

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9905 OF 2015

Vaibhav Sarjerao Gaikwad,
Age-28 years, Occu-Unemployed,
R/o Ambad Road, Jalna,
Tq. and Dist. Jalna

PETITIONER

VERSUS

1. The State of Maharashtra,
for Divisional Additional Commissioner,
Division Aurangabad,

2. The Chief Executive Officer,
Zilla Parishad, Jalna.

RESPONDENTS

Mr.,D.R.Irale Patil Advocate for the petitioner.
Mr.Y.K.Bobade h/f Mr.S.S.Tope, Advocate for respondent No.2.
Mr.S.G.Sangle, AGP for respondent No.1.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 05/10/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the impugned order dated 24/08/2015 delivered by the Additional Divisional Commissioner in Appeal No.61/2015. By the impugned order, the delay of 5 years caused in challenging the order dated 05/01/2009 passed by the Chief Executive Officer / Respondent No.2 has not been condoned

and the application for condonation of delay has been rejected.

3. Mr.Irale Patil, learned Advocate for the petitioner submits as under :-

- a. Father of the petitioner passed away on 08/01/2002 while in service of respondent No.2 / Zilla Parishad, Jalna.
- b. Mother of the petitioner Smt.Meena w/o Sarjerao Gaikwad was already in service of Zilla Parishad, Jalna as an ANM prior to her marriage to the late Sarjerao.
- c. An application dated 08/01/2002 was filed by the petitioner claiming compassionate appointment in place of the deceased father.
- d. By order dated 17/03/2006, respondent No.2 / Zilla Parishad granted compassionate appointment to the petitioner.
- e. By order dated 05/01/2009, the services of the petitioner were terminated as it was noted by the Department subsequent to his appointment that his mother was in the service of the Zilla Parishad.
- f. The petitioner challenged the order passed by respondent No.2 dated 05/01/2009 before the Additional Commissioner on 23/03/2015.
- g. By the impugned order dated 24/08/2015, the application for condonation of delay was rejected on account of inordinate delay.

4. Learned Advocate for respondent No.2 points out that the compassionate appointment in Zilla Parishad and Government

Service is provided by the G.R. dated 23/08/1996. It was not known to respondent No.2 that the mother of the petitioner was already in permanent employment of the said Zilla Parishad. After it was noticed, the service of the petitioner was terminated.

5. He further submits that when the mother of the petitioner was in employment, it was the duty of the petitioner as well as his mother to inform the Department that one member of the family was already in permanent service. He, therefore, submits that even on the merits of the matter, the petitioner has no case.

6. He further submits that the delay of 5 years was not properly explained by the petitioner. Though the issue of delay is to be looked at liberally, an inordinate delay and for the unacceptable reasons, cannot be condoned out of sheer sympathy. He, therefore, prays for the dismissal of this petition.

7. Learned AGP has adopted the submissions of learned Advocate for respondent No.2.

8. I have considered the submissions of the learned Advocates as have been recorded hereinabove.

9. Mr.Irale Patil has strenuously contended that the relation of the petitioner with his biological mother requires no consideration as she was in employment prior to her marriage. As the father of the petitioner has passed away, one member of the family, who is eligible as per the GR dated 23/08/1996, deserves to be appointed. Despite the petitioner having been appointed, he was terminated on 05/01/2009 without taking into consideration the fact that he was dependent upon his father.

10. I am unable to accept the submissions of Mr.Irale Patil. It has been noted by respondent No.2 in its order dated 05/01/2009 that the mother of the petitioner Smt.Meena Sukhchand Nirmal was a permanent employee of the Health Department of the Zilla Parishad.

11. The petitioner had filed an affidavit dated 10/09/2004 declaring that no person in the family is employed in Government service. I find from the declaration submitted by the petitioner that his mother is shown to be in business and earning Rs.1,500/- per month only. It is, therefore, apparent that the petitioner did not disclose that his mother was a permanent employee of the Zilla Parishad for the last more than 2 decades and was earning salary as per the applicable scale.

12. Notwithstanding the above, the application for condonation of delay filed by the petitioner, puts forth no reason to explain why the delay of 6 years has been caused. In fact the statement made is that the petitioner has been thrown on the road because of the death of his father. Nowhere has it been stated that the petitioner was never dependent upon his mother or was living separately.

13. The Apex Court in the case of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy, [(2013) 12 SCC 649] has concluded that unless the delay is explained properly and reasons cited are acceptable, there ought not to be condonation of delay.

14. Considering the above, I do not find that the impugned order dated 24/08/2015 delivered by the Additional Commissioner could be termed as being erroneous or perverse.

15. As such, since this petition is devoid of merits, same is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)