

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CAO No.1853 of 2018
in
M.C.A. St. No.18437 of 2018 (For Restoration)
in
Writ Petition No.3664 of 2012(D)
(Sudhakar Vishram Telgote and ors. .vs. Sub Divisional Officer and ors.)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions
 and Registrar's orders

Court's or Judge's orders.

Mr. M.V. Mohokar, Advocate for Applicants/Petitioners.
 Mr. S.B. Bissa, AGP for Respondent Nos. 1 to 3.

CORAM : Manish Pitale, J.
DATED : February 28, 2019.

These are applications for restoration of writ petition which stood dismissed for want of prosecution on 17.07.2013 and for condonation of delay in moving the application for restoration.

2. The application for condonation of delay shows that there has been a delay of 1817 days in moving the application for restoration of the writ petition. The delay is undoubtedly huge and, therefore, the learned counsel appearing for the applicants was asked to explain as to what was the reason for such delay in preferring application for restoration of the writ petition, wherein Rule was granted by this Court on 19.10.2012.

3. The learned counsel for the applicants/petitioners explained that after Rule was granted on the aforesaid date, which was made returnable early, for the first time the writ petition was

listed for final hearing on 17.07.2013, when the learned counsel for the applicants/petitioners could not mark the case due to which none appeared on behalf of the applicants/petitioners in the writ petition. It was submitted that due to absence of counsel, the writ petition stood dismissed for want of prosecution on 17.07.2013. As the petition was not marked in the office of the learned counsel for the applicants/petitioners, it was also not noticed that the writ petition had been dismissed for want of prosecution on 17.07.2013. According to the learned counsel, said order came to the notice of the applicants on 07.08.2018, whereupon the present applications were immediately filed on the next date i.e. 08.08.2018.

4. The facts of the present case show that the applicants/petitioners herein are workers, who along with other such workers, had filed complaints before the Industrial Court, Amravati Bench, seeking relief of being given work by the respondents and for payment of salary from the date when their juniors were given work and they were deprived of their rightful claim. According to the learned counsel for the applicants/petitioners, there was evidence placed on record before the Industrial Court to show that juniors were indeed given work in preference to the applicants/petitioners and other such similarly situated workers. On 15.04.2011, the Industrial Court dismissed the said complaint. Only the petitioners numbering three filed Writ Petition No. 3664 of 2012 before this Court challenging the said judgment and order of the Industrial Court. Upon hearing counsel for the

applicants/petitioners, on 19.10.2012, this Court granted Rule, which was made returnable early. But, as noted above, thereafter on 17.07.2013 when the writ petition was listed for final hearing, it stood dismissed for want of prosecution.

5. In view of the above facts, it becomes clear that the applicants/petitioners have sought to agitate their right for being continued in employment and given work by the respondents, since they were wrongfully deprived of such relief while workers junior to them were given preference. There was no interim order in favour of the applicants/petitioners since their complaint itself was dismissed on merits by the Industrial Court. Therefore, even today the applicants/petitioners have no effective relief in their favour and they certainly could not have gained anything by being negligent and allowing their writ petition to be dismissed for want of prosecution. It appears that the writ petition stood dismissed for want of prosecution on 17.07.2013, due to some mistake/communication gap in the office of the learned counsel for the applicants/petitioners. Although there is huge delay of 1817 days in filing the application for restoration, considering the fact that the applicants/petitioners cannot be said to be at fault for dismissal of their writ petition for want of prosecution and also considering the fact that they are workmen who need to be heard on merits by this Court, the said applications deserve to be allowed.

6. Accordingly, the applications are allowed, the delay is condoned and the application for restoration is allowed. Consequently, the writ petition is restored to

file. The learned counsel for the applicants/petitioners is directed to furnish a copy of the writ petition to the office of the Government Pleader. List this writ petition for final hearing in the week commencing from 08.04.2019.

JUDGE

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