



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

WRIT PETITION NO.5622 OF 2024

Prashant Onkar Khairnar

VERSUS

Shivaji Vidya Prasarak Sansthas Vidyanagari Through
It's Chairman And Others.

...

Advocate for the Petitioner : Mr. A.R. Syed
AGP for Respondents: Mr. P.D.Patil

...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : June 18, 2024

...

PER COURT :-

1. The Petitioner approached this Court under Article 227 of the Constitution of India, assailing the order dated 11.9.2023 passed by the University and College Tribunal, Aurangabad in Misc. Application No. KBCNMU No.10/2023 by which the Tribunal declined to condone the delay of almost 14 years caused in filing the appeal assailing the termination order dated 16.7.2009.

2. Mr. A.R. Syed, learned advocate appearing for the petitioner submits that on 8.10.2005 petitioner was appointed as Lecturer in pursuance of selection by duly constituted Committee with respondent no.2-Institution. On 30.1.2006 his appointment was approved by the concerned authorities. Petitioner acquired M.Phil qualification on 26.6.2009. As such, he was entitled for

absorption/continuation as permanent employee. The Management had forwarded proposal for exemption from acquiring NET/SET qualification in pursuance of M.Phil qualification possessed by the petitioner. However, for want of response from the University Authority, services of the petitioner came to be terminated on 16.7.2009. Petitioner pursued his remedies before the University Authorities. Thereafter, he filed writ petition no.5495 of 2009 before this Court. However, writ petition came to be dismissed on 21.10.2015. Petitioner had approached this Court once again vide writ petition no.4983 of 2021 seeking directions against the University Authorities to decide the proposal forwarded by the Management. However, he suffered dismissal.

3. According to Mr. Syed, the petitioner prosecuted remedies before the wrong forum and as advised filed appeal before the Tribunal under section 59(3) of the Maharashtra Universities Act, 1994 with prayer to condone the delay. Tribunal dismissed the application without considering the aforesaid aspects. Hence, he urges to quash and set aside the order passed by the Tribunal and condone the delay caused in filing the appeal.

4. Having considered the submissions advanced, apparently, the petitioner is out of service from 2009. Initially, he approached this Court in Writ

Petition No.5495 of 2009. This Court observed in paragraph no.2 as under :-

“2. In view of this, following question could have arisen for our consideration, whether the qualification of the petitioner was sufficient for his appointment as Lecturer. We are not inclined to decide this question in the Writ Petition, because the petitioner has lost his job way back in 2009 and he is already replaced with another candidate, who according to the respondents held requisite qualification. So, the deciding the question, quoted above, would become an academic exercise. We are not inclined to decide the same. The petition stands dismissed.”

5. Having suffered dismissal of the writ petition, petitioner made his second attempt by filing writ petition no.4983 of 2021 and sought directions that proposal dated 2.3.2009 and 15.7.2009 forwarded by the Management for exemption from NET/SET be directed to be decided. This Court dismissed the petition observing that the petitioner has not challenged dis-continuation of his service either before the College Tribunal or in earlier Writ Petition. As such, declined to entertain the petition. In this background, petitioner approached the University Tribunal on 22.6.2023 assailing the termination order dated 16.7.2009. Only explanation sought to be offered for inordinate delay of 14 years is that petitioner was prosecuting the remedies before the wrong forum. However, such submissions cannot be countenanced for the reason that the petitioner was aware about termination of his services

while he approached this Court in Writ Petition no.5495 of 2009. This Court observed that petitioner was not holding requisite qualification for appointment on the post of Lecturer and he has been replaced with another candidate holding the requisite qualification. It can be observed that petitioner is a qualified person and aware about legal remedies under law. If in the year 2009 itself he was replaced by another employee, the only remedy available for him is to assail the termination before the Tribunal. It is apparent that after dismissal of the Writ Petition in the year 2015, in 2021 he filed another petition seeking directions to consider the proposal for exemption of NET/SET qualification. In both the petitions filed before this Court, petitioner could have assailed the termination. But, no such prayer was employed. The Tribunal has rightly observed that petitioner failed to explain huge delay of fourteen (14) years. In any case, petitioner was not entitled for re-instatement for want of requisite qualification. Hence, no case is made out to cause interference under Article 227 of the Constitution of India. Writ Petition stands dismissed in limine.

(S. G. CHAPALGAONKAR)
JUDGE

...

aaa-