



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9896 OF 2024

Sarjerao s/o Shankarrao Bhangе ... **Petitioner**
Age 48 years, Occu: Asstt. Teacher,
R/o Z. P. Primary School, Ravjitanda-
(A), Kendra Antur Tq. Jalkot, Dist.Latur

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai 32
2. The Additional Commissioner, ... **Respondents**
Aurangabad Region, Aurangabad
3. Chief Executive Officer,
Zilla Parishad, Latur
4. Education Officer (Primary)
Zilla Parishad, Latur

Mrs. Jayshri Reddy, Advocate for the Petitioner,
Mr. N. S. Tekale, AGP for the Respondents State

CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRADE, JJ.
RESERVED ON : 10.09.2024
PRONOUNCED ON : 25.09.2024

JUDGMENT (Per: Y. G. Khobragade, J.)

1. Rule. Rule made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

2. By the present Petition under Article 227 of the Constitution of India, the Petitioner prays for issuance of Writ of certiorari for quashment of order dated 29th November, 2022 passed by the Respondent No. 2, thereby refused to condone the delay of 6 years, caused while challenging the order dated 14.01.2016 in Departmental Appeal under Rule 13 of Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964 (hereinafter referred to as 'the Service Rules, 1964'), bearing No. DB/Appeal/Cell/CR-3/2022.

3. Having regard to strenuous submissions canvassed on behalf of both the sides, we have gone through the Petition paper book. It is not in dispute that, the Petitioner was initially appointed as a Assistant Teacher by Respondent No. 3 on 18.02.1994 and was posted at Z.P. Primary School, Malkondji, Tq. Ausa Distt. Latur. During the service tenure, the Petitioner was transferred at various places and now is serving at Z.P. Primary School, Ravjitanda (A), Kendra Antur Tq. Jalkot. On 22.07.2011, the Petitioner was served with a show cause notice under Rule 6(2) of the Service Rules, 1964 alongwith charge sheet for unauthorized absenteeism. During pendency of enquiry, the Petitioner was suspended with effect from 19.12.2012. Accordingly, the Disciplinary Authority enquired into the charges through the Enquiry Officer, who submitted his report on 30.08.2014 holding that the charge

of unauthorized absenteeism proved against the Petitioner. On 11.09.2014, the Petitioner was served with a show cause notice, as to why an action should not be taken against him under the Service Rules, 1964. Accordingly, the Petitioner replied said show cause notice on 10.11.2014 alongwith medical certificates issued by medical practitioner Dr. V. G. Jadhav and denied about unauthorized absence. On 14.01.2016, the Disciplinary Authority- Respondent No.3 passed an order under Rule 3 of the Service Rules and imposed penalty of stoppage of three increments.

4. It is a matter of record that on 21.03.2021, the Petitioner submitted an application with Respondent No.3 and prayed for regularizing of suspension period as duty period. However, on 16.09.2021, the Respondent No.3 passed the order and confirmed the earlier order dated 14.01.2016 in respect of imposing penalty and declined to treat the suspension period as duty period. Therefore, the Petitioner lodged the appeal before Respondent No.2- Additional Commissioner and challenged the order dated 16.09.2021 passed by Respondent No.3. However, on 29.11.2022, Respondent No.2 passed the impugned and rejected said appeal on the ground of limitation.

5. The learned counsel appearing for the Petitioner canvassed that Respondent No.2 has passed two orders viz., (i) Order dated

14.01.2016 and (ii) Order dated 16.09.2021 without assigning reason. After the second order dated 16-09-2021 was passed, the Petitioner immediately presented the Appeal within a period