

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

WRIT PETITION NO. 7782 OF 2017

Ramchandra s/o Amruta Bhalerao

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

.....

Mr. V. D. Patnurkar, Advocate for the petitioner

Mr. A. A. Jagatkar, AGP for respondent/State

Mr. S. G. Rudrawar, Advocate for respondent nos. 4 & 5

.....

WITH
CIVIL APPLICATION NO. 10983 OF 2019
IN
WRIT PETITION NO. 7782 OF 2017

CORAM : BHARATI H. DANGRE, J.

DATE : JANUARY 17TH, 2022

PER COURT : -

1. Heard learned Counsel for the petitioner and the Counsel for respondent nos. 4 and 5 i.e. the Management, who are opposing the writ petition.

2. As per the petitioner, he was appointed by respondent no. 4 on the post of Peon w.e.f. 01.06.1995, and it is his contention that his

appointment even received approval from the Education Officer and he was categorized as a permanent employee. The case of the petitioner is to the effect that despite the aforesaid fact, the petitioner came to be orally terminated on 10.08.2001 and he was not allowed to sign the muster roll. Even his proposal for receiving the salary was also not forwarded to the Education Officer.

. Being aggrieved by the oral termination, he preferred an appeal under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 before the School Tribunal at Aurangabad, which was subsequently transferred to the School Tribunal at Latur. On the proceedings being instituted, on 23.06.2004, his appeal came to be dismissed in default.

3. The submission advanced on behalf of the Counsel for the petitioner is that he was not responsible for the dismissal as he had engaged the services of the Counsel, who preferred not to remain present resulting into dismissal of appeal. On 01.10.2012 i.e. after lapse of more than eight years, an application was moved for restoration, along with condonation of delay and this was done on 01.10.2012. The reason cited was the petitioner was not having any source of income and, therefore, he was unable to contact his

Advocate and the Tribunal under the impugned order, dated 29.07.2016 has passed the following order : -

"Parties and Advocate of applicant absent even in second session also. Application is fixed for dismissal in default order. No reasons for adjournment. Hence, dismissed for default with costs".

. It is this order which is sought to be challenged in this petition.

4. On perusal of the record and proceedings and on hearing the learned Counsel for the petitioner, the petitioner, in my considered opinion, does not deserve any sympathy or indulgence as he had engaged the services of the lawyer and though on first occasion the proceedings were dismissed on 23.06.2004, even at the second occasion on 29.07.2016 the School Tribunal was constrained to dismiss the appeal in default, particularly which sought condonation of delay of more than eight years in the said appeal.

5. It is a trite position of law that the party who seek a remedy before the competent court of law must adopt all due diligence to prosecute the said remedy given to him under the law. If he falters and fail to prosecute the remedy, the Tribunal/authority is perfectly

justified in dropping the proceedings since there was no prosecution.

. Since such can be noticed on two occasions the petitioner was negligent and did not avail the remedy available to him, once in the year 2014 and then in the year 2016, he does not require any indulgence.

6. Necessarily, the impugned order dated 29.07.2016 passed by the Tribunal, is upheld and the writ petition is dismissed.

7. In view of disposal of writ petition, nothing survives for consideration in the pending civil application and same stands disposed of.

[BHARATI H. DANGRE]
JUDGE