

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Letters Patent Appeal No. 034 of 2003
(Arising out of Writ Petition No. 5184 of 2002)

District : Ahmednagar

Mahatma Phule Krishi Vidyapeeth,
Rahuri, through its Registrar,
Shri Babasaheb Raoji Pardhe,
Age : 34 years,
Occupation : Service,
R/o. University Campus,
Rahuri, Taluka Rahuri,
District Ahmednagar.

.. Appellant
(Original Writ
Petitioner)

versus

1. Nanasaheb Janardhan Kokate,
Age : 45 years,
Occupation : Nil,
R/o. Kokate Vasti,
Nandur Road,
Taluka Rahuri,
Dist. Ahmednagar.
2. Rangnath Nana Borkar
(died) through L.Rs. :
 - 2A) Smt. Alkabai Rangnath Borkar,
Age : 35 years,
Occupation : Household.
 - 2B) Ku. Sangita Rangnath Borkar,
Age : 16 years,
Occupation : Student.
 - 2C) Ku. Mangal Rangnath Borkar,
Age : 14 years,
Occupation : Student.
 - 2D) Ku. Surekha Rangnath Borkar,
Age : 12 years,
Occupation : Student.
 - 2E) Ku. Meera Rangnath Borkar,
Age : 10 years,
Occupation : Student.

2F) Mahesh Rangnath Borkar,
Age 08 years,
Occupation : Student.

Respondent nos.02B to 02F all
are minor represented through
natural guardian respondent
no.02A, r/o. Vambori,
Taluka Rahuri,
District Ahmednagar.

3. Babu Vitthal Agawane,
Age : 40 years,
Occupation : Nil,
R/o. Central Camp, .. Respondents
At Post Taluka Rahuri, (Original respondents)
District Ahmednagar.

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Mr. Pradeep Shahane, Advocate, for the appellant.

*Ms. Sunita Sonawane, Advocate, holding for
Mr. D.R. Jayabhar, Advocate, for respondent
nos.01, 02A to 02F and 03.*

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**CORAM : V.M. KANADE &
V.K. JADHAV, JJ.**

DATE : 19TH JANUARY 2017

ORAL JUDGMENT (Per V.M. Kanade, J.):

Heard the learned Counsel appearing for the parties.

02. The appellant is aggrieved by the order passed by the learned Single Judge in Writ Petition No. 5184 of 2002 on 10.12.2002. By the said order, the learned Single Judge was pleased to dismiss the petition filed by the petitioner on the ground of delay and laches. Explanation given by the

petitioner for the delay caused in para 06 of the petition was not accepted.

03. In the present case, the Industrial Court has granted permanency and continuity of service to the respondents from 01st December, 1989. According to the appellant, the respondents ought to have been made permanent from 30th September 1989. He has relied on settlement between the parties in support of the said submission.

04. So far as contention of delay is concerned, we are of the view that the learned Single Judge has given cogent reasons for not accepting the explanation given by the appellant for condoning the delay caused in filing the petition. We do not find any perversity in the reasons given by the learned Single Judge while refusing to condone the delay. We are, therefore, not inclined to interfere in the order of not condoning the delay.

05. According to the appellant, the respondents ought to have been made permanent from 01st December, 1989, whereas the Industrial Court has directed that they should be made permanent from 30th September, 1989. The difference is only of three months. For this reason also, we are not inclined to interfere in the order passed by the Industrial Court.

06. The learned Counsel appearing on behalf of the appellant - University, at this stage, insisted

that the judgment of the Hon'ble Apex Court, cited by him, namely, in the case of ***Mahatma Phule Agricultural University & others Vs. Nasik Zilla Sheth Kamgar Union & others*** [AIR 2001 SC 3228], should be referred in our judgment. By the said judgment, according to the appellant, permanency granted by the Industrial Court has been set aside.

07. In our view, there is no substance in the said submission. Firstly, it is not necessary to refer to the ratio of the said judgment since we have come to the conclusion that the appeal deserves to be dismissed and order of the learned Single Judge, who has dismissed the Writ Petition on account of delay caused in filing the Writ Petition, needs no interference. However, as the learned Counsel for the appellant has insisted that a reference should be made to the aforesaid judgment of the Hon'ble Apex Court, we would like to refer to the facts of the case before the Hon'ble Apex Court in the case of ***Mahatma Phule Agricultural University & others Vs. Nasik Zilla Sheth Kamgar Union & others*** (*supra*).

In the said case, about 2000 out of 4000 labourers raised an industrial dispute which was referred to the Industrial Tribunal. The workmen claimed permanency, pay scales on the basis of permanency, dearness allowance and enhanced rates of daily wages, house rent allowance, either a vehicular transport or transport allowance, etc. The Industrial Tribunal allowed the said reference and held that they were entitled to get wages at higher

rates. Thereafter, the appellant - University filed large number of petitions before the High Court. The said order was confirmed by the High Court. When the matter went to the Apex Court, a concession was made by the learned Counsel appearing on behalf of the workmen, that there were no sanctioned posts available to absorb all the workers. The Hon'ble Apex Court in view of the concession made by the Counsel for the workmen and also because the Hon'ble Apex Court had held that status of permanency could not be granted when there were no posts, allowed the Special Leave Petition and set aside the order of permanency.

In our view, ratio of the said judgment will not apply to the facts of the present case firstly because even according to the appellant, permanency was to be granted from 01st December, 1989 according to the settlement between the parties. We are unable to understand, in what manner judgment of the Hon'ble Apex Court, cited supra, is relevant to the facts of the present case.

08. In the result, the Appeal fails and same is dismissed. In the circumstances, parties shall bear their own costs.

(V.K. Jadhav)
JUDGE

(V.M. Kanade)
JUDGE

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