

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

49 WRIT PETITION NO.12000 OF 2022

Smt. Shital Walmik Kale,
Age; 35 years, Occ; Service,
R/o; Bhatangali,
At present Shivani (Bk.)
Tq. Ausa, Dist Latur.

...Petitioner

VERSUS

1. The State of Maharashtra
Through its Secretary,
Rural Development Department,
Maharashtra State, Mantralaya,
Mumbai -32.
2. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Chief Executive Officer,
Zilla Parishad, Latur.

...Respondents.

...
Advocate for Petitioner : Mr. V.P.Golewar
AGP for Respondent Nos. 1 & 2/State : Mr. K.B.Jadhavar
...

CORAM : KISHORE C. SANT, J.

DATE : 21.07.2023.

PER COURT :

1. Heard the learned Advocate for the petitioner and the learned AGP for respondent Nos. 1 & 2. No one appears for respondent No. 3 inspite of service.

2. By consent taken for final hearing. The petitioner is aggrieved by the judgment and order passed by the learned Additional Divisional Commissioner, Aurangabad dated 13.10.2021 wherein, an application for condonation of delay seeking condonation of delay of 2786 days caused in filing appeal is rejected. An appeal against the order dated 23.01.2014 passed by the Chief Executive Officer i.e. respondent No. 3 stopping increment for one year with permanent effect is filed. This action is taken as the petitioner did not join the School on 17.06.2013 that was on opening day of the School. This order was passed on the ground that the petitioner herself got her transferred to the Zilla Parishad, Latur by making representation. In the said representation a proposal was given on undertaking that she would join in School Ujani, Tq. Ausa, District Latur and she will not seek transfer to any other School in Latur District. In spite of that she did not attend the school on 17.06.2013 at Zilla Parishad, Primary School, Ujani, Tq. Ausa, District Latur. Because of non joining of the petitioner, loss to the students is caused.

3. The petitioner submits that in fact she had

proceeded on maternity leave and that was sanctioned by the B.D.O., Panchyat Samiti, Ausa from 07.06.2013 till 31.12.2013. When the petitioner was on maternity leave it was not expected of her to join the School. The authorities were aware of the sanctioning of the maternity leave, still action was taken.

4. The petitioner raised her grievance and file an application on 03.02.2014 for forwarding the same to the appellate authority. She was hopefully waiting for the decision of the appellate authority. However, in the month of July 2023 she got knowledge that an order is passed by the appellate authority in the case of some other teacher, whereby the order dated 19.07.2013 was challenged in Pra/Kra/2018/DB/Appeal/Cell/80/2018 and another appeal Pra/Kra/2018/DB/Apeal/Cell/95. It is thereafter, she made inquiry about her appeal and learnt that her appeal was not forwarded to the appellate authority. Thereafter she filed this application. For these reasons there appears to be delay. The petitioner in view of these facts submits that it was necessary for the learned Additional Commissioner to consider the case of the petitioner sympathetically of stoppage of increment with

permanent effect. This will affect on her pensionary benefits.

5. The learned AGP submits that the reason assigned in the application is not sufficient to condone the delay. The petitioner was expected to exercise due diligence and should have made inquiry within a reasonable time and prays for rejection of the petition.

6. This Court finds that the impugned action taken by respondent No. 3 dated 23.01.2014 itself appears to be prima-facie illegal, it was necessary for the appellate authority to consider the same by condoning the delay. Hence the following order :

ORDER

- a) The Writ Petition is allowed.
- b) The impugned order dated 13.10.2021 passed by respondent No. 2 is quashed and set aside.
- c) Application for condonation of delay stands allowed.
- d) Respondent No. 2 to register and hear the appeal of the petitioner as early as possible and preferably within six months from today.

e) The petitioner has also not taken any steps, it would be in the interest of justice to award her costs, subject to depositing of Rs. 5,000/- (Rs. Five Thousand Only) towards costs, to be paid to the Library of Government Pleader's Office, within two weeks from today.

(KISHORE C. SANT)
JUDGE

mahajansb/