

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

**WRIT PETITION NO.7963 OF 2011
WITH
CIVIL APPLICATION NO.1362 OF 2014**

Arun s/o. Trimbak Pathak,
Age : 46 years, Occ. Nil,
r/o. Near Hanuman Mandir,
Vidyasagar, Parbhani

..Petitioner

Vs.

1. The State of Maharashtra,
Through the Secretary,
Department of Law and Judiciary,
Maharashtra State,
Mantralaya, Mumbai – 32

2. The District and Sessions Judge,
Parbhani

3. The Registrar (Inspection-II),
High Court, Appellate Side,
Mumbai – 400 032

..Respondents

Mr.Pradeep Deshmukh, Advocate i/b. Mr.A.M.Awate, Advocate for
Petitioner

Mr.S.K.Tambe, A.G.P. for respondent no.1

Mr.Rajendra Deshmukh, Advocate for respondent nos.2 and 3

**CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.**

DATE : SEPTEMBER 13, 2017

ORDER :

Heard.

2. The petitioner, who happened to be appointed as Senior Clerk in District Court, Parbhani, is said to have suffered attack of schizophrenia and around 1996 had tendered resignation from service. Subsequently, the resignation had been withdrawn by him under an application. Chief Judicial Magistrate then, had sent the petitioner to the Medical Board. The Medical Board had certified the petitioner to be fit to join services. It is further stated that though it was so certified, the petitioner had not completely recovered and therefore, he again applied for relieving him from the service. Said request had been taken back around February, 1999. Subsequently, on 09.03.1999, the petitioner had submitted another resignation and had again taken it back on 03.04.1999. The petitioner was allowed to take back his resignation by the District Judge, Parbhani, admonishing him to behave. In August, 1999, the petitioner once again tendered resignation and requested to relieve him from service. Said resignation had been accepted by the District Judge, Parbhani on 22.09.1999.

3. Against aforesaid order accepting the resignation dated 22.09.1999 passed by the District Judge, the petitioner had approached this Court under Writ Petition No.8368 of 2002. Said Writ Petition was not properly prosecuted and has resulted in refusal of its registration. Thereafter, present petition has been filed in the year 2011 challenging order dated 22.09.1999 of the District Judge, Parbhani.

4. Learned counsel for the petitioner Mr. Pradeep Deshmukh tries to persuade to allow writ petition in terms of prayers made in present Writ Petition and to declare the petitioner to be entitled to get pension under Rule 23 of the Maharashtra Civil Services (Pension) Rules, 1982 (Pension Rules). He submits that the petitioner is a hapless person, suffering chronic schizophrenia and is not in a position to rejoin services. However, considering that he had been in service since 1988 continuously, till his resignation had been purportedly accepted in 1999, his case may be considered sympathetically and he be allowed to have pension pursuant to provisions of Pension Rules. He submits that an application had been made to the High Court, however, the Registrar has communicated the decision in the negative under a letter dated 05.10.2002. He

submits that family of the petitioner is not having economic source and capacity to take care of the pathetic condition of the petitioner. He, therefore, urges to consider the prayers made by the petitioner in this petition.

5. Mr. Rajendra Deshmukh, learned counsel for respondents no.2 and 3, submits that respondents no.2 and 3 found it difficult to accede to the request made by the petitioner in the framework of the Rules and particularly, Rule 46(1). He submits that as there is forfeiture of services of the petitioner, the benefit of past service cannot be given to the petitioner. He further submits that the decision so taken by the authorities concerned, cannot be flawed having been taken with reference to the Rules. He further submits that while the resignation has been tendered and accepted in 1999, an attempt was made to challenge the same before this Court by filing Writ Petition No.8368 of 2002, which was not properly prosecuted and had resulted into refusal of its registration. Thereafter, suddenly, in 2011, present Writ Petition is filed which suffers from *laches*.

6. Having heard the learned counsel for the parties as aforesaid, the position emerges that, this is, in fact, the second

attempt to challenge the decision of 1999 and this turns out to be the second Writ Petition on the same grounds. Further, if the period from 2002-03 to 2011 is taken into account, it goes unexplained. Save and except that the registration of the earlier Writ Petition was rejected in the year 2002, there is no explanation in respect of the period thereafter, till the year 2011 when the present Writ Petition came to be filed. In the circumstances, with reference to that we find it difficult to accede to the request made by the petitioner. The petition suffers unexplained delay and laches and as such is not being entertained.

7. The Writ Petition is, thus, dismissed. The Civil Application stands disposed of.

8. At this stage, Mr. Pradeep Deshmukh, learned counsel for the petitioner urges this court to consider the petitioner's request, at least for grant of pension as per provisions under Pension Rules, *inter-alia*, for invalid pension. It is for the petitioner to take such recourse, as is advised and as may be available.

[SANGITRAO S. PATIL, J.]

[SUNIL P. DESHMUKH, J.]

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