

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1992 OF 2013

1. Matoshri Sevabhavi Sanstha,
Wadzari, Matoshri Nivas,
Sant Dnyaneshwar Nagar,
Behind Govt. I.T.I., Beed,
Through its President.

2. The Head Master,
Sant Shiromani Bhagwan Baba
Primary Ashram School, Wadzari,
Tq.Patoda, Dist. Beed.

..Petitioners

Versus

1. Parmeshwar Uttam Darade,
Age 29 years, Occ. Nil,
R/o Limba Rui, Tq. and Dist.Beed.

2. District Social Welfare Officer,
Beed, Tq. and Dist. Beed.

3. Sudhakar Dattatraya Sanap,
Age 34 years, Occ. Service
r/o Sant Shiromani Bhagwan Baba
Primary Ashram School, Wadzari,
Tq. Patoda, Dist. Beed.

4. The Regional Dy. Commissioner,
Social Welfare Department,
Aurangabad.

..Respondents

...

Advocate for Petitioners : Shri Syed Masood Chand

Advocate for Respondent 1 : Shri Kadam N.S.

AGP for Respondent 2 & 4 : Smt. Shinde V.A.

Advocate for Respondent 3 : Shri Farooqui K.N. h/f Shri Jadhav N.L.

...

CORAM : RAVINDRA V. GHUGE, J.

Dated: August 24, 2015

...

ORAL JUDGMENT :-

1. I have heard the learned Advocates for the respective sides for quite sometime.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. This is the second round of litigation inter se the litigating sides.
5. Respondent No.1 herein had filed an Appeal bearing No.2 of 2009 before the Regional Deputy Commissioner, Social Welfare Department, namely, Raosaheb Udaji Rathod, presently working as Deputy Commissioner, Caste Verification Committee, Aurangabad. An application for condonation of delay was filed by the first respondent. It was prayed that the delay caused, if any, be condoned.
6. By order dated 25.7.2012, the said authority allowed the application and condoned the delay of 1 year and 5 months. Writ Petition No.6874 of 2012 was preferred by these petitioners challenging the said order. Noticing that the impugned order bore no reasons while condoning the delay, this Court had observed in its judgment dated

23.8.2012, in paragraph Nos. 5 to 8, which read as under:-

“5. From the perusal of the impugned Order, it is manifest that the authority has not given any reasons. The reasons are the life line of any order. It depicts the application of mind by the authority.

6. The impugned order states that the authority had heard both the parties and after hearing them, he has condoned the delay. Whether sufficient cause is stated or not, has not been discussed by the authority.

7. In view of the above, the impugned order can not be sustained and is quashed and set aside.

8. The learned counsel submits that the matter is kept before the authority on 27/08/2012. The authority shall hear the parties on an application for condonation of delay on the said date and shall decide the said application expeditiously and in any case within the period of four (4) weeks from today i.e. 24/09/2012 and pass reasoned order on an application for condonation of delay.”

7. Now, by the impugned order, the said authority has condoned the delay by merely narrating the submissions of the parties in a few lines and then concluding that the delay deserves to be condoned by maintaining the order dated 25.7.2012, which had been quashed and set aside by this Court in the above reproduced order.

8. Grievance of the petitioners is that once the order dated

25.7.2012 was quashed and set aside by this Court, the concerned authority - respondent No.4 herein could not have concluded that it was upholding its earlier order, dated 25.7.2012. It is, therefore, prayed that this petition be allowed and exemplary costs be imposed on the said authority.

9. The learned AGP has made a valiant attempt to support the impugned order dated 5.10.2012.

10. This Court on 24.6.2015, had observed in paragraph Nos. 2 to 6 as under:-

“2 It is pointed out by Mr. Syed, learned Advocate for the Petitioners, that the specific directions of this Court to Respondent No.4 have been recorded by the said Authority in its impugned order dated 05.10.2012. This Court has directed him to assign proper reasons while passing a fresh order. Mr. Syed, therefore, submits that though the concerned Authority has properly understood the import and meaning of the order passed by this Court, he has delivered the impugned order stating that clauses 1, 2 and 3 at the end of the order, are the reasons for which the application for condonation of delay of one year and five months has been allowed.

