

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 767 OF 2016
IN
WRIT PETITION NO. 9107 OF 2011

Prof. Naikwadi Shamsuddin S.Applicant
(Orig. Petitioner)

IN THE MATTER BETWEEN :

Prof. Naikwadi Shamsuddin S.Petitioner

V/S.

1. The Principal Ramniranjan
and Ors.Respondent

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Advocate Shilpa M. Linge and Latika H. Belingade, present.

Mr. R.V. Govilkar, Advocate for the applicant.

Mr. M.V. Joglekar, Advocate for respondents no.1 and 2.

Mr. S.D. Rayrikar, AGP for State.

Coram : - Smt. .R.P. SondurBaldota, J.

Dated :- 24th October, 2016.

P.C. :-

1). This order is on the application filed by the petitioner for restoration of Writ Petition No. 9107 of 2011 after condoning the delay of 1191 days. The application is opposed by respondents no.1 and 2. Since the application was found to contain serious allegations of negligence and professional misconduct on the part of the Advocates earlier representing the petitioner, notice was sent to them to enable them to file their affidavit-in-reply, if any. The applicant was earlier represented by Advocates, Ms. Shilpa Linge and Ms. Latika Belingade who had filed joint Vakalatnama. On receipt of notice, they have filed affidavit of Advocate Ms. Latika Belingade refuting the allegations made against them. Respondents no.1 and 2, have also filed their affidavit-in-reply.

2). The petitioner was appointed as a Lecturer in Commerce in the College of respondents no.1 and 2 on 20th October, 1989. He claimed to be holding the degrees of M.Com and M.Phil. In addition, he claimed to have a Ph.D. from Magadh University, Bihar. When respondents no.1 and 2 found that the Ph.D. certificate produced by the applicant was fake and bogus, a departmental enquiry was conducted against him on the charges of misconduct and moral turpitude. In the departmental enquiry, he was found guilty of both the charges and consequently by way of penalty, his

services came to be terminated w.e.f. 16th February, 2005. The applicant had challenged his termination by preferring an appeal to the University and College Tribunal, Mumbai. By a detailed reasoned order dated 24th January, 2008 the Tribunal dismissed his appeal. More than three years thereafter i.e. 20th September, 2011, the petitioner challenged the order of dismissal of the appeal by filing Writ Petition No. 9107 of 2011. The petition was dismissed for default on 3rd April, 2012.

3). The nature of the allegations made and the controversy raised by the applicant necessitates a detailed reference to his pleadings in the application and the affidavits filed therein. The applicant alleges, at para-2, that the petition was filed on 28th September, 2011 with the joint Vakalatnama of Advocate, Shilpa Linge and Advocate Latika Belingade. Thereafter, the applicant did not receive any intimation/information from the Advocates about the status of the matter. Whenever, he contacted them to enquire about the progress of the matter, he was told that the petition was pending and he would be informed, as and when, there is any development. The Advocates had also given various reasons like “Judge not available”, “Bench not proper for service matter” and “as and when proper Bench would be available, the petition would be moved” etc. Thus the applicant was kept under the impression that, his matter was pending and his advocates

were taking care of the same. In this paragraph, the applicant does not disclose the details of his contacts with the Advocates viz. the date, the time, place and the nature of the contact etc. At para-3, the applicant states that since he did not receive any intimation for quite a long time, he started making enquiries and was constantly calling the Advocates but did not receive any reply from them. This claim, is also completely bald and without any particulars.

4). At para-4, he claims that in March, 2015 he personally came to the High Court and met Advocate Shilpa Linge who informed him that she had been on maternity leave for 2 years and as such did not attend the Court. She had, however, given instructions to Advocate Latika Belingade to attend to his petition. Advocate Belingade also did not give any information. However, when he insisted to see the record, it was revealed that the petition was dismissed on 3rd April, 2012. The statement made in this para that he came to know about the maternity leave of Advocate Linge in March-2015 is contradicted by the applicant in his subsequent affidavit wherein he states that in the year 2011 when he brought the papers to Advocate Linge for filing the petition, she had told him about the fact. In fact, for that reason there was joint vakalatnama filed. In the next para-5, the applicant alleges that even thereafter, the Advocates gave assurance to him that they would file application for restoration of the

petition. Though, the assurance was given in the “last week of March/April, 2015”, even after re-opening of the Court in the month of June, 2015 the application was not filed. Ultimately, the petitioner took back the papers and handed the same over to the present Advocate for taking appropriate steps.

5). The petitioner next refers to the No-Objection Certificate given by the earlier Advocates but alleges that no papers were returned to him as they were misplaced by the Advocates. The brief had to be reconstructed from the skeleton record available with the applicant. On account of this process, over which the applicant had no control, time elapsed and there was delay of 1191 days.

6). Respondents no.1 and 2, in their affidavit-in-reply refer to the delay on the part of the applicant in filing the writ petition also. Their affidavit, states that, after the College Tribunal dismissed his appeal on 24th November, 2009 the applicant filed the Writ Petition on 28th September, 2011 after lapse of a period of 3 years and 8 months. Similarly, there was delay in filing the application for restoration which delay is of 3 years and 4 months. Thus, the petitioner is now seeking to challenge the order of the Tribunal after a gap of about 7 years. With such extensive delay, the petition filed by the applicant has become stale and does not deserve restoration.

The respondents also point out that after the applicant's appeal was dismissed by the College Tribunal, they have appointed Professor Subodh Barve as a Lecturer for the subject of Commerce w.e.f. 6th August, 2008. That appointment has been approved by the concerned authorities.

