

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11826 OF 2014

Mahatma Jyotiba Phule Jivan
Shikshan Prasarak and Apang
Seva Mandal, Walgud,
Tq. and Dist. Osmanabad,
through its President Bharat
Sambhajirao Sarwade,
Age 58 years, Occ. Agriculture
and President of the Institution,
R/o Walgud, Post. Chilwadi,
Tq. and Dist. Osmanabad.

..Petitioner

Versus

1. The State of Maharashtra
(Through its Secretary
Social Welfare Department,
Mantralaya, Mumbai.)

2. The Commissioner of
Welfare of Disable Person,
Maharashtra State,
New Church Road No.3.
Pune 1.

3. The Zilla Parishad,
Osmanabad Through its
Chief Executive Officer,
Osmanabad.

4. The Divisional Social
Welfare Officer,
Latur Division, Latur.

5. The District Social
Welfare Officer,
Zilla Parishad, Osmanabad.

6. Bhaironath Maruti Surve,
Age major, Occ. Nil,
R/o C/o Dagdu Suryawanshi
In front of Raje Complex,
Osmanabad.

..Respondents

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Advocate for Petitioner : Shri Bayas Anandsing
AGP for Respondents 1, 2 & 4 : Shri Korde D.R.
Advocate for Respondent 3 : Served
Advocate for Respondent 5 : Shri Ghute Patil K.J.
Advocate for Respondent 6 : Shri Jadhavar S.S.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 13, 2016
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ORAL JUDGMENT :-

1. Heard learned Advocates for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.
4. On 11.8.2015, this Court had recorded the submissions of the petitioner as under:-

“1. The Petitioner is aggrieved by the order dated 09.04.2014 delivered by the Regional Deputy Commissioner, Social Welfare Department, Latur, on the following grounds:

(a) The application for condonation of delay at page 66 dated 26.07.2012 has not been decided by the said Authority or may have decided the same, but a copy of the order is not served upon the Petitioner.

(b) No notice of hearing on the main appeal was issued by

the said Authority and the Petitioner has not received any such notice.

(c) The reply dated 30.10.2012 filed by the Petitioner through it's Advocate is a reply to the application for condonation of delay.

(d) Without opportunity of hearing and without hearing the Petitioner, the impugned order dated 09.04.2014 has been passed.

(e) On internal page 10 of the impugned order, the said Authority has framed an issue as to whether, the appeal is filed within limitation and whether, the Appeal can be maintained before the said Authority, thereby indicating that till the decision dated 09.04.2014, the delay caused in preferring the appeal has not been condoned."

5. After notice, this matter was heard on 29.3.2016. Submissions of the litigating sides were then recorded from paragraph Nos.2 to 7 in the order dated 29.3.2016 as under:-

"2. Mr.Jadhavar, learned Advocate for respondent No.6 has tendered across the bar a copy of the order dated 14/05/2013 accompanied with the order (undated) passed by the same Authority / respondent No.4 thereby condoning the delay caused in filing the appeal. Same is taken on record and marked as Exhibit "X" for identification (6 pages).

3. Ex-facie, it appears to the Court that when respondent No.4 delivered the impugned order, it has concluded below paragraph No.12 that it has considered the contentions of the parties and the documents before it and has framed 3 issues. Issue No.2 is with

regard to whether the appeal filed by respondent No.6 is within limitation. If the delay was already condoned by the order Exhibit 'X', there would have been no reason for respondent No.4 to frame an issue while delivering the impugned order dated 09/04/2014 as to whether the appeal is filed within limitation. So also, if the delay was condoned by respondent No.4/Authority by the order Exhibit 'X', there was no reason for the said Authority to answer issue No.2 by concluding that the delay is being condoned.

4. *Mr.Bayas, learned Advocate for the petitioner submits that the order Exhibit 'X' appears to have been manufactured and antedated.*

5. *It also appears from the Roznama that there is no mention of the order condoning the delay having been passed either on 30/04/2013 or 14/05/2013. The roznama indicates one hearing scheduled on 26/12/2012 and the next hearing being scheduled on 04/07/2013.*

6. *Before forming any opinion about the conduct of Mr.Madhav Vaidya, Appellate Authority Cum Regional Deputy Commissioner, Social Welfare Officer, Latur, I find it appropriate to direct the said Officer to file his personal affidavit explaining the facts recorded as above. Affidavit by the said Officer shall be filed on or before 11/04/2016.*

7. *This matter shall stand over in the supplementary board on 13/04/2016. It is made clear that respondent No.4 shall not seek extension of time for filing his affidavit, as directed above.”*

6. Considering the above, the record and proceedings were called for and I have gone through the same with the assistance of the learned Advocates.