3 Mr. Syed further submits that the contentions of the parties, their averments, the case law cited and the written notes of arguments submitted, have not been considered by Respondent No.4, much less discussed.

4 *Ex facie, it appears that the conduct of Respondent No.4 in passing the impugned order despite the directions of this Court, cannot be countenanced. However, I find it appropriate to consider his explanation before passing any order on this petition.*

5 *As such, Respondent No.4 is directed to file his personal affidavit on or before 13.07.2015 explaining, whether, he has complied with the above reproduced order of this Court dated 23.08.2012. The affidavit shall also explain, whether, he has considered and discussed the contentions and averments of the parties and the documentary evidence and written notes of arguments placed before him while delivering the impugned order dated 05.10.2012.*

6 *Since this is the second round of litigation, Respondent No.4 shall be precluded from seeking extension of time beyond 13.07.2015 for filing his affidavit.”*

11. The learned AGP, therefore, indicates from the affidavit-in-reply, filed by the respondent No.4 authority that the delay deserved to be condoned. It is further stated that the delay was condoned in accordance with law as the management had not followed the proper procedure while terminating the services of respondent No.1. The order passed on 5.10.2012, impugned in this petition is just and proper.

12. Respondent No.1, who is the original appellant, has also supported the order.

13. I have considered the submissions of the learned Advocates. I find a peculiar case before this Court. Order dated 25.7.2012, delivered by respondent No.4 was quashed and set aside purely on the ground that it was a cryptic order running into one paragraph and which did not bear any reason in support of the conclusions for condoning the delay of 1 year 5 months. The impugned order now has only been increased in size from one to two paragraphs. The first paragraph is a narration of how the litigating sides reached upto this Court in the earlier Writ Petition and this Court directed respondent No.4 to adduce reasons while delivering an order. Thereafter, in a single sentence, respondent No.4 has noted that, *"The submissions and written notes are considered and for condoning the delay, the earlier order dated 25.7.2012 is sustained."*

14. It is beyond comprehension that when the order dated 25.7.2012 was quashed and set aside, respondent No.4 could not have restored the said order, thereby, virtually disregarding the order passed by this Court, dated 23.8.2012. Once again, no reasons are adduced by respondent No.4 while condoning the delay, despite the specific observations of this Court that he shall discuss, whether a sufficient cause is stated or not and shall assign reasons for drawing any conclusion on the application for condonation of delay. I, therefore, find that the impugned order indicates a posture of defiance by respondent No.4.

15. In the light of the above, this petition is allowed. The impugned order dated 5.10.2012 is quashed and set aside on the ground of the failure on the part of respondent No.4 to abide by the directions issued by this Court vide its oral judgment dated 23.8.2012.

16. By the conduct of the fourth respondent, the petitioners and respondent No.1 have been compelled to be in litigation for the second time before this Court. Therefore, I am imposing costs of Rs.10,000/- to be paid individually to the petitioner management and respondent No.1 herein by the fourth respondent, namely, Raosaheb Udaji Rathod, presently working as Deputy Commissioner, Caste Verification Committee, Aurangabad.

17. The said costs shall be paid by the fourth respondent by depositing two account payee cheques of Rs.10,000/- each in favour of the petitioner society and respondent No.1, which shall be deposited in the office of the fourth respondent at Aurangabad within four weeks from today. The petitioner society and respondent No.1 shall receive the said account payee cheques without any conditions. It is made clear that both these account payee cheques shall be paid by Raosaheb Udaji Rathod from his salary bank account.

18. Appeal No. 2 of 2009 is, therefore, remitted back to the said

competent authority for hearing the litigating sides and for passing a reasoned order while deciding the application for condonation of delay. The litigating sides shall appear before the competent authority on 16.9.2015. Appeal No.2 of 2009 shall be decided by the competent authority as expeditiously as possible and preferably on/or before the 15th day of December, 2015.

19. Rule is, therefore, made absolute in the aforesaid terms.

(RAVINDRA V. GHUGE, J.)

...

akl/d