

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

WRIT PETITION NO. 1595 OF 2015

Bapurao S/o Madhavrao Mane,
Age : 49 Years, Occu. : Service as
Co-operative Officer, Grade-I in
the office of Assistant Registrar,
Co-operative Societies, Kallamb,
Dist. Osmanabad. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Co-operative Department,
Mantralaya, Mumbai.
2. The Commissioner for Co-operative
Societies, Pune, Dist. Pune.
3. The Divisional Joint Registrar,
Co-operative Societies, Aurangabad,
Dist. Aurangabad.
4. The Divisional Joint Registrar
Co-operative Societies, Latur,
Dist. Latur. .. Respondents

Shri P. G. Rodge, Advocate for the Petitioner.
Shri V. D. Rakh, A.G.P. for All Respondents.

**CORAM : S. V. GANGAPURWALA AND
V. L ACHLIYA, JJ.
DATE : 11TH FEBRUARY, 2015.**

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. The learned Assistant

Government Pleader waives notice of rule for all respondents. With the consent of parties, taken up for final hearing.

2. Mr. Rodge, the learned counsel submits that, matter could not be attended as regular Division Bench was not available for number of days. In view of that, the matter could not be attended. According to the learned counsel the inaction on the part of the petitioner was not intentional one, but due to aforesaid reasons. The learned counsel submits that, the matter involves the rights of the applicant as far as his service is concerned. As such, liberal approach may be adopted.

3. The learned Assistant Government Pleader submits that, on many dates the petitioner remained absent. Even the amendment application which was allowed was not attended. The amendment was not carried out. In the light of that, the Tribunal was right in dismissing the matter and not restoring it further.

4. It is trite that, whenever technical considerations and cause for substantial justice are pitted against each other, the cause for substantial justice has to be sub served. The petitioner is not gaining anything by delay. No doubt, the Tribunal has observed that, even the petitioner did not carry out the amendment which was allowed. The reason given that, there was no regular Division Bench sitting could not be accepted, as carrying out amendment is a ministerial act.

5. Be that, as it may, it would be appropriate to decide the matter on merits, as it concerns with rights of the petitioner in service. As

such, we are inclined to grant one more opportunity to the petitioner. However, the petitioner also deserves to be mulct with cost for the delay that has been caused.

6. In the result, we pass the following order.

7. The impugned order is quashed and set aside. The Original Application No. 153 of 2008 is restored to its original position on condition that, the petitioner pays cost of Rs. 5,000/- (Rs. Five thousands only) to the respondents within a period of three (3) weeks from today. Payment of cost is condition precedent. On cost being paid, the matter that is Original Application No. 153 of 2008 be proceeded further in accordance with law. The cost to be deposited before the Tribunal.

Rule accordingly is made absolute in above terms.

Sd/-

[V. L ACHLIYA, J.]

Sd/-

[S. V. GANGAPURWALA, J.]