

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2092 OF 2016
IN
WRIT PETITION NO.5175 OF 2002**

Shri.Dhiraj Zabroo Dulgaj ..Applicant/Petitioner

V/s.

Cantonment Board, Deolali & Anr. ..Respondents

Mr.Dinesh P. Adsule for the Applicant.

Mrs.Neeta V. Masurkar for Respondent No.1.

**CORAM : ANOOP V. MOHTA AND
G.S. KULKARNI, JJ**

DATE : 19th SEPTEMBER 2016

ORDER :

1. The civil application is taken out by the petitioner/applicant for restoration of this Writ Petition as the petitioner's service was terminated for various reasons including Criminal proceedings pending against him. In the year 2002, though time was granted to the petitioner to enable him to remove office objections as per the submission/averments, we have noted from the proceedings of Writ Petition which was filed in the year 2002 that for want of office objection the matter was dismissed and most of the time Advocate appearing for the petitioner at the relevant time was absent so also the respondent. The petitioner in

this application dated 20th November 2014 as for various reasons and sufficient grounds including the inaction on the part of Advocate though not made serious allegations, but the fact that the Advocate was absent which resulted into the dismissal of petition, for removal of office objections is very clear.

2. We are also convinced that all the time when the matter was dismissed for want of prosecution before the office Registry as well as the Court none appeared for the petitioner. The petitioner is a Class-IV employee appointed on compassionate ground as 'Safai Karmachari' in Deolali Cantonment Board in the year 18-08-1988. He was terminated as recorded above, because of an externment order passed by the concerned authority. The same was also challenged in a Writ Petition. The averments are made in this application that he was acquitted on 16-03-2004. The earlier application in these background was rejected on 15th September 2008. However, we have noted that the averments so made in the petition including the admitted default of the Advocate who appeared on behalf of the petitioner was not specifically dealt with. The submission is made that for the default of the Advocate the petitioner should not have been penalized instead of deciding the case on merits. The order of termination in this way

has attended finality. This will definitely not only affect the petitioner but also his family as the question is of the employment which as noted above itself on a compassionate ground.

3. Therefore, taking an overall view of the matter, as prayer is also made to recall the order dated 15th September 2008 and as the case is made out even to recall the order dated 15th September 2008. We are inclined to grant this application as prayed in the interest of justice. This would have been subject to costs being imposed by this Court but considering the nature of issues so raised and the background so referred above and the petitioner is being a Class-IV employee was terminated long time. We are not inclined to pass any order on costs.

4. Therefore, taking an overall view of the matter and in the interest of justice to give one more opportunity to the petitioner to contest the case including the order of termination on merits, the application is allowed in terms of prayer clauses (a) and (d). No costs.

5. Matter be listed for 'Admission' after three weeks.

(G.S. KULKARNI, J.)

(ANOOP V. MOHTA, J.)