

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

WRIT PETITION NO. 8738 OF 2016

Shri. Gajanan Pundlik Patil]
Residing at Rajhans, Plot No. 19/20,]
Shivenerinagar, Panchgaon,]
Kolhapur 416013].. Petitioner

1. State of Maharashtra]
Through Principal Secretary,]
Higher and Technical Education,]
Deptt. Mantralaya, Mumbai-32]
]
2. The Director of Education,]
Directorate of Higher Education]
Maharashtra State, Central Bldg.]
Pune 411 001]
]
3. Joint Director of Higher Education]
Kolhapur Division,]
Rajaram College Compound,]
Vidyanagar, Kolhapur-416004]
]
4. The Principal,]
Rajaram Mahavidyalaya,]
Sagarmal, Vidyanagar,]
Kolhapur 416004].. Respondents

....
Mr. M.S. Topkar Advocate for Petitioner
Mr. N.C.Walimbe AGP for the State
....

**CORAM : SMT.V.K.TAHILRAMANI AND
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATED : AUGUST 08, 2017

ORAL JUDGMENT [PER SMT. V.K.TAHILRAMANI,J.]:

1 Heard the learned advocate for the Petitioner and the learned A.G.P. for Respondent Nos. 1 to 3.

2 Rule. By consent, rule is made returnable forthwith and matter is finally heard.

3 This petition is preferred against the order dated 8.7.2016 passed by the Maharashtra Administrative Tribunal, Mumbai Bench in Original Application No. 25 of 2015. In the said Original Application, the petitioner was seeking regularization of service as Laboratory Assistant at Rajaram College Kolhapur with effect from 8.3.1999. The said original application was dismissed, hence, this petition.

4 The petitioner was initially appointed as Laboratory Assistant for a period of 29 days on ad-hoc basis from 7.7.1994 to 4.8.1994. He was thereafter continued in service by similar

orders of 29 days by giving breaks in between two spells of appointment. Last order was issued on 16.3.1995 and was followed upto 13.4.1995. As the petitioner's service was not continued, he approached the Labour Court at Kolhapur under Section 28 of the Maharashtra Recognition of Unfair Labour Practices Act, 1971 by filing ULP No. 140 of 1995 on 27.6.1995. The Labour Court granted him *exparte* interim relief on 27.6.1995. The petitioner had initially approached the Labour Court in relation to his termination from service, however, while his complaint was pending before the Labour Court, the petitioner sought permission of the Labour Court to amend his ULP Complaint to seek regularization of his service in view of G.R. dated 8.3.1999. His ULP Complaint was dismissed by Labour Court on 15.3.2012. Thereafter the petitioner approached the Industrial Court by filing Revision Application (ULP) No. 44 of 2012 and also sought interim relief. On account of interim relief granted by the Industrial Court by order dated 2.4.2012, the petitioner continued in service. In the meanwhile, the petitioner also preferred Original Application before the Maharashtra Administrative Tribunal, Mumbai Bench. Thereafter the petitioner withdrew the revision application from

the Industrial Court on 7.6.2016.

5 There are two issues in this matter. The first is that the petitioner is seeking regularization of service from 1999 in view of G.R. dated 8.3.1999 and the Original Application was preferred on 15.1.2015 seeking regularization of service. The petitioner has not made any prayer for condonation of delay in preferring the Original Application. The Tribunal came to the conclusion that the cause of action arose in 1999 as the petitioner claimed regularization from 1999, however, as the Original Application was filed on 15.1.2015, there was inordinate delay and laches. The second issue is that the petitioner had approached the Labour Court with the prayer for regularization of service. The said ULP complaint was dismissed by the Labour Court. Therefore, one Court has looked into the grievance of the petitioner and thereafter found no merit therein and has dismissed the ULP complaint. In such case, it would not have been permissible for the Tribunal to take an entirely different view.

6 The learned counsel for the petitioner submitted that

other persons who are similarly situated, have got the relief of regularization of service from the Labour Court. As far as this aspect is concerned, it is seen that even though the petitioner approached the Tribunal by preferring Original Application on 15.1.2015 for regularization of service from 8.3.1999, he had not sought for condonation of delay. In view of the fact that there was delay of almost 16 years in approaching the Tribunal, the least the petitioner should have done is made a prayer for condonation of delay. Just stating that regularization of services is a continuous cause of action is not enough. In fact, the Tribunal has categorically observed that the petitioner should have been forthcoming and in all fairness sought condonation of delay. Such is not the case of the other employees, thus, it cannot be said that the case of the other employees and that of the petitioner is similar.

7 The Tribunal has taken into consideration the aspect of delay as well as the order of the Labour Court dismissing the ULP of the petitioner wherein the very same prayer had been made by the petitioner for regularization of service and thereafter dismissed the Original Application. Looking to the

facts and circumstances of this case, no interference is called for. Petition is dismissed. Rule is discharged.

[DR.SHALINI PHANSALKAR-JOSHI, J.] [SMT.V.K.TAHILRAMANI, J.]

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