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

**WRIT PETITION NO.10161 OF 2017**

Shri. Aasaram s/o Sakharam Chormare PETITIONER  
Age - 61 years, Occ - Nil (Removed from Service)  
R/o Paradgaon, Taluka - Ghansawangi,  
District - Jalna

VERSUS

1. The State of Maharashtra RESPONDENTS  
The Secretary,  
Revenue & Forest Department  
Mantralaya, Mumbai - 32
2. The Settlement Commissioner  
and Director of Land Records,  
Pune
3. The Dy. Director of Land Records,  
Aurangabad
4. The District Superintendent of Land Records  
Osmanabad

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Mr. Kakasaheb B. Jadhav, Advocate for the petitioner  
Mr. G. O. Wattamwar, AGP for respondent - State

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**[CORAM : SUNIL P. DESHMUKH AND**  
**S. M. GAVHANE, JJ.]**

**DATE : 11<sup>th</sup> JUNE, 2019**

**ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.) :**

1. Rule. Rule made returnable forthwith and heard finally with  
consent of learned advocates for the parties.

2. Petitioner questions propriety and legality of order dated 5<sup>th</sup> May, 2017 passed in miscellaneous application No. 174 of 2017 in original application (stamp) No. 588 of 2017, whereunder Maharashtra Administrative Tribunal, Aurangabad has rejected request of the petitioner to condone delay of about seven years in approaching the tribunal against order of removal from service, dated 13<sup>th</sup> July, 2009.

3. Petitioner had been a class III employee with the respondents from 1978, initially appointed as surveyor. Petitioner, during the course of his employment had also been promoted and had been transferred at different places from time to time.

While petitioner had been working in the office of Taluka Inspector of Land Records at Bhokardan, he came to be suspended on the ground that though he had received amount of Rs.67,154/- towards measurement charges, he had not deposited the same in government accounts. Petitioner adverts to that failure to deposit the amount in government account is attributable to the circumstances. He had been detained from depositing the amount, since he had met with an accident and could not remain present on duty. After recuperating, he had

deposited said amount with the respondents.

4. Petitioner had been proceeded against in a departmental inquiry. Charges about irregularity in working and misappropriation had been levelled against him. In the inquiry, charges were considered to have been proved against the petitioner.

5. According to the petitioner, despite proper explanation having been tendered, under a perfunctory approach, without proper appreciation of material, he had been foisted with punishment of removal from service.

6. Learned advocate for the petitioner submits that against said decision of removal from service dated 13<sup>th</sup> July, 2009, the petitioner had preferred departmental appeal on 9<sup>th</sup> November, 2009. However, for quite a long time no further development in the appeal had been communicated. Neither amounts due to him towards GPF, GIS, arrears of suspension allowance etc. nor the difference of pay under 6<sup>th</sup> Pay Commission had been paid. In the circumstances, he had moved an application in 2017 to the employer to release amounts of GPF, GIS, arrears of suspension and difference of pay. To this as well there had no response from the respondents, entailing movement for redressal of grievance

before Maharashtra Administrative Tribunal. Accordingly, original application along with miscellaneous application for condonation of delay of seven years had been moved and the same has been rejected by the tribunal under impugned order dated 5<sup>th</sup> May, 2017.

7. Learned advocate for the petitioner submits, perusal of impugned order would evince that the same is a non speaking order and has been passed without application of mind to the facts and circumstances of the case and without even reference to the cause explaining delay, save and except to that in application there are vague statements about disturbed state of mind and him being deficient of funds. He submits that there is no application of mind to the content of the application, which particularly refers to that an appeal had been preferred against order of removal from service and that application for withdrawal of GPF, GIS etc. had to be lodged in 2017 and thereafter proceedings were required to be moved. Learned advocate puts particular emphasis on that on the very first day of hearing, the application has been dismissed without even calling upon response and without issuing notice to the respondents. He, therefore, urges to indulge into the request being made under the writ petition and to take a lenient view.

8. Learned AGP Mr. Wattamwar, however, stiffly opposes the request under writ petition contending that there is no credible material made available by the petitioner about appeal had ever been preferred by him. He submits that such a contention is being advanced to wriggle out of the situation, since there is no other explanation available with the petitioner. There is no basis for such a contention. He submits that the tribunal has decided the matter, albeit on the very first date, yet it has taken into account all the relevant considerations and has referred to and has reproduced relevant provisions in impugned order. He particularly purports to point out that if appeal had really been filed, it had been imperative for the petitioner to take recourse to tribunal immediately after expiry of period of six months from the date of filing appeal. He submits that it is not the case of the petitioner that he had moved the tribunal after exhaustion of such period. He, therefore, submits that while after due enquiry petitioner has been found guilty and petitioner being removed from service and was sitting unmoved over the same for seven years, it is not the case where indulgence as sought under the writ petition deserves to be given.

9. Learned AGP further refers to that the amounts which have

been claimed by the petitioner towards GPF, GIS etc. have been paid to him. Learned advocate for the petitioner quickly interjects stating that payments have been made only after decision had been rendered by the tribunal and after writ petition has been moved. He further purports to point out that the subsistence allowance has not been paid as yet.

10. Scenario shows that the petitioner indeed had taken up contention before the tribunal that he had preferred an appeal and no notice had been given for quite a long time keeping him under the impression that one day or the other same would be responded to. The dejected petitioner had mustered courage to file application claiming legitimate dues, to which as well there had been no response for quite a while. It had then been realized that no response is likely to be given to the appeal and the application. Petitioner refers to date of filing of appeal and he also refers to in the miscellaneous application before the tribunal that an application for withdrawal of amount of GPF, GIS etc. had been filed by him in the year 2017. It is not the case of the respondents that said application had not been received at their end, yet the application as well had not been responded to until decision by the tribunal and movement against order of tribunal before this court in writ petition. These aspects are not disputed.

In the circumstances while the miscellaneous application been decided on very first day without issuing notice, without claims being referred to other side, would not be a sound procedure to form opinion while, as it emerges that upon the application filed in 2017, there had been no response from the respondents.

11. Regard may also usefully had to decisions of the Supreme Court in the cases of “*Collector, Land Acquisition, Anantnag and Another V/s Mst. Katiji and Others*” reported in (1987) 2 SCC 107 and “*Esha Bhattacharjee V/s Managing Committee of Raghunathpur Nafar Academy and Others*” reported in (2013) 12 SCC 649. Guidelines thereunder need not be restated. Attention of the tribunal, it appears, had not been drawn towards these guidelines.

12. In the circumstances, we deem it appropriate to set aside impugned order dated 5<sup>th</sup> May, 2017 in the miscellaneous application passed by the tribunal, and remit the matter for reconsideration with reference to facts, circumstances and merits, restoring the miscellaneous application to its position as had been subsisting before 5<sup>th</sup> May, 2017.

13. Accordingly, writ petition succeeds. Impugned order dated 5<sup>th</sup> May, 2017 in miscellaneous application No. 174 of 2017 in original application (Stamp) No. 588 of 2017 passed by the

Maharashtra Administrative Tribunal, Aurangabad Bench is set aside. Miscellaneous application No. 174 of 2017 in original application (Stamp) No. 588 of 2017 is restored with the tribunal for decision afresh as referred to above. Parties to co-operate expeditious disposal of the miscellaneous application. In the circumstances there is no order as to costs. Rule is made absolute in aforesaid terms.

14. Needless to refer to that all points are kept open for the parties and observations in this order shall not influence decision making on facts, circumstances and merits of the case.

**[S. M. GAVHANE]**  
**JUDGE**

**[SUNIL P. DESHMUKH]**  
**JUDGE**