

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 2929 OF 2013

SUMERSINGH RAJPALSINGH PAWAR
VERSUS
THE MINISTER OF STATE FOR RURAL DEVELOPMENT,
M.S. AND OTHERS

...

Advocate for Petitioner : Mr. Talekar S.B.
AGP for Respondents: Mr.A.S.Shinde.
Advocate for Respondent No.3 : Mr. Bhavthankar Vivek Vasantrao.

...

CORAM : **S. V. GANGAPURWALA and
V. L. ACHLIYA, JJ.**

DATE : 02nd March, 2015.

PER COURT:

. Mr.Talekar, learned counsel for the Petitioner submits that the Petitioner joined the services of Respondent – Zilla Parishad as an Assistant Gramsevak in the year 1962. In the year 1975, the Petitioner was terminated. The Petitioner filed an appeal before the Divisional Commissioner. The said appeal was dismissed. Thereafter, the Petitioner preferred an appeal before Respondent No.1 on 14th October, 1976. The learned counsel submits that the Petitioner did not get any further knowledge of the position in the said appeal. The Petitioner engaged an Advocate in the year 1990 also. The Advocate of the Petitioner also could not get any information about the said appeal. The Petitioner received the communication from the postal department on 7th

October, 2003, about the factum of his appeal being allowed. Immediately, the Petitioner approached Respondent No.3 and submitted application dated 27th November, 2003, and asked the Respondents to allow him to join. However, as per the age of superannuation, the Petitioner was to attend the age of superannuation on 31st January, 1998. The Petitioner till 7th October, 2003, was never intimated about the fate of his appeal and the appeal being allowed. The learned counsel for the Petitioner submits that upon getting knowledge, the Petitioner is prosecuting with all the authorities, even Respondent No.1. However, the case of the Petitioner is not considered only on the ground that the postal department does not have any record available with them. The learned counsel submits that there is also no record with the Respondents that prior to 2003, the Petitioner was communicated with the order of allowing the appeal. If the Petitioner would have been communicated about the order in appeal, the Petitioner certainly would have joined the service. According to the learned counsel, the report which is relied, is of the year 2007, that the Petitioner is engaged in political activity. The same is not till the age of Petitioner attaining superannuation. All these aspects are not considered. The Petitioner be given retiral benefits considering his service from 1962 till the age of attaining superannuation i.e. till the year 1998. The Petitioner is not at fault. It is the fault of the Respondents in not communicating the said order to the Petitioner immediately. The

Respondent No.1 had communicated the order allowing the appeal of the Petitioner in the year 1977 itself to the Respondents. A copy was also forwarded to the Respondents. However, same was not implemented. The learned counsel further submits that the order was address to a wrong authority who did not have power of implementation.

2 Mr. Bhavthankar, learned counsel for Respondent No.3 and Mr.Shinde, learned AGP for Respondent Nos.1 and 2 submit that after a long slumber, the Petitioner has approached the Court. The petition cannot be entertained after such a long delay. Even there is no record of the order, which is produced by the Petitioner. As no record is available with Respondent No.1 about the order which the Petitioner states is in his favour, it would be unsafe to rely on such an order.

3 We have considered the submissions canvassed by the learned counsel for respective parties. It is not disputed that the Petitioner was in service with the Respondents as an Assistant Gramsevak. He joined the service in the year 1962. It is also not disputed that the Petitioner was terminated in the year 1975. The Petitioner filed an appeal before the Divisional Commissioner, which was dismissed. According to the learned counsel for the Petitioner, the appeal was filed before the State and the State has allowed the appeal. The order is signed by the Desk Officer and a copy of the decision seems to have been forwarded to the

Commissioner, Nagpur Division, and the Chief Executive Officer, Zilla Parishad, Parbhani. It appears from the copy of the order produced on record that a copy of the order was also forwarded to the Petitioner at the address of the Petitioner. The Petitioner has filed an envelop on which the endorsement is of the year 2003. But, on the said envelop, which is produced, it is shown that it is dispatched in June, 1977 itself. The veracity of the order cannot be tested as certified copy of the said order is not available. Copy of the order is produced.

4 Even assuming that the Petitioner was not communicated with the order of 1977 wherein the appeal was allowed and the termination was set aside, still, the Petitioner cannot absolve himself of the lethargy on his part. From 1976 that is the day when the Petitioner filed an appeal before Respondent No.1, it does not appear that the Petitioner had even once attended the office of Respondent No.1 so as to know the fate of his appeal. It is submitted that the Petitioner engaged an Advocate in the year 1990 i.e. 14 years after the appeal was filed and he also could not trace out the appeal, and thereafter, the things started moving in the year 2004 for the first time. The Petitioner had attained the age of superannuation in the year 1998. The qualifying service for the purpose of pension as per the Zilla Parishad Service Rules is 20 years. Even considering the service period from 1962 to 1977, the Petitioner does not comply the said period. It would be too late in the day to consider the

case of the Petitioner in the year 2013 i.e. when the present writ petition is filed. The Petitioner did not take steps for all these years or even did not care to know the progress made in the appeal. The Petitioner was terminated from service, had filed an appeal before Respondent No.1. It was also the duty of the Petitioner to know the progress in the appeal. By keeping silence, the Petitioner cannot claim advantage of his own negligence. For this Court to exercise equitable jurisdiction, the long delay would also play a pivotal part. In case the Petitioner would have completed the qualifying service for retirement till the date of the order relied by Petitioner, then this Court would have considered the case of the Petitioner. Admittedly, the Petitioner had never worked after 1975 with the Respondents i.e. after his termination. The record shows that the inquiry was made and the Petitioner is found indulging in political activity. Though the record is of the year 2007, it can be construed that the Petitioner was engaged in other activity. The Petitioner was not interested in prosecuting the appeal and keeping track of the appeal.

5 Considering all these aspects of the matter, it would not be possible to invoke our jurisdiction under Article 226 of the Constitution of India.

6 In the result, the writ petition is dismissed. No costs.

7 The original copy which was tendered, is returned back to the learned counsel.

ndm

[V. L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]