

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2666 OF 2023
IN
WRIT PETITION NO. 6973 OF 2005**

Manohar Nivruti Patil	...Applicant
<i>In the matter between</i>	
Manohar Nivruti Patil	...Petitioner
<i>Versus</i>	
Shri Warana Vibhag Shikshan Mandal & Ors	...Respondents

Mr Sanjeev P Kadam, with Varsha M Thorat, Aditi Rajput, Mayur Sanap & Pratik Deshmukh, for the Applicant.
Mr Rui Rodrigues, with Ashutosh Mishra, for Respondent No. 2.
Ms PN Diwan, AGP, for the Respondent-State.

**CORAM G.S. Patel &
 Neela Gokhale, JJ.
DATED: 29th March 2023**

PC:-

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1. This application for restoration of the Writ Petition No. 6973 of 2005 is most vigorously opposed by all the Respondents. They point out that there is a delay of 288 days. There is no explanation given. In response, it is pointed out by the Applicant that there is indeed an explanation and this is to be found in paragraph 3. This is the more or less. That paragraph is worth quoting in full.

“3. The Applicant states that after passing of the above order the Applicant has been receiving his salary as per the 7th pay commission by offline method as directed by the Government authority. However no other service benefits were granted in favour of Applicant by any of the Respondents. Recently the advocate for Applicant tried to circulate the main petition for hearing as the Applicant would be retiring from service within few years. Moreover in absence of permanent status in service and pay fixation, the Applicant is deprived of other service benefits including seniority, higher pay scale, promotion etc. However the matter was not being placed on the board and the Applicant was shocked to note that the main petition of Applicant was disposed off in the list of matters vide order dated 01.04.2021. The order reflects that the list of such petitions for being disposed as infructuous were submitted by the office of Ld. Government Pleader. It appears that for one or the other reason it could not be pointed out to the Hon’ble Court that the present writ petition has not become infructuous. Accordingly, the petition is disposed off as infructuous, however with a liberty to the original Petitioner to revive the same in case something survives in the matter. **During this period due to COVID-19 pandemic the Courts were operating online.**”

(Emphasis added)

2. It is the last line in particular that we find especially endearing: that during the Covid-19 pandemic, the Courts were operating online. That is true. We were operating online. How this excuses or explains the delay is unclear but, it is a well-settled principle that if the benefit of doubt has to be given to anyone, it must be given to the one who has suffered and hence we give the benefit of doubt to the Applicant.

3. The Interim Application is made absolute.
4. The Petition is restored to file.

(Neela Gokhale, J)

(G. S. Patel, J)