

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

Civil Application (C.A.O) No.1117 of 2014

in M.C.A.St. No.14014 of 2014 in Writ Petition No.1504 of 2003 (D)

(Vasantrao s/o. Ganpatrao Gotmare .vs. The Divisional Commissioner, Nagpur Division
and another)

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

Court's or Judge's orders

CORAM : B.P.DHARMADHIKARI &
A.P.BHANGALE, JJ.

DATE : 10.3.2015.

Civil Application No.1117 of 2014

Heard Mr.A.M.Gedam, learned Counsel for the applicant/original petitioner, Mr.A.S.Fulzele, learned A.G.P. for respondent no.1 and Mr.Raut, learned Counsel for respondent no.2.

The facts show that an order of punishment deducting the amount of Rs.1,20,634/- from pensionary benefits forms subject matter of challenge in Writ Petition No.1504 of 2003. The Writ Petition came to be dismissed in default on 22.1.2008 as the Counsel for the petitioner did not remain present.

Misc. Civil Application St. No.14014 of 2014 is filed for restoration of the Writ Petition by recalling that order. As there is delay of 2336 days i.e. 6 years and 14 days, Civil Application No.1117 of 2014 is taken out for its condonation.

Mr.A.M.Gedam, learned Counsel for the

applicant submits that listing of the matter escaped the attention of the Counsel then appearing for the petitioner; the matter, thus, went unattended and hence, its dismissal came to his knowledge belatedly.

Learned A.G.P. for respondent no.1 and Mr.Raut, learned Counsel for respondent no.2 are opposing the prayer. Mr.Raut, learned Counsel is relying upon reply-affidavit. He submits that the petition was dismissed earlier also and was restored on 30.11.2006. He further states that the Zilla Parishad has already deposited that amount with the Registry of this Court and it has still not received it back.

The petitioner has approached this Court with a grievance that withholding of amount of Rs.1,20,634/- from his pension is unjustified. The approach, therefore, cannot be said to be mala fide. The fact that the petition has been dismissed twice is not that relevant.

After its first dismissal, it was restored. Hence, the circumstances in which it came to be dismissed in default on 22.1.2008 only need to be looked into. On that day, the Counsel for the petitioner could not remain present. It is explained that listing of matter escaped the attention and hence, the matter was not attended to. The reason cannot be said to be incorrect. If listing is not noticed, its dismissal may also go unnoticed and hence, there may be delay. In these circumstances, we find that the delay has been properly explained. By trying the matter on merits, no prejudice would be caused to the respondents. This Court has already asked respondent no.2/employer to deposit the amount of Rs.1,20,634/- with interest @ 10 % and accordingly, that amount has been deposited and has been

invested. In absence of such deposit, respondent no.2/employer may have been required to pay interest on the amount not paid under Rule 129(A) and (B) of the Maharashtra Civil Services (Pension) Rules, 1982. However, that contingency also does not arise in the present case.

As such, we condone the delay. The Civil Application is accordingly allowed. Registry to register the Misc. Civil Application.

Misc. Civil Application St. 14014 of 2014

Today, we have condoned the delay and directed the Registry to register this Misc. Civil Application.

Mr.A.S.Fulzele, learned A.G.P. waives service on behalf of respondent no.1. Mr.Raut, learned Counsel waives service on behalf of respondent no.2.

For the reasons recorded while condoning the delay, we re-call the order dt.22.1.2008 and restore Writ Petition No.1504 of 2003 for its admission. It is made clear that, for the period of delay, the petitioner/applicant shall not be entitled to claim interest under Rules 129(A) and 129 (B) of the Maharashtra Civil Services (Pension) Rules, 1982.

Accordingly, the order dt.22.1.2008 is re-called.

List Writ Petition No.1504 of 2003 for admission before the appropriate Bench as per the roster assigned - on 6.4.2015.

JUDGE

JUDGE