

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

923 WRIT PETITION NO.4946 OF 2021

BANDU RAMCHANDRA BAJGUDE
VERSUS
VYAVASTHAPAK PRASHSAN THE MAHARASHTRA STATE CO-
OPERATIVE MARKETING FEDERATION LTD AND OTHERS

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Mr. T.M. Venjane, Advocate for petitioner.
Mr. A.R. Tapse, Advocate holding for
Mr. D.N. Suryawanshi, Advocate for respondent Nos. 1 to 3.

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CORAM : **AVINASH G. GHAROTE, J.**

DATE : 03-08-2021.

ORDER :

1. Heard Mr. Venjane, learned Counsel for the petitioner, who challenges the judgment passed by the Member, Industrial Court, Latur in Misc.ULP No. 3/2020, refusing to condone delay, occasioned in the petitioner approaching the Industrial Court, in challenging the order dated 19.02.2009 in Departmental Enquiry Proceedings imposing punishment of stoppage of three increments upon the petitioner.

2. Mr. Venjane, learned Counsel for the petitioner contends, that on 17.02.2006 an offence came to be registered under Sections 465, 467, 472, 409, 420 of the Indian Penal Code against the petitioner, at the behest of the respondents, in pursuance to which, the petitioner was suspended by an order dated 10.03.2006 w.e.f. 17.02.2006. Thereafter a Departmental Enquiry was conducted into the alleged misconduct, whereupon finding the

petitioner guilty, a punishment of stoppage of three increments came to be imposed by the order dated 19.02.2009.

3. Learned Counsel Mr. Venjane further submits, that the prosecution as initiated by the respondents, mentioned above, resulted in acquittal of the petitioner on 04.05.2017 consequent to which vide applications dated 05.12.2017, 12.11.2018, 09.04.2019 and 25.07.2019, the respondents were requested to grant continuity in service with all the monetary benefits consequential thereto. As nothing was done, the petitioner had approached the Industrial Court, seeking the said reliefs on 16.01.2020, in which an application for condonation of delay came to be filed. It is this application for condonation of delay which has been rejected by the learned Industrial Court, by the impugned judgment.

4. Mr. Venjane, learned Counsel for the petitioner submits that the learned Industrial Court, did not consider the matter in its proper prospective inasmuch as it should have considered the pendency of the criminal proceedings, and the acquittal therein, which according to him gives rise to the cause of action for claiming the relief of continuity in service and challenging the order of stoppage of increments with all consequential benefits. He therefore submits, that the impugned order passed in ignorance of the same, is required to be quashed and set aside.

5. Advocate Mr. A.R. Tapse, holding for Mr. D.N. Suryawanshi, learned Counsel for the respondents submits, that the cause of action for challenging the punishment of stoppage of the

increments would be the date on which the punishment has been imposed. He submits, that the criminal proceedings and disciplinary proceedings are independent of each other and are to be prosecuted separately, in view of which, the order of stoppage of increments ought to have been challenged within the time specified, for such a challenge. Having not done so, the petitioner, cannot fall back on his acquittal in the year 2017

6. It is a settled position of law that criminal prosecution and disciplinary proceedings are two different aspect, which may emanate from a common cause. That however does not mean, that both are dependent on each other. In fact, both of them follow a different course altogether. This being the position, the order of stoppage of increments dated 19.02.2009, passed in disciplinary proceedings, against the petitioner, was susceptible to challenge independently of the fact of pendency of criminal prosecution, which did not come in the way of such a challenge. This having not been done, the challenge made in the complaint dated 16.01.2020 by seeking a relief as indicated in the prayer clause in the complaint, of challenging the suspension order dated 10.03.2006, and the order of stoppage of increments dated 19.02.2009, after a passage of more than 11 years, merely on the ground, of the pendency of the criminal prosecution and the resultant acquittal, cannot be a good or sufficient ground for condoning the delay. The reliance placed by Mr. Venjane, learned Counsel for the petitioner on ***Collector, Land Acquisition, Anantnag and another Vs Mst. Katiji and others,***

AIR 1987 SC 1353, holding that the Courts should adopt the liberal approach, in the matter of condoning delay, and the principles laid down in para 3 thereof, do not come to the assistance of the learned Counsel, in view of the fact position discussed above and the admitted situation, that the impugned order dated 19.02.2009, was independently challengeable without any impediment whatsoever including the pendency of the criminal prosecution.

7. The judgment of the learned Industrial Court, is a well reasoned one by considering the judicial precedents in that regard and I do not find any infirmity in the same. The petition, is therefore, without any merits and is accordingly dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)

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