

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7416 OF 2015

Smt. Pratima w/o Pradip Dahale,
Age 44 years, Occu. Nil,
R/o. C-25, Bhagyanagar,
Shikshak Colony,
Behind Vithal Tempal,
Koregaon Road, Parbhani.
Dist. Parbhani.

... Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Water Conservation Department,
Mantralaya, Mumbai – 32.
2. The Chief Engineer,
Minor Irrigation (Local Sector),
Maharashtra State,
Pune.
3. The Superintending Engineer,
Minor Irrigation (Local Sector),
Circle Aurangabad,
Aurangabad.
4. The Executive Engineer,
Minor Irrigation (Local Sector),
Division Jalna,
Dist. Jalna.
5. The Sub Divisional Engineer,
Minor Irrigation (Local Sector),
Sub Division Parbhani,
Dist. Parbhani.

... Respondents

.....
Advocate for petitioner : Mr. M. M. Parghane h/f Mr. G. G. Kadam
AGP for respondents : Mr. S. S. Tope
.....

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 23rd JULY, 2015

ORAL JUDGMENT (PER S. V. GANGAPURWALA, J.) :-

1. Rule. Rule made returnable forthwith. The learned AGP waives service of Rule for all respondents. By consent heard finally.

2. The learned counsel for the petitioner states that the Original Application was filed seeking appointment on compassionate ground. However, the said Original Application was dismissed in default. Thereafter, the petitioner/original applicant filed an application for restoration. The learned counsel submits that the Tribunal has taken a very hyper-technical approach while rejecting the said application. According to the learned counsel, the advocate could not remain present due to his personal difficulty, as such, could not attend the matter when the Original Application was placed before the Tribunal. The Original Application is rejected only on the ground that the respondents could not be served.

3. Mr. Tope, the learned AGP, submits that it is a case of total laxity on the part of the petitioner. Ample opportunity was given to the petitioner. Even earlier, the Original Application was dismissed in default. No steps were taken by the petitioner for serving the respondents. According to the learned AGP, the Tribunal has not committed any error while passing the impugned order.

4. The conduct of advocate for the petitioner certainly cannot be

justified. However, it is also trite that for the fault of the advocate, the litigant should not be made to suffer. The advocate has consistently remained absent and has failed to take steps. The Original Application is filed seeking appointment on compassionate ground by the widow. It is the fault of the advocate in not taking steps and not attending matter and if the technical approach is taken, it is the litigant who would suffer for no fault of the litigant. It is a settled preposition of law that whenever technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice shall be sub served.

5. Considering the above, we are inclined to entertain this writ petition and to give one more opportunity to the petitioner. However, the petitioner also deserves to be mulct with cost.

6. In the result, the writ petition is allowed. The impugned order dated 24.11.2014 in Miscellaneous Application No. 246 of 2013 is quashed and set aside and the said Miscellaneous Application No. 246 of 2013, seeking restoration of Original Application No. 641 of 2012 is allowed on condition that the petitioner deposits cost of Rs. 5,000/- with the Tribunal, within a period of four (4) weeks from today. Rule is accordingly made absolute in the above terms. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)