sudhir was terminated from service on 17th August, 1999. Contemporaneously, the University also granted permission to the Management to close down the Commerce Faculty from the academic session 1999-2000 for want of students.
3. Sudhir challenged his termination before the University and College Tribunal, Nagpur¹⁰, which dismissed his appeal *vide* order dated 24th April, 2000. Aggrieved thereby, Sudhir filed a writ petition before the High Court. By the impugned judgment, the High Court set aside the order of the Tribunal and quashed the order of termination. *Inter alia*, the High Court directed the “Joint Director” to take steps to include Sudhir’s name in the list of surplus lecturers/teachers and to absorb him in any other college [paragraph 26 (iv)]. The High Court further directed the Management to pay a sum of Rs. 10,00,000/- (Rupees ten lakh) to Sudhir towards compensation *in lieu* of arrears. Aggrieved by the

⁷ College

⁸ Society

⁹ Communication dated 21st July, 1990 addressed to Respondent No. 4 (University)

¹⁰ Tribunal

direction regarding absorption, the Joint Director filed a review application, which came to be dismissed as noted above.

4. We have accorded our thoughtful consideration to the rival submissions advanced by learned counsel appearing for the respective parties and have perused the materials on record.
5. On behalf of the appellant, it was primarily urged that the College was functioning entirely on a “no grant-in-aid” basis. Relying upon Government Resolution (G.R.) dated 24th March, 1994 and a subsequent corrigendum dated 21st March, 1997, it was submitted that the policy for the absorption of surplus lecturers/teachers is applicable exclusively to grant-in-aid colleges and that the High Court exceeded its jurisdiction in directing the absorption of Sudhir, quite contrary to law.
6. *Per contra*, learned counsel for Sudhir submitted that under Section 79(4) of the Maharashtra Universities Act, 1994¹¹, the mandate to absorb surplus lecturers/teachers applies to all “affiliated colleges” without distinguishing between aided and unaided institutions, rendering the 1997 G.R. *non-est* in law. To claim parity, reliance has been placed on the absorption of another similarly situated lecturer, Bhaurao s/o Pundlikrao Kadav (since deceased).
7. Having considered the rival submissions, the fulcrum of the present dispute lies, notably, in a fundamental procedural infirmity that goes to the root of the matter: the non-impleadment of the State of Maharashtra in the writ proceedings before the High Court.

¹¹ Universities Act

8. It is an admitted position that the State of Maharashtra was not arrayed as a party respondent in the writ petition instituted by Sudhir. It was only in March 2015—nearly fifteen years after the institution of the writ petition—that Sudhir filed an application seeking impleadment of the “Joint Director” as the sixth respondent, and not the State *eo nomine*. The High Court proceeded to issue a writ of mandamus directing the inclusion of Sudhir in the list of surplus lecturers/teachers for his absorption—a direction that unequivocally fastens a direct and continuous financial and administrative liability upon the State.
9. On behalf of Sudhir, it was contended that the writ petition was competent, since the State of Maharashtra was duly represented through the office of the Joint Director and the learned Assistant Government Pleader had contested the matter on merits. The contention, however, overlooks the settled position of law that the State, as the necessary party, should have been duly impleaded in the proceedings; mere representation through one of its officers cannot dispense with such impleadment. The law on the subject is no longer *res integra*. In ***Ranjeet Mal v. General Manager, Northern Railway***¹², a three-Judge Bench of this Court held that an employee of the Union cannot seek to enforce an order setting aside removal from service by merely impleading the General Manager. This Court categorically laid down that the Union of India is a necessary party, as any order passed would have to be enforced against the Union, not merely its servants.