7). Advocate Belingade in her affidavit, while denying the allegations made against her and Advocate Shilpa Linge states that, the applicant is a family acquaintance of Advocate Shilpa Linge. He knows her brother, Ajay Talhar who is a practicing Advocate from Aurangabad and also her father, Dr. G. Talhar. He had approached Advocate, Shilpa Linge for filing the petition which was already drafted and ready. Both the advocates were told to only file the writ petition and not to argue it since the applicant had proposed to engage a Counsel. Since at the relevant time, Shilpa Linge was on her maternity leave, she had requested Advocate Belingade to file a joint Vakalatnama. At the relevant time, the applicant was pursuing his Ph.D. After filing of the petition, the applicant did not contact the Advocates to give further instructions. When the attempts on the part of the Advocates to obtain instructions from him failed, they issued a No-Objection Certificate (NOC) for engaging another advocate and returned all the papers to him. In that circumstance there was no reason for them to keep track of the matter. The Advocates deny that they had given any of the excuses to the applicant,

as stated at para-3 above and also deny that they had not given him the papers. In her oral submissions, Advocate Belingade stated that, infact there were two NOCs given to the applicant. The first was in the year 2012 and the second in March, 2015. The second NOC which was wholly unnecessary was given at the insistence upon the applicant.

8). In his reply to the Advocate's affidavit, the applicant admits that he is the family acquaintance of Advocate Shilpa Linge. He knows her father Dr. G. E. Talhar, a Retired Professor from North Maharashtra University for some years and also her brother Advocate Ajay Talhar. He admits that the writ petition was drafted by Ajay Talhar. Thereafter, he had met Advocate Shilpa Linge at her residence at Thane. Advocate Linge had told him that since she was in family way her friend Advocate Belingade would file the case and appear for him. Therefore, he met Advocate Belingade, handed over the draft writ petition to her and signed the Vakalatnama . This was in the year 2011. At para-8, the applicant admits that he had registered for his Ph.D. in 2010 and had completed his Viva in the year 2014. The applicant claims that, he was also in constant touch with the father and brother of Advocate, Shilpa Linge. He had met Advocate Ajay Talhar "Sometime in 2014" in the Bombay High Court and was advised that he should arrange for another advocate. The applicant does not disclose the date or month of his meeting

with Advocate Ajay Talhar in the Bombay High Court. Next, he claims to have met Dr. G.M. Talhar at the Maharashtra State Commerce Conference, Pune in 2015 who told him that Advocate Belingade was creating problems for his son and the daughter and advised the applicant to arrange for another Advocate. The applicant, then contacted a couple of Advocates who had asked him the reason for the delay and he was unable to give an answer. Finally, he talked to Advocate Shilpa Linge who allegedly told him that, he could mention the name of both the advocates and file the application for restoration. All these statements made by the applicant are bald and without necessary particulars. Neither in his application nor in his affidavit filed, the applicant discloses the date, time and place of any of his meetings with Advocates or the communications with them.

9). He admits in his Affidavit that, there was an NOC given by both the Advocates but complains that they were initially not ready to give the same and Advocate Linge had kept on trying to convince him that they would try to get the writ petition restored through Advocate, Belingade. After that, he allegedly met Advocate Belingade and paid her the fees for the application for restoration. This allegation is again bald and without necessary particulars. The applicant does not disclose the date on which he met Advocate Belingade and paid her fees. He also does not disclose the

quantum of the fees paid. This whole story put forth by the applicant is completely unbelievable. After issuing the NOC, there was no question of the Advocates appearing for the applicant and the applicant paying any fees to Advocate Belingade for any further work.

10). During the course of the submissions, Advocate Govilkar, the learned Advocate appearing for the applicant submits that, the NOC given by the two Advocates was in the month of March, 2015 on the basis of which the applicant could engage another advocate and file the present application. He tenders zerox of the Vakalatnama with the endorsement of No-Objection thereon. Much stress has been laid by Mr.Govilkar on the date of 18th March, 2015 on the copy of the Vakalatnama produced by the petitioner. He submits that the endorsement of the No-Objection on the Vakalatnama and the signature of Advocate Belingade are not disputed by her. With the contemporaneous signature of the applicant thereon alongwith the date of 18th March, 2015 it must be held that NOC was given for the first time in March, 2015.

11). The averments made by the applicant in his application, as well as, the affidavit-in-reply to the advocate's notice are vague and without necessary particulars. At times, the applicant has resorted to quibbling and at times to taking inconsistent stand to suit his convenience. Nonetheless, the

facts that can be said to be established from the pleadings on record and which can be inferred from the submissions advanced are that, the applicant is a family acquaintance of Advocate Shilpa Linge. He had brought a petition drafted and ready to be filed in Court. She had informed him at that time, that she being on maternity leave would not be attending to the matter personally and the same would be attended by Advocate Belingade. There was delay of 3 years and 8 months in filing of the petition by the applicant. At the relevant time, he was pursuing his studies for Ph.D. from Nagpur University. Advocate Belingade had given NOC to him in the year 2012 after which their responsibility to look after the matter was over.

12). The bald claim of the petitioner that he was in continuous touch with his earlier Advocates is not supported by any material on record. The allegations against the earlier advocates cannot be believed since as already mentioned, it is inconceivable that after handing over the NOC to the applicant, the advocates would promise him to file an application for restoration. His claim that, he had paid fees to Advocate Belingade for filing the application is also not established.

13). It is thus clear that, the applicant has not made out any case for condonation of delay as also for restoration of the petition. It is unfortunate that, he has chosen to blame his

earlier advocates, the officers of the Court for his inaction. Also in the facts of the case, the issue of termination from service of the applicant has become stale. Respondents no.1 and 2 have already appointed another person in his place. Hence, the Application is dismissed with costs. The applicant shall pay costs quantified at Rs.10,000/- by depositing the same with the Maharashtra Legal Services Authority.

(SMT. R.P. SONDURBALDOTA, J)