7. During the course of the submissions of the learned Advocates, Shri Bayas submitted, on instructions from the petitioner that the petitioner would be satisfied if the Appeal filed by the respondent No.6 is heard afresh, subject to certain conditions and a time frame that may be imposed by this Court. He would put forth all his contentions before the competent authority in the said hearing.

8. Shri Jadhavar, on instructions from the respondent / employee submits that since the employee has been granted reinstatement by the learned Division Bench, vide his order dated 6.11.2015, delivered in Writ Petition No.8884 of 2014, he is agreeable for a rehearing of the Appeal on its merits, subject to the continuation of the relief granted by the learned Division Bench and subject to the payment of his monthly salary, considering the fact that he has joined duties on 13.6.2015 and no wages have been paid.

9. I have considered the record and proceedings pertaining to the hearing of the appeal filed by the respondent / employee. To say the least, respondent No.4 - Divisional Social Welfare Officer, Latur at the relevant time and who is said to be Shri Madhav Rukhamaji Vaidya has conducted the proceedings in the most haphazard and unusual manner. The dates of hearing stated in his affidavit-in-reply, dated 7.4.2016 do not match with the record and proceedings. The record with regard to the issuance of notices of hearing and acknowledgment receipts of service of

communications, has also not been properly maintained. I am astonished by the manner in which the said proceedings have been conducted. The said Officer owes an explanation for having conducted quasi judicial proceedings in an haphazard manner.

10. It is informed by the learned AGP that the said officer Shri Madhav R. Vaidya is presently under suspension on disciplinary grounds for other reasons. A different officer has now taken charge of the department at Latur and he would hear the appeal on its merits under the orders of this Court.

11. Shri Jadhavar makes a serious grievance, on instructions, that despite the order of the learned Division Bench, the petitioner has deprived respondent No.6 of his monthly wages on the pretext that the Social Welfare Officer, respondent No.5 has purportedly withdrawn his approval.

12. I have gone through the order passed by the learned Division Bench, dated 6.5.2015. An order of reinstatement issued by any Court presupposes that the employee deserves to be reinstated, unless the said order is set aside and deserves to be paid his monthly wages.

13. Be that as it may, the petitioner was expected to pay the wages of respondent No.6, either through the grants and if the same were not available, from its own coffers, considering the order passed by the learned Division Bench dated 6.5.2015.

14. In the light of the above and considering the statements made by the petitioner and respondent No.6 on instructions, this petition is partly allowed. The impugned order dated 9.4.2013, delivered by respondent No.4 on the appeal filed by respondent No.6 is quashed and set aside on the following conditions:-

(A) The litigating sides, who are before this Court, and are party to the appeal, shall appear before respondent No.4 on 29.4.2016 at 11.00 AM. Formal notices need not be issued by respondent No.4.

(B) Respondent No.6 in the meanwhile shall supply the copy of appeal memo with all annexures to the petitioner on/or before 22.4.2016.

(C) The petitioner shall endeavour to file its written statement on the appeal, latest by 13.5.2016, subject to the condition that the entire outstanding wages of respondent No.6 / employee shall be paid to him by a banker's cheque or a demand draft on/or before 10.5.2016.

(D) In the event the petitioner fails to comply with the above directions and especially the direction to pay the outstanding wages of respondent No.6, this order shall stand recalled, this petition shall then stand dismissed and the impugned order dated 9.4.2014 shall stand restored.

(E) Only after the above stated conditions are complied with, respondent No.4 shall then post the matter on 27.5.2016 for hearing the litigating sides and for enabling them to file their written notes of arguments.

(F) Respondent No.4 shall endeavour to deliver its order on/or before 16.7.2016.

(G) The relief granted by the learned Division Bench, dated 6.5.2015 shall continue to protect respondent No.6 during the pendency of the Appeal and for a period of four weeks after the date of the order of the fourth respondent, in the event, the said order is adverse to the respondent No.6 employee.

(H) Record and proceedings be returned to respondent No.4 forthwith.

15. Rule is made partly absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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