

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.10013 OF 2021

SUARNALATA LAXMANRAO DONGRE  
VERSUS  
THE CHIEF EXECUTIVE OFFICER AND ANOTHER

Mr.V.D.Gunale, Advocate for the petitioner.  
Mr.S.R.Yadav, AGP for respondent No.2.  
Mr.P.D.Suryawanshi, Advocate for respondent No.1.

( CORAM : RAVINDRA V. GHUGE , J.)

DATE : MARCH 15, 2022

PER COURT :

1. The petitioner is aggrieved by the order dated 05.07.2021 vide which the Additional Divisional Commissioner, Aurangabad has refused to condone the delay of 17 months which was caused in filing the appeal for challenging the order of punishment dated 24.07.2019.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides.

3. The petitioner retired on 31.05.2019. The impugned order imposing punishment upon her is dated 24.07.2019, which is two

months after her superannuation. The petitioner's father was unwell due to co-morbidities over a period of about 4-5 years and was 82 years of age when he passed away on 10.07.2020. The petitioner was the Head Mistress of a particular school. She used to manage her domestic affairs as well as her duty as Head Mistress and used to also take care of her ailing father. It is submitted that there was a National Lockdown due to Covid-19 pandemic on 24.03.2020 and her father passed away on 10.07.2020. She preferred her appeal under Rule 13 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964. The limitation is prescribed under Rule 16 and the proviso thereunder enables the authorities to condone the delay for justifiable reasons.

4. The learned Advocate for the Zilla Parishad has strenuously opposed this petition and prays that the petition be dismissed. In the alternative, he submits that if this Court is willing to entertain this petition, heavy costs may be imposed.

5. It is settled law that if the delay is neither deliberate nor inordinate, the same can be condoned liberally. The Hon'ble Supreme

Court has crystallized the Law in **Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107]** and **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [2013(12) SCC 649]**. However, if laches or ulterior motives are attributable to the conduct of a litigant, the delay would not be condoned. In the instant case, the delay is of 17 months. The limitation ended on 25.10.2019. The Hon'ble Supreme Court as well as this Court, while calculating delay, have been excluding the period of Lock down from 24.03.2020 till January 2021. If this period is subtracted from the total duration, the delay would be of around 7 months, i.e. 5 months from 26.10.2019 till 24.03.2020 and from January 2021 till February 2021, as the appeal is filed on 01.03.2021.

6. The above aspect was not brought to the notice of the Additional Divisional Commissioner-2, Aurangabad. The exclusion of the period of lock down should be an advantage given to the litigant. Moreover, if the delay is not condoned, the petitioner would be rendered remediless as she would not be able to challenge her punishment of bringing her salary scale to the lowest stage as the Head Mistress, in her lifetime. Costs could be imposed on the petitioner for the 7 months delay.

7. In view of the above, this petition is partly allowed. The Additional Divisional Commissioner-2, Aurangabad shall register the appeal of the petitioner and both the litigating parties shall appear before the Authority on 06.04.2022 at 12.00 noon. The impugned order dated 05.07.2021 is quashed and set aside and the delay is condoned by imposing costs of Rs.15,000/- which shall be handed over by the petitioner to the authorized representative of the Zilla Parishad, Beed on 06.04.2022 in the presence of the Additional Divisional Commissioner, Aurangabad. After granting reasonable opportunity of hearing to the litigating parties, the Appellate Authority shall deliver its judgment on or before 30.06.2022.

( RAVINDRA V. GHUGE, J.)