



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

WRIT PETITION NO.6755 OF 2024

Shri. Sanstosh Kalyanrao Karanjkar
Age: 48 years, Occu: Service as Peon,
r/o: Bhagyanagar, S.T.Colony, Kallamb,
Tq.: Kallamb, Dist.: Osmanabad.

..Petitioner

Versus

1. Secretary,
Mahatma Gautam Shikshan Prasarak Mandal, Kallamb, Tq.:
Kallamb, Dist.: Osmanabad.
2. Head Master,
Janjagruti Madhyamik Vidyalaya, Kallamb,
Tq.: Kallamb, Dist.: Osmanabad.
3. Education Officer (Secondary),
Zilla Parishad, Osmanabad.
4. Dy. Director of Education,
Mahatma Gandhi Chouk, Latur.
5. The Presiding Officer,
School Tribunal, Solapur.

..Respondents

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Mr. V. S. Panpatte, Advocate for Petitioner.

Mr. V. M. Jaware, AGP for Respondent-State.

Mr. P. V. Tapse (absent), Advocate for Respondent No.3.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 04th JULY 2024.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.
2. The petitioner impugns the order dated 12.12.2023 passed by the Presiding Officer, School Tribunal, Solapur in Miscellaneous Application No.05/2022, thereby rejecting prayer of the petitioner

for restoration of Appeal No.43/2006, which was dismissed for want of prosecution on 09.02.2012.

3. Mr. Panpatte, learned Advocate appearing for the petitioner submits that the petitioner was appointed as Peon in the year 1995 with respondent no.2-School. The proposal seeking approval to his appointment was kept pending by the Education Officer. The petitioner had filed Writ Petition seeking direction to decide the proposal. While Writ Petition was pending, on 03.04.2006, respondent no.2 orally terminated the petitioner's service. The petitioner filed Appeal No.43/2006 under Section 9 of M.E.P.S. Act before the Tribunal at Solapur alongwith Application for grant of stay. The said application was allowed on 31.01.2007. However, the respondents failed to comply the order. The petitioner made application under Section 13 of the M.E.P.S. Act and also approached the Education Officer for grant of approval and release of salary. On 19.03.2008, the Education Officer granted approval to the appointment of the petitioner w.e.f. 16.06.2006. Unfortunately, Advocate, who was looking after the Appeal before the School Tribunal expired. The petitioner was not aware about the dates of hearing. Consequently, the Appeal came to be dismissed for want of prosecution vide order dated 09.02.2012. On 09.11.2021, the petitioner got knowledge about dismissal of Appeal and filed Application dated 28.02.2022 alongwith Application to condone the delay of 9 years 10 months and 17 days seeking restoration of Appeal. However, the Tribunal rejected such application.

4. Mr. Panpatte would submit that the petitioner would be remediless and loose all the benefits falling from his service as Peon. The absence of the petitioner was because of inadvertence.

He had engaged an Advocate, who expired. In fact, in view of the interim orders, the petitioner was in service and was not aware about the dismissal of the Appeal. In support of his submissions, he relies upon the following judgments:

- i. ***N. Balakrishnana Vs. M. Krishnamurthy*¹.**
- ii. ***Sonerao Sadashivrao Patil and Another Vs. Godawaribai w/o Laxmansingh Gahirewar*².**
- iii. ***Shivaji Shivlingappa Kadge & Others Vs. Chief Officer, Municipal Council*³.**

5. Per contra, Mr. Jaware, learned AGP appearing for the respondent-State submits that in fact there was delay of 10 years and 20 days in filing the Application for restoration. There is no explanation for such inordinate delay. The petitioner enjoyed all benefits based on interim orders passed by the Tribunal, however, never turned up prosecute appeal before the Tribunal. In matter of enquiry by provident fund, respondent no.3 i.e. Education Officer called status regarding appeal. Thereafter, petitioner filed present application for restoration. Mr. Jaware, learned AGP relies upon the judgment of the Supreme Court of India in case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others***⁴ as well as judgment of the Single Bench of this Court in case of ***Chandrakant Laxman Kulbhayya and Anr. Vs. State of Maharashtra and Ors.***⁵.

6. Having considered submissions advanced by the learned Advocates appearing for the respective parties, it can be observed Appeal No.43/2006 was filed by petitioner alleging otherwise termination under Section 9 of the M.E.P.S. Act. Although he claims to have served institution since 1995 onwards, his services

¹ (1998) 7 SCC. 123.

² 1999 (2) Mh.L.J. 272.

³ 2005(6) Bom. C.R. 424.

⁴ 2013 AIR SCW 6158.

⁵ 2015 (1) ABR 72.

were never approved by competent authority before alleged termination. The petitioner secured interim order of stay to alleged termination dated 03.04.2006. Based on such interim order, he secured approval to his appointment from the Education Officer vide order dated 19.03.2008 w,e,f, 12..06.2006. Thereafter, he succeeded in getting directions from this court against the management to pay him salary w.e.f. 04.10.1995 as per pay scale. Apparently, management never contested writ Petition, which has been disposed of on 21.06.2017. Based on order of this court, petitioner succeeded in securing approval to his appointment from 04.10.1995 to 15.06.2006 vide order dated 28.12.2018 passed by the Education Officer. Pertinently, during this period he never felt it necessary to see the status of his pending Appeal and enjoyed all the benefits under various orders issued by Education Department.

7. Turning back to the reasons as stated in the Application for restoration to justify continuous absence leading to dismissal of appeal and delay of 10 years in moving for restoration, only reason given is that the Advocate engaged by petitioner expired. No date is given when his Advocate is expired. Pertinently petitioner was very much vigilant in prosecuting Writ Petitions before this court and pursuing Education Officer for release of financial benefits. However, he did not find it necessary to see the status of the pending Appeal or engage another advocate. Apparently, the petitioner deliberately absented himself and made maximum good of the interim orders, probably in connivance with the management and secured financial benefits from the Government. The reasons recorded by the Tribunal while rejecting the prayer for restoration of appeal after 10 years 20 days cannot be faulted. The lack of bona fides imputable to the party seeking condonation of the delay is significant and relevant fact. Although substantial justice is

paramount consideration for this Court, the conduct of the petitioner do not warrant exercise of Writ jurisdiction. Hence, no interference is called in impugned order. Writ Petition sans merit and the same is dismissed.

8. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2024