¹² (1977) 1 SCC 484

- 10.** This principle was reiterated in ***Jagtu v. Suraj Mal***¹³, wherein this Court, reading Section 79 and Order 27 Rule 1 alongside Order 1 Rule 9 of the Code of Civil Procedure, 1908, held that where a declaration of rights is sought in respect of land belonging to the State, the State is a necessary party. In the absence of the State, the proceedings cannot continue, and the suit is not maintainable. Furthermore, in ***Chaman Lal v. State of Punjab***¹⁴, this Court deprecated the practice of granting relief against the State exchequer when the State itself has not been formally impleaded. It was clarified that a decree erroneously passed in such a suit would not bind the State, even if it had attained finality.
- 11.** The impleadment of an officer or a department, without formally arraying the State as a juristic entity under Article 300 of the Constitution, renders the petition fundamentally defective when substantive relief is sought against the public exchequer.
- 12.** Applying the aforesaid established principles to the present case, the direction contained in paragraph 26 (iv) of the impugned judgment cannot be sustained. The belated impleadment of the “Joint Director” does not cure the fundamental defect of non-joinder of the State of Maharashtra. An officer or a department of the State cannot be equated with the State itself for the purposes of fastening sovereign or financial liability. The High Court thus grossly erred in fastening liability for absorption upon the appellant without its formal impleadment as a necessary party.

¹³ (2010) 13 SCC 769

¹⁴ (2014) 15 SCC 715

13. Even otherwise, on merits too, the claim of Sudhir for absorption cannot be sustained. The undisputed fact that Sudhir was appointed in a “no grant-in-aid” college, clearly places him outside the protective umbrella of the State’s surplus absorption policy as clarified in the corrigendum dated 21st March, 1997. Sudhir did not challenge this corrigendum. Without any challenge, reference to the Universities Act cannot aid Sudhir. To bypass this executive policy, Sudhir seeks parity with another lecturer, late Bhaurao, who was allegedly absorbed. However, as held by this Court in **Chaman Lal** (supra), Article 14 of the Constitution does not envisage negative equality. If an illegal or irregular benefit has been conferred upon a similarly situated person inadvertently or by mistake, it does not confer any legal right on others to claim the same relief to perpetuate an illegality.

14. The appeals, therefore, have to and must succeed.

15. However, despite the aforesaid legal position, we cannot remain oblivious to the peculiar equities of the present case. Having battled the sword of Damocles over his employment since 1993, Sudhir ultimately attained the age of superannuation on 30th November, 2025, during the pendency of these proceedings. Because of the order of stay, he could not reap the fruits of the reinstatement order passed by the High Court. He accepted the lump-sum compensation of Rs. 10,00,000/- (Rupees ten lakh) from the Management *in lieu* of arrears, perhaps on the expectation that he would be absorbed in service, as directed by the High Court. He remained out of employment since 1999. While the

appellant is correct in its submission that the legal mandate for absorption does not apply to a “no grant-in-aid” college, leaving Sudhir destitute at this advanced stage of his life would result in a travesty of justice. Indeed, the appellant, too, shares a degree of blame for not raising the specific objection regarding its non-impleadment firmly at the earliest opportunity before the High Court.

16. Therefore, having regard to the larger scheme of things, we are of the view that Sudhir may not be left without any succour at the twilight of his life. At our request, recorded in the order dated 12th August, 2026, the appellant has placed on record a calculation chart setting out the arrears of salary which Sudhir would have been entitled to, had he continued to serve as a college lecturer during the period from 7th October, 2015 to 30th November, 2025. The net amount, so calculated, is staggering.

17. Nonetheless, with a view to securing complete justice between the parties, we deem it appropriate to invoke our extraordinary jurisdiction under Article 142 of the Constitution and mould the relief.

18. While setting aside paragraph 26 (iv) of the impugned judgment, we direct the appellant-State to pay to Sudhir a consolidated sum of Rs. 10,00,000/- (Rupees ten lakh only), within a period of eight weeks from date, in full and final settlement of all his claims. The compensation already paid by the Management shall remain undisturbed. This direction is passed in the unique facts and circumstances of this case and shall not be treated as a precedent.

19. The appeals are allowed on the above terms.

20. Pending application(s), if any, shall also stand disposed of. Interim orders, if any, stand vacated. There shall be no order as to costs.

.....J.
(DIPANKAR DATTA)

.....J.
(SHEEL NAGU)

**NEW DELHI;
OCTOBER 13, 2026.**