

BDP-SPS-TAC

BHARAT
DASHARATH
PANDIT

Digitally signed
by BHARAT
DASHARATH
PANDIT
Date: 2022.07.04
20:42:40 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1000 OF 2020**

Sanmitra Mandal and Anr.

.... Petitioners.

V/s

Late Shri Ramchandra Bapu Salunke

Through legal heirs

a) Smt. Shalini Ramchandra Bapu

Salunkhe and Ors.

.... Respondents.

Mrs. Ranjana Todankar for the Petitioners.

Mr. Chandrakant T. Chandratre for Respondent Nos. 1 and 2.

Mrs. V.S. Nimbalkar, AGP for Respondent Nos. 2 and 3.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 04, 2022

P.C.:-

1] Deceased Ramchandra was appointed as peon on 23rd July, 1990. Since he remained continuously absent from duty in the capacity of peon of Petitioner No.2 – an aided School, which amounts to abandoning of service, it is claimed that he was not taken back in the employment thereafter. Ramchandra expired in 2014. After his death, it is claimed that Petitioners tried their level best for compassionate appointment. However, since Education Department

filled in the said post by sponsoring surplus candidate, the claim of Respondent Nos. 1(a) and (b) appears to have not been considered. In the aforesaid backdrop, Respondent Nos 1(a) and (b) were prompted to take out Misc. Application No.3 of 2019 seeking condonation of delay, alleging that order dated 8th March, 2011 abandoning service by deceased amounts to otherwise termination. The said appeal since was time barred, prayer for condonation of delay came to be moved. Vide order impugned, School Tribunal has condoned the delay of 7 years and 8 months. As such, this Petition by the Management.

2] Submissions of learned Counsel for the Petitioner-Management are, the order impugned is not sustainable as there is hardly any explanation in support of condonation of delay of inordinate period of more than 7 years. According to her, Respondents/legal heirs of the deceased were pursuing their remedies by seeking compassionate appointment which rightly prompted the Petitioners to believe that the Respondents/legal heirs were having knowledge about termination of the employment of the deceased. It is further claimed that the order

impugned condoning delay is passed on merits of the appeal and not by considering sufficient cause. It is as such claimed that delay was intentional and malafide.

3] Counsel for the Respondents/legal heirs of the deceased would urge that prayer to grant compassionate appointment in categorical terms establishes that aforesaid abandoning of service was not within their knowledge. It is further claimed that delay was condoned based on the circumstances established before the School Tribunal. He would urge that once the discretionary power of condoning delay is exercised, this Court should be slow in causing interference.

4] Learned AGP and Counsel for Respondent No.2 would support the order impugned.

5] I have appreciated the said submissions.

6] The only consideration in the order impugned passed by the Tribunal directing condonation of delay of 7 years is,

Respondents/legal heirs of deceased have strong case on merits and appeal can be accordingly decided. Unless there is some substance in the prayer for condonation of delay which narrates cause in support thereof, Tribunal, in my opinion, has failed to consider requisites for passing such order. As such, the order impugned is not sustainable, as same lacks reasons so as to form opinion that delay was intentional and bonafide. As such, order impugned passed by the School Tribunal on 01/10/2019 is quashed and set aside.

7] Petition stands allowed in the aforesaid terms.

8] Deceased Ramchandra was appointed on 23/7/1990 as a peon and continued so in the employment of the Petitioners till 7/3/2011 and thereafter he appears to have abandoned his service which led to filing of the appeal. Said Ramchandra is claimed to have expired in 2014. In the aforesaid backdrop, having regard to the fact that deceased Ramchandra has rendered continuous service of more than 20 years on the aforesaid date of his abandoning of service and he is claimed to have expired because of his ill-health, a proposal is directed

to be submitted to Respondent No.2 – Education Officer by the Petitioners for service benefits, including that of pension. Such Documents be submitted to Respondent No.2 – Education Officer within a period of six weeks from today. Counsel for Respondents/legal heirs of deceased and Respondent No.2 assure that they shall appear before the Petitioner Nos. 1 and 2 on 18/7/2022 to assist in compliance with the aforesaid proposal. This Court expects Respondent No.2 – Education Officer to decide the proposal expeditiously and in any case within a period of 8 weeks from receipt of such proposal by considering that Respondent Ramchandra has only abandoned his service and was not terminated from the service. As a sequel, pending appeal stands disposed of.

(NITIN W. SAMBRE, J.)