

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

WRIT PETITION NO.7678/2019

Sharad s/o Vitthalrao Bhople,
Aged about 65 years, Occupation : Retired.
R/o Uday Colony No.1, Sai Nagar,
Amravati, Tahsil and District Amravati.
Mob. 9370379100

..... **PETITIONER**

...V E R S U S...

- 1] State of Maharashtra, through its
Secretary, Tribal Development Department,
Mantralaya, Mumbai-32.
- 2] Additional Commissioner,
Aadivasi Vikas Vibhag (Additional Tribal Commissioner)
Vilasnagar Road, Amravati, District Amravati.
- 3] Head Master,
Secondary Ashram School,
Kutange, Tq. Dharni, District Amravati.
- 4] Commissioner,
Tribal Development Department,
Trimbak Road, Nashik.

..... **RESPONDENTS**

Mrs. S.W.Deshpande, Advocate for petitioner.
Mrs. S.S.Jachak, Assistant Government Pleader for respondent nos. 1, 2 and 4.
None for respondent no.3.

CORAM : A.S.CHANDURKAR and G.A.SANAP, JJ.
DATE : 17th FEBRUARY, 2022.

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule is made returnable forthwith. Heard learned counsel for the parties.

2. The petitioner who was serving as a 'Head Master' at the respondent no.3-School within the purview of the respondent no.2 came to be reverted from the post of 'Head Master' to that of 'Assistant Teacher'. Being aggrieved the petitioner approached Maharashtra Administrative Tribunal (for short, the Tribunal). Original Application No.382/2005 filed by the petitioner was admitted for final hearing. It appears that on 10.07.2015 the Tribunal dismissed the proceedings on account of absence of the petitioner's counsel. Thereafter the petitioner filed an application for restoration of the original application. The counsel engaged by the petitioner was again absent on 19.07.2016 resulting in dismissal of the restoration application. Yet again a fresh application for restoration was filed and on 30.08.2019 the Tribunal refused to restore the original application as it was not satisfied with the reasons assigned by the petitioner. Being aggrieved, the said orders are challenged in this writ petition.

3. Heard the learned counsel for the parties. The record indicates that Original Application No.382/2005 was dismissed on 10.07.2015 and reason assigned by the petitioner is that the counsel engaged by the petitioner Advocate P. V.Kaslikar had expired in the meanwhile. The application for restoration was also dismissed on 19.07.2016 as the counsel who had been engaged by the petitioner was also absent. In paragraph 27 of the writ petition it has been specifically pleaded by the petitioner that on 05.10.2019 he had filed a complaint under Section 35 of the Advocate's Act, 1961 against the counsel who had been engaged

to represent him but had remained absent.

4. We find that the dismissal of the proceedings is principally for absence of the counsel. It is well settled that for the fault of the counsel the litigant shall not suffer. Reference in this regard can be made to the decision in ***Rafiq and another vs. Munshilal and another AIR 1981 SC 1400***. It is also to be kept in mind that the petitioner has since retired and hence adjudication on merits is necessary to determine the nature of retiral benefits to which he would be entitled. Considering all these reasons we are inclined to grant one opportunity to the petitioner to have an adjudication of his grievances on merits before the Tribunal.

5. For the aforesaid reasons, the orders dated 10.07.2015 in Original Application No.382 of 2005, dated 19.07.2019 in Miscellaneous Civil Application No. 51 of 2015 in Original Application No.382 of 2005 and dated 30.08.2019 in Miscellaneous Civil Application Nos. 20 and 21 of 2018 in Original Application No.382 of 2005 are set aside. Original Application No. 382 of 2005 is restored before the Tribunal for being adjudicated on merits. The petitioner shall diligently pursue the said proceedings and co-operate in the expeditious disposal of the same. The writ petition is allowed and disposed of.

Rule is made absolute in aforesaid terms. No costs.

(G.A.SANAP, J.)

(A.S.CHANDURKAR, J.)