

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

WRIT PETITION NO. 527 OF 2018

MADHUKAR GANPATRAO CHAVAN
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for the Petitioner : Shri Kulkarni Shriniwas A..
AGP for Respondents 1 to 3/ State : Shri S.K.Tambe.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 17th January, 2018

Per Court:

1 The Petitioner is aggrieved by the order dated 15.11.2017 passed by the Additional Divisional Commissioner by which, the appeal preferred by the Petitioner under Rule 13 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964, has been rejected on the ground that no reasons are assigned for seeking condonation of delay of 11 years, 11 months and 26 days.

2 The learned Advocate for the Petitioner has strenuously criticized the impugned order. The contention is that the Petitioner was appointed to the post of Junior Assistant in the Panchayat Samiti, Sillod. During his service tenure, he was involved in a misappropriation case. He was acquitted by the Court. He was absent for 133 days from 17.07.1997

till 26.11.1997. As the Establishment found that he was unauthorizedly absent, he was not paid his salary for the said period. The said absence was not treated as a break in service and the continuity was granted so as to ensure that the Petitioner would get his retiral benefits based on his continuous service from 12.06.1967 till the date of his retirement on 31.08.2002.

3 The Petitioner's grievance is that his pensionary benefits were not properly calculated. He, therefore, decided to challenge the order passed on 26.05.2004 by which, his break in service was condoned on humanitarian ground and 133 days of his unauthorized absence were reckoned with for calculating his continuous service.

4 I find that Rule 13 enables a Zilla Parishad employee to challenge an order imposing a penalty upon him under Rule 4. If the order of punishment is passed by the Chief Executive Officer, an appeal is to be preferred before the Divisional Commissioner. Such an appeal is to be preferred within a period of three months as per Rule 16 of the said Rules. The Petitioner has preferred an appeal after the delay of 11 years, 11 months and 26 days. It is settled law that the provisions of Section 5 of the Limitation Act, 1963 are applicable to the "courts". Since a department appeal challenging the order of the Chief Executive Officer before the Divisional Commissioner, would not bring the "authorities" within the meaning of "courts", the law of limitation would not be applicable.

5 Considering the above, I do not find that the impugned order passed by Respondent No.2 dated 15.11.2017 could be termed as being perverse or erroneous. This Writ Petition being devoid of any merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)