

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.12072 OF 2019
IN
WRIT PETITION NO.2183/2001
(Divisional Controller, MSRTC, Parbhani Vs. Mahabubkhan
Habibkhan)
WITH
CIVIL APPLICATION NO.1166 OF 2019

Mr.A.D.Wange, Advocate for the applicant.
Mr.S.E.Siddiqui, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 14/11/2019

PER COURT :

1. The Corporation prays for condonation of delay of 1697 days caused in filing the 1st civil application for seeking restoration of the writ petition that was dismissed in default on 04/07/2014. In the other civil application No.1166/2019, the employee prays for leave to withdraw an amount of Rs.1,00,913/- with interest.

2. I have heard the learned Advocates for the respective sides.

3. When the writ petition was admitted by this Court by order dated 23/07/2001, notice was issued to the respondent/employee

and the payment of 50% back wages was stayed subject to the Corporation depositing the said amount in this Court. Consequentially, an amount of Rs.2,50,913/- was deposited in this Court on 20/12/2001. By a subsequent order dated 04/02/2002 passed in CA No.548/2002, the employee was permitted to withdraw Rs.1,50,000/-. He has furnished security for an amount of Rs.2,25,000/-.

4. I find from the record that this Court had issued RULE in the first order passed on 23/07/2001. Notice on Rule was issued to the respondent/employee. Two advocates caused an appearance on behalf of the respondent. When the matter came up for final hearing on 22/04/2014, both the advocates made a statement that they were withdrawing their appearance on behalf of the respondent. Hence fresh notice was issued to the respondent. Same could not be served as the respondent had changed the address. Finally, this Court passed an order on 04/07/2014 directing the petitioner to furnish the fresh address within 2 weeks. As the petitioner could not trace out the new address of the respondent, the petition was dismissed in default.

5. After the respondent filed CA No.1166/2019 in this Court for

withdrawal of amount, that the MSRTC noticed his new address and filed CA No.12072/2019 within 13 days for restoration of the writ petition.

6. It is informed that the respondent has suffered a second dismissal on 05/03/2004 for proved misconducts. The same has not been challenged and has attained finality.

7. In the peculiar facts recorded as above, civil application No.12072/2019 is allowed and the delay is condoned with nominal costs of Rs.501/- which the Corporation shall deposit with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of **“Dean, Government Medical College and Hospital, Aurangabad Dengi Samiti”**) on or before 30/11/2019. The writ petition is restored forthwith and order dated 04/07/2014 is recalled. The respondent worker causes an appearance.

8. In so far as CA No.1166/2019 is concerned, as the applicant/workman has already withdrawn an amount of Rs.1,50,000/-, I do

not think that the said application could be entertained. The same is, therefore, rejected.

9. List WP No.2183/2001 for final hearing on 12/12/2019.

(Ravindra V.Ghuge, J.)