

**FARAD CONTINUATION SHEET No.**  
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH AT NAGPUR**

**WRIT PETITION NO. 5878/2016**

(KU.DEVENDRA MANSARAM BOPCHE & ANOTHER **VERSUS** STATE OF MAHARASHTRA & OTHERS)

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

Court's or Judge's orders

Shri N.D. Thombre, counsel for the petitioner.  
 Shri S.P. Deshpande, Additional G.P. for the R-1 & 3.  
 None for the respondent no.2.

**CORAM : SMT. VASANTI A NAIK AND**  
**MRS. SWAPNA JOSHI, JJ.**

**DATE : NOVEMBER 18, 2016.**

By this writ petition, the petitioners challenge the order of the Divisional Commissioner, Nagpur Division, Nagpur, dated 30.03.2016 rejecting the application made by the petitioners for condonation of delay in filing an appeal under Rules 13-14 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964.

The petitioners and nine other teachers that were working with the respondent-Zilla Parishad, Bhandara were served with a show cause notice in the year 2005 in respect of their alleged misconduct. After considering the explanation, the Zilla Parishad passed an order against the petitioners and nine other teachers under the provisions of the Zilla Parishad Rules, thereby withholding one increment permanently. Only three teachers which did not include the petitioners challenged the order of the Zilla Parishad, dated 27.02.2006 imposing the minor penalty on them, in an appeal under the provisions of the Rules of 1964. The Divisional Commissioner allowed the appeals filed by the three employees on the ground that it was necessary for the Zilla Parishad to have conducted an enquiry against the three teachers. The order

of the Zilla Parishad imposing the punishment of withholding one increment permanently was quashed and set aside. It appears that the Zilla Parishad conducted an enquiry against those three teachers. After the enquiry was conducted against the three teachers out of the eleven teachers against whom the penalty was imposed, the petitioners woke up from the deep slumber to file the appeals before the Divisional Commissioner under Rules 13-14 of the Rules. The petitioners also sought the condonation of delay of nearly ten years in filing the appeals. The Divisional Commissioner by the impugned order dated 30.03.2016 rejected the appeals filed by the petitioners on the ground that the petitioners had not sufficiently explained the delay in filing the appeals after ten years. The orders of the Divisional Commissioner are challenged by the petitioners in the instant petition.

Shri Thombre, the learned counsel for the petitioners, submitted that the Divisional Commissioner was not justified in rejecting the appeals-applications filed by the petitioners. It is stated that in respect of the three other employees the order imposing penalty was quashed and set aside by the orders in the appeals filed by them and since the Divisional Commissioner had quashed the order passed by the Zilla Parishad imposing penalty in the appeals filed by the three other teachers, the Divisional Commissioner should have entertained the appeals of the petitioners. It is stated that in the circumstances of the case, this Court may quash and set aside the orders of the Divisional Commissioner and direct the Zilla Parishad to conduct an enquiry against the petitioners in terms of the order passed by the Divisional Commissioner in the case of the other three teachers.

Shri Deshpande, the learned Additional Government Pleader appearing on behalf of the respondent nos.1 and 3, has strongly opposed the prayers made in the petition. It is stated that the petition suffers from laches in regard to the prayer made by the petitioners for a direction against the Zilla Parishad to conduct an enquiry against the petitioners. It is stated that the Divisional Commissioner had rightly rejected the appeals-applications made by the petitioners as the petitioners had failed to sufficiently explain the cause for the inordinate delay.

On hearing the learned counsel for the parties and on a perusal of the impugned orders as also the provisions of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964, it appears that the relief sought by the petitioners cannot be granted. A minor penalty was imposed upon the petitioners and nine other teachers and one increment was stopped permanently. The petitioners did not challenge the order of the Zilla Parishad dated 27.02.2006 till they filed the appeals before the Divisional Commissioner under Rule 13-14 of the Rules, in 2016. Only three other teachers that were also punished by the order dated 27.02.2006 had challenged the order of the Zilla Parishad. The appeals filed by the three employees were allowed and the Zilla Parishad was directed to conduct a departmental enquiry and pass appropriate orders against them. More than four years after the appeals of the other three teachers were allowed, the petitioners filed the appeals before the Divisional Commissioner under the provisions of Rules 13-14 of the Rules. As per Rule 16 of the Rules, an appeal or revision cannot be entertained by the Divisional

Commissioner unless it is submitted within a period of three months from the date on which the appellant or the revisionist, as the case may be, receives the copy of the order that is challenged in the appeal or revision. In the instant case, the petitioners sought to challenge the order dated 24.02.2006 by filing the appeal before the Divisional Commissioner in the year 2016. Since there was a delay of almost ten years in filing the appeal and since the petitioners had not sufficiently explained the cause for the delay, the Divisional Commissioner rightly refused to condone the inordinate delay in filing the appeal. Merely because the appeals filed by some diligent teachers were allowed, the petitioners could not have filed the appeals after ten years from the date of the order imposing penalty and after nearly four years from the date of the order in the appeals filed by the other three teachers. The period of limitation is only three months. Only because the appeals filed by the other three employees were allowed, the petitioners could not have been heard to state that their appeals also should have been entertained and allowed by the Divisional Commissioner. The Supreme Court has time and again held that there cannot be a parity between diligent and negligent litigants. While invoking the protection of rights, there cannot be a parity between the litigants that are diligent and non-diligent litigants. It would be worthwhile to refer to the judgments of the Hon'ble Supreme Court reported in **(1997) 11 SCC 13** (*Jaidev Gupta Versus State of H.P. & Another*), **(2007) 9 SCC 274** (*Shiv Dass Versus Union of India & Others*), **(1995) 5 SCC 628** (*M.R. Gupta Versus Union of India & Others*) and **(2008) 8 SCC 648** (*Union of India & Others Versus Tarsem Singh*), in this regard.

The second prayer made by the petitioners for a direction against the respondent-Zilla Parishad to conduct an enquiry against the petitioners after quashing and setting aside the orders dated 27.02.2006 also cannot be granted. Rule 4 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 speaks about the nature of the penalties and Clause (ii) of Rule 4 speaks about the penalty of withholding of increments or promotion. Rule 6 of the Rules clearly provides that no order imposing penalties specified in Clauses (iv) to (vii) of Rule 4 could be passed without holding an enquiry. Clauses (iv) to (vii) of Rule 4 speaks of the penalties of reversion, compulsory retirement, removal from service and dismissal from service. It is apparent from a reading of the provisions of Rules 4 and 6 of the Rules that a Zilla Parishad is bound to conduct an enquiry before passing a major punishment of reversion, compulsory retirement or dismissal of services. It is apparent from a combined reading of Rules 4 and 6 of the Rules that it is not necessary for the Zilla Parishad to conduct a full-fledged enquiry before imposing the punishment of withholding one increment permanently as that punishment falls in Clause (ii) of Rule 4 of the rules. Since the petitioners were not reverted, compulsorily retired, removed or dismissed from service, it was not incumbent on the part of the Zilla Parishad to have conducted an enquiry against the petitioners before imposing the punishment of withholding one increment permanently against them.

Since the petitioners are not entitled to the relief claimed, we dismiss the writ petition with no order as to costs.

**JUDGE**

**JUDGE**

APTE