

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

WRIT PETITION NO. 2586 OF 2017

Shaikh Gayasoddin Tamij

... Petitioner

VERSUS

The State of Maharashtra & Ors.

... Respondents

.....
Mr S. B. Bhosale, Advocate for the petitioner
Mrs Vaishali N. Patil-Jadhav, AGP for respondent/State
.....

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATE : 08TH JANUARY, 2018.

ORDER:

1. The petitioner has claimed multiple reliefs challenging the order dismissing the appeal in default so also challenging the subsequent termination order dt. 03.02.2017.

2. Mr Bhosale, learned counsel for the petitioner submits that the petitioner had filed an appeal against the order terminating his services before the Commissioner, Aurangabad. The appeal was pending since the year 2012. The appellate authority had passed interim order granting *status quo* to the termination. Thereafter, stay

to the impugned order was passed on 04.04.2012. The learned counsel submits that, under order dt. 26.04.2012, the petitioner was reinstated on his earlier post of Jr. Assistant. On 31.08.2016, the appeal was dismissed in default. In fact, the appeal was not being heard and even the respondent was consistently absent. The petitioner was not intimated about the dismissal of the appeal immediately and upon the appeal being dismissed in default, the respondent again terminated the services of the petitioner, the same is illegal.

3. The learned counsel for respondent Nos. 4 to 7 submits that, Roznama would show that the petitioner was consistently absent. It was only because the interim order was in favour of the petitioner, the petitioner was prolonging the hearing of the appeal and was intentionally remaining absent. After the appeal was dismissed in default and the interim order was vacated, the respondent issued show-cause notice to the petitioner. After getting his reply and finding the reply unsatisfactory, the respondent terminated the services of the petitioner. The petitioner cannot take the advantage of his own wrong.

4. We have considered the submissions. In the present

petition, we would refrain from considering the prayer of the petitioner with regard to challenge to the termination order dt.03.02.2017 as the petitioner has remedy before the appellate authority.

5. We would restrict ourselves to the order dismissing the appeal in default and also rejecting the application of the petitioner for restoration of appeal.

6. On perusal of the Roznama, it appears that the petitioner and the respondent herein were consistently absent before the appellate authority. None of the parties seem to be present on 18.11.2015, 02.12.2015, 17.02.2016, 18.05.2016, 09.06.2016 & on 10.08.2016. As an appellant, it was the duty of the appellant to remain present for hearing and cannot rely on the absence of the respondents. The petitioner had engaged an advocate to conduct the matter. It appears that, the advocate of the petitioner was absent. It is also the duty of the petitioner to attend the matter or at least get the status of the appeal from his advocate.

7. Considering the fact that the appeal was substantive appeal and the service rights of the petitioner were involved and the order

terminating the services of the petitioner was the subject matter of consideration, we are inclined to grant one more opportunity to the petitioner, however, the petitioner deserves to be mulct with the consequences.

8. Considering the above, we pass the following order.

- (i) The impugned orders dismissing the appeal in default and rejecting the application for restoration of appeal are quashed and set aside.
- (ii) Appeal No. 26/2012 filed by the petitioner before the Commissioner, Aurangabad is restored to its original position sans any interim order.
- (iii) In the said appeal, the petitioner may also file an application for amendment and challenge the subsequent order terminating his services.
- (iv) In case the petitioner succeeds in appeal, then the petitioner shall not claim back-wages for the period from 03.02.2017 till date.

- (v) The parties shall appear before the appellate authority on **29.01.2018**.

9. The writ petition accordingly stands disposed of. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde