

FARAD CONTINUATION SHEET NO.
 IN THE HIGH COURT OF JUDICATURE AT BOMBAY
 APPELLATE SIDE, BENCH AT AURANGABAD
CIVIL APPLICATION NO.12206 OF 2015
IN
RAST NO.27136 OF 2015
IN
WRIT PETITION NO.6064 OF 2014.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.R.D.Biradar, advocate for the applicant.
 Mr.A.S.Bajaj, advocate holding for Mr.R.S.Wani,
 advocate for the Respondent.

**CORAM : S.V.GANGAPURWALA AND
 K.K.SONAWANE, JJ.**
Date : 22.04.2016.

PER COURT :

1. Heard.
2. Mr.Biradar, learned counsel for the applicant is present in the Court.
3. The applicant has filed present application for condonation of delay along with the Review Application seeking review of the order passed by this Court on 8.10.2014 in W.P.No.6064/2014.
4. Mr.Biradar, learned counsel for the applicant submits that the applicant got knowledge of the judgment and order passed by this Court only after the applicant received the letter/notice dated 7.4.2015 on 15.4.2015.

5. Learned counsel submits that in W.P.No.6064/2014, the present applicant was arrayed as Respondent No.3. The Respondent No.3 had not engaged any advocate and had never instructed any advocate to make concession on his behalf. The applicant has stated said fact on affidavit before the Superintending Engineer i.e. the present non-applicant No.2.

6. The learned counsel further contends that the present non-applicant No.3/original Writ Petitioner himself had approached the present applicant and got his signatures. It was stated to the applicant by the present non-applicant No.3 that they both would initiate proceedings and on the said premise had taken the signature of the present applicant on various documents/papers. So also had taken signatures on blank papers. The applicant at no point of time had engaged Mr.D.B.Shinde, advocate before this Court nor has given any instructions to make concession that the applicant is not ready to join the post. According to the applicant, fraud is played by non-applicant No.3 and the applicant is victim of fraud. The applicant would never have instructed the advocate to make any concession prejudicial to his own interest.

7. Mr.Tripathi, learned counsel appearing for non-applicant No.4 Mr.D.B.Shinde, states that the applicant had engaged advocate Shinde. He had signed the Vakilpatra. The applicant had approached advocate Shinde, along with notice received by him

from this Court and had instructed to state that the applicant is not interested in joining the post of measurer.

8. Mr.Bajaj, learned counsel appears for non-applicant No.3-original petitioner and denies the averments and the allegations made by the present applicant that the present non-applicant No.3 had taken signatures of the applicant on blank papers. It is submitted by him that non-applicant No.3 did not approach the applicant.

9. We have considered the submissions. The Writ Petition is filed by the present non-applicant No.3 bearing W.P.No.6064/2014 against the order passed by the Maharashtra Administrative Tribunal. The non-applicant No.3 had filed the Original Application before the Tribunal on the ground that reservation has not been properly applied.

10. This Court perused the judgment of the Tribunal and while passing the order in W.P.No.6064/2014, reproduced the observations of the Tribunal, more particularly, para 13 and 14 of the judgment of the Tribunal. We reproduce the same as under :

“13. Though Respondent No.3 is added in this original application as added respondent with order of this Tribunal, he is neither appeared nor filed affidavit in reply claiming appointment on the said post of horizontal reservation of part time

employee degree or diploma holder and, as such, for want of relief claimed by added respondent No.3, this Tribunal can not pass order for selection and appointment of respondent No.3 on the said post.

14. *Even, with this situation, relief can not be granted to the applicant for selection and appointment on the said post of horizontal reservation of part time employee degree or diploma holder, because the applicant is not entitled for the said appointment excluding the claim of respondent No.3. In this situation, it is for the authorities to take proper call for selection and appointment of respondent No.3 and if there is failure on the part of respondent No.3 to join the said post after his selection and appointment then to consider the claim of the applicant for selection and appointment on the said post.”*

11. It would appear that even before the Tribunal the present applicant who was Respondent No.3 did not appear. The Tribunal also observed that no relief can be granted to the Respondent No.3 therein i.e. the present applicant as he has not claimed any relief. In fact, the present applicant did not appear before the Tribunal. The

present applicant did not assail the said order. The non-applicant No.3 assailed the said order in W.P.No.6064/2014, wherein statement was made by the learned counsel appearing for present applicant i.e. Respondent No.3 in Writ Petition that Respondent No.3 is not interested in joining the said post.

12. The certified copy of the Vakilpatra signed by the present applicant engaging advocate Mr.D.B.Shinde, is placed on record along with the notice of this Court received by the applicant. The signature on the Vakilpatra is not denied by the present applicant.

13. It is a fact that the present applicant since beginning was never interested in prosecuting any litigation nor at any point of time claimed any relief so as to seek appointment on the said post. The relief was not claimed by the present applicant before the Tribunal nor before this Court. As such it would not be possible at this belated stage to rely on the applicant's contention that the applicant had not instructed his advocate Mr.Shinde, to make the said statement or that he had not engaged said advocate Mr.Shinde.

14. Considering the above, the Review Application along with condonation of delay Application are disposed of. No costs.

(K . K . SONAWANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.22.04.2016.
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