

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAO) NO.670 OF 2015

AND

MCA ST.NO.4255 OF 2015

AND

CIVIL APPLICATION (CAO) NO.1673 OF 2015

IN

WRIT PETITION NO.5734 OF 2013

Vishwajeet S/o Chango Warkade

..vs..

Chief Executive Officer, Zilla Parishad, Buldhana, District Buldhana and anr

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri S.G. Joshi, counsel for the applicant/petitioner.
Mrs. S.W. Deshpande, counsel for NA No.1/Resp.

**CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.**

DATED : NOVEMBER 20, 2015.

Heard Shri S.G. Joshi, learned counsel for the
applicant - petitioner and Mrs. S.W. Deshpande, learned
counsel for non-applicant No.1– employer.

By MCA St.No.4255 of 2015, the applicant-
petitioner seeks review of order dated 7.1.2015 disposing
of Writ Petition No.5734 of 2013 in motion hearing. As
the application for review is filed belatedly, Civil
Application (CAO) No.670 of 2015 has been filed for
condoning the delay of 24 days. The Civil Application

.....2/-

(CAO) No.1673 of 2015 has been filed to add grounds to the application for review.

Shri S.G. Joshi, learned counsel, submits that after this Court rejected the writ petition on 7.1.2015, because of illness and other domestic problems the application for review of order could not be preferred within time.

Mrs. S.W. Deshpande, learned counsel, strongly opposes the prayer for condonation of delay. However, non-applicant No.1–employer has not come up with any specific case to doubt the statement made by the applicant-petitioner on affidavit.

Learned AGP appears for non-applicant No.2–Scrutiny Committee.

In this situation, as we do not find any *mala fide*, delay of 24 days in filing the misc. civil application is condoned.

Office to register MCA St.No.4255 of 2015.

MCA St.No.4255 of 2015

Heard.

This Court has, today, condoned delay in filing the misc. civil application. By moving Civil Application

.....3/-

(CAO) No.1673 of 2015, effort of the applicant-petitioner is to point out that after termination on 30.6.2005, he has been continuously making representations seeking relief of reinstatement. Shri S.G. Joshi, learned counsel, submits that those representations could not be pressed into service before this Court on 7.1.2015.

It is not in dispute that after hearing learned counsel for the respective parties, on last occasion i.e. 11.9.2015, in this background, the matter was adjourned to enable learned counsel for non-applicant No.1–employer to find out whether there is any vacancy in which the applicant-petitioner can be accommodated. Upon instructions, Mrs. S.W. Deshpande, learned counsel, informs that such vacancies are available and if the proper application is made, non-applicant No.1–employer may provide reinstatement to the applicant-petitioner. She, however, adds that for the period during which the applicant-petitioner was out of employment, backwages cannot be permitted.

Shri S.G. Joshi, learned counsel, submits that the applicant-petitioner is not interested in backwages. However, he should be given benefit of continuity in employment.

In this situation, we grant Civil Application (CAO) No.1673 of 2015. The representations sought to be placed on record and grounds in support thereof are allowed to be incorporated by amending prayer for review.

The Misc. Civil Application St.No.4255 of 2015 be accordingly amended within a period of three days from today.

The Writ Petition No.5734 of 2013 was disposed of by this Court on 7.1.2015 mainly on the ground that the order of invalidation dated 21.3.2005 was questioned before this Court in Writ Petition No.1153 of 2005 and that writ petition was dismissed on 9.4.2005. Thereafter, termination was ordered on 30.6.2005. That termination was sought to be questioned in writ petition filed for the first time in the year 2013.

The Full Bench of this Court in the judgment in the case of Arun Vishwanath Sonone ..vs.. State of Maharashtra and ors reported at 2015(1) Mh.L.J. 457 has concluded this aspect. The benefit of protection in employment extended by the Honourable Apex Court is held not one under Article 142 of the Constitution of India. It has also been held that the question of *res judicata* in such matters has to be examined in the facts and circumstances

of each matter.

Here, the prayer for protection was not considered by this Court at all as request was made belatedly. In the light of the Full Bench judgment noted *supra* and the readiness and willingness of non-applicant No.1–employer, we are inclined to review order dated 7.1.2015.

Accordingly, we direct non-applicant No.1–employer to reinstatement the applicant-petitioner back in service from 1.1.2016 with continuity but without any backwages.

MCA St.No.4255 of 2015 is accordingly partly allowed and disposed of. No costs.

Needless to mention that, in the meanwhile, the applicant/petitioner shall file an undertaking with the Registry of this Court as also his employer that in future, neither he nor his progeny shall claim any benefit of or status as person belonging to the “Scheduled Tribe”.

JUDGE

JUDGE

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