

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

WRIT PETITION NO. 564 OF 2020

PETITIONER: Gajanan Vyankatrao Nirawar,
Aged about 35 years, Extension Officer
(Agril.), Panchayat Samitee, Mahagaon,
R/o Krushna Nagar, Pusad Road,
Umarkhed, Dist. Yavatmal.

..V E R S U S..

RESPONDENTS 1] Zilla Parishad, Yavatmal,
through its Chief Executive Officer,
Tq. & Dist. Yavatmal.

2] State of Maharashtra,
through Divisional Commissioner,
Amravati.

3] State of Maharashtra,
Department of Rural Development,
through its Secretary, Mantralaya,
Mumbai-32.

Shri P.B. Patil, advocate for the Petitioner.

Shri S.S. Bhalerao, advocate for the Respondent No.1.

Shri D.P. Thakre, AGP for the Respondent Nos. 2 and 3.

CORAM : ANIL S. KILOR, J.

DATE : 25/01/2023

CIVIL APPLICATION (CAW) NO. 238/2023

1. Heard.

2. For the reasons stated in the application, the same is
allowed.

3. Amendment be carried out forthwith.
Civil application is allowed and disposed of.

WRIT PETITION NO. 564 OF 2020

ORAL JUDGMENT :

1. Heard Shri P.B.Patil, learned advocate for the Petitioner, Shri S.S. Bhalerao, learned advocate for the Respondent No.1 and Shri D.P. Thakre, learned A.G.P. appearing for the Respondent Nos. 2 and 3.

2. **RULE.** Rule made returnable forthwith.

3. In this writ petition, the order passed by the Hon'ble Minister dated 05/03/2019, dismissing the Revision Application preferred by the petitioner, challenging the order of the Chief Executive Officer, Zilla Parishad vide order dated 21/05/2012, treating the absence of the petitioner from the period 12/04/2010 to 10/06/2012 as break in service and order dated 17/11/2018 passed by the Divisional Commissioner, dismissing the appeal preferred by the petitioner against the forfeiture of earlier service, is under challenged.

4. The brief facts are as under:-

The petitioner was selected and appointed on the post of the Extension Officer (Agricultural), Panchayat Samitee, in Respondent No.1/Zilla Parishad, Yavatmal on 01/08/2009. He joined the services on 03/08/2009. Thereafter, on 16/11/2009, the

petitioner was served with show cause notice to which he gave reply on 20/11/2009. Thereafter, again he was served with another show cause notice, alleging that the petitioner is not assuming the charge of the post of Extension Officer (Agricultural), though he was appointed on the said post and thereby creating hindrance in the day-to-day work of the Government. The petitioner submitted his reply on 15/12/2009. Thereafter, again show cause notices were served upon him and thereafter on the medical ground, he was absent for the period from 12/04/2010 to 10/06/2012 for two years, one month and 28 days. The Chief Executive Officer, as per the Maharashtra Civil Services Pension Rules, 1982 (for short 'the Rules of 1982') by exercising powers under Section 47(1), passed an order on 21/05/2010, thereby forfeiting the earlier service of the petitioner.

Thereafter, vide order dated 11/12/2014, period of absence of the petitioner from 12/04/2010 to 10/06/2012 was considered as unauthorized absence and it was further treated as a break in service vide order dated 15/06/2017 issued by the Block Development Officer.

5. The petitioner raised a grievance against all the above-referred three orders filed before the Divisional Commissioner, without filing separate appeals for each cause of action and without filing an application for condonation of delay. Though there was a delay in challenging all the orders referred here-in-above, the Divisional Commissioner, vide order dated 17/11/2018, dismissed the appeal preferred by the petitioner, against the same, a revision

was filed before the Hon'ble Minister, which also came to be dismissed vide impugned order dated 05/03/2019. The Hon'ble Minister while dismissing the revision has commented upon the delay caused in filing the appeal and also he has observed that a single appeal is not maintainable against all the three orders which were challenged.

6. I have heard learned counsels for the respective parties.

7. Shri P.B. Patil, learned advocate for the petitioner submits that, if the authorities below have reached the conclusion that there was a delay in filing the appeal and a single appeal is not maintainable against all the three orders which were challenged in the appeal, the authorities below ought to have granted an opportunity to file separate appeals against each cause of action and also to file an application for condonation of delay.

8. It is submitted that, in the above-referred backdrop, when the authorities were of the opinion that there was a delay caused in filing the appeal, the authorities should not have entered into the merits of the matter. It is, therefore, submitted that both the authorities have committed an error in dismissing the appeal and revision respectively without giving sufficient opportunity to the petitioner. For this purpose, he was placed reliance on the judgment of the Co-ordinate Bench of this Court in the case of *Madhao S/O Somaji Sarode vs Jotiba Dhyan Upasak Shikshan* ¹

9. On the other hand, Shri S.S. Bhalerao, learned advocate for the Zilla Parishad/Respondent No.1, supports the order passed

by the Divisional Commissioner in appeal and the order passed by the Hon'ble Minister on Revision and submits that no explanation has been offered by the petitioner for the delay caused and therefore, both the authorities below have rightly rejected the challenge raised by the petitioner to all the three orders on the ground of delay as well as on merits.

10. Shri D.P. Thakre, learned AGP for the Respondent Nos. 2 and 3 supports the case of the Divisional Commissioner and the order of the Hon'ble Minister.

11. In the backdrop of rival submissions of both the parties, I have perused the documents filed along with the petition and the impugned orders.

12. After perusal of the record, it is evident that the petitioner was absent for the period from 12/04/2010 to 10/06/2012, and considering the period of absence which was more than two years, the Chief Executive Officer vide order dated 21/05/2012 passed under Rule 47(1) of the Rules of 1982, forfeited the earlier service of the petitioner. This order was not challenged by the petitioner, though an opportunity of appeal is provided under Rule 14 of the Maharashtra Zilla Parishad Services (Discipline and Appeal) Rules, 1964 (in short 'the Rules of 1964'). The limitation for filing such an appeal is 90 days.

13. Thereafter, another order dated 11/12/2014 came to be passed against the petitioner, treating the absence of the petitioner for the above-referred period, as unauthorized absence. This order

was also not challenged within the period of limitation.

14. Thereafter, the third order was passed i.e. on 15/6/2017, by the Block Development Officer, treating the period of unauthorized absence as a break in service. After this order, also no appeal was filed within the period of limitation.

15. Then, the petitioner filed an appeal on 15/01/2018 under Rule 14 of the Rules of 1964, raising a grievance against the above-referred three orders.

16. Thus, in the light of the above referred undisputed facts, if the authorities below have noticed that for three different cause of action or three different disciplinary actions, a single appeal came to be filed by the petitioner and no application for the condonation of delay was filed along with the appeal, both the authorities without entering into the merits of the matter, ought to have granted an opportunity to the petitioner to file separate appeals against each cause of action along with the application for condonation of delay, in view of the observations made by the Co-ordinate Bench of this Court, in the case of *Madhao S/O Somaji Sarode* (supra).

17. Thus, in absence of any such opportunity given to the petitioner, I am of the opinion that both the orders passed by the Hon'ble Minister dated 05/03/2019 and the order passed by the Divisional Commissioner dated 17/11/2018, need to be quashed and set aside with liberty to the petitioner to file separate appeals against each cause of action along with the application for condonation of delay, if so desires.

18. The delay from the date of filing of the appeal before the Divisional Commissioner on 21/03/2018 till filing of the separate appeal before the Divisional Commissioner after this order, shall not be considered as delay, if the appeals are filed within three weeks from today. Accordingly, I pass the following order :

- a) The writ petition is partly **allowed**.
- b) The order dated 05/03/2019 passed by the Hon'ble Minister i.e. Respondent No.3, order dated 17/11/2018 passed by the Divisional Commissioner are hereby quashed and set aside.
- c) Liberty is granted to the petitioner to file separate appeals against each cause of action along with the application for condonation of delay, explaining the delay.
- d) On filing of such appeal/appeals, the Commissioner shall decide the same on its own merits without influenced by the observations made by the earlier order of the Divisional Commissioner or the order of the Hon'ble Minister, which is impugned in the present writ petition.

JUDGE

RKN

Signed By: RAJESH K
NANDURKAR

Signing Date: 02.02.2023 17:34