

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.11856 OF 2012 IN
WRIT PETITION NO.4807 OF 1996

Govind Chandrakant Kherdekar

APPLICANT

VERSUS

The Principal and others

RESPONDENTS

Mr.Kalyan Patil h/f Mr.S.R.Barlinge, Advocate for the applicant.
Mr.V.D.Gunale, Advocate for respondent Nos. 1 and 2.
Mrs.V.A.Shinde, AGP for respondent Nos. 3 and 4.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 30/07/2015

PER COURT :

1. The applicant prays for condonation of 1032 days delay caused in filing the civil application seeking restoration of the writ petition, which was dismissed in default by this Court on 13/11/2009.

2. Mr.Barlinge submits that this matter involves a service dispute. The appeal filed by the applicant/petitioner challenging his non-continuance in employment amounting to termination, was dismissed by the School Tribunal vide impugned judgment dated 28/08/1996 in Appeal No.67/1994. He, therefore, submits that the petitioner is rendered unemployed and remediless since this petition has been dismissed in default due to non appearance of the counsel,

on 13/11/2009.

3. He further submits that the petitioner had to engage another Advocate and file this application for seeking restoration. He would be rendered without any remedy and that would cause an irreparable harm and serious prejudice to the petitioner.

4. Mr.Gunale, learned Advocate for the respondent/Management has vehemently opposed this civil application. He submits that the delay is of about 3 years. Same can be termed as inordinate. The petitioner/applicant has been negligent and careless. Diligence is not shown. Reasons cited are unacceptable and hence the civil application be rejected with costs.

5. I have considered the submissions of the learned Advocates and the strenuous opposition expressed by the learned Advocate for the respondent/Management and by the learned AGP as well.

6. It is apparent that the applicant has caused a delay of almost 3 years in moving this application. The petition was dismissed in default since the counsel did not remain present. The petitioner would be rendered remediless since he would be precluded from

challenging the impugned judgment of the School Tribunal dated 28/08/1996. The petition was admitted by order dated 30/10/1996 and is the only remedy available to the applicant/petitioner.

7. In the light of the above, this application is allowed. Delay of 1032 days is condoned subject to the petitioner / applicant depositing costs of Rs.5,000/- (Rs.Five thousand only), which respondent Nos. 1 and 2 and 5 shall withdraw in equal proportion. Costs shall be paid within a period of 3 (three) weeks from today.

8. After the costs is deposited, the order dated 13/11/2009 shall be recalled and Writ Petition No.4807/1996 shall be restored. After restoration, the litigating sides are at liberty to seek listing of the petition for final hearing.

9. In the event, this order is not complied with, same shall stand recalled, civil application shall stand rejected and the order dated 13/11/2009 shall stand restored.

(RAVINDRA V. GHUGE, J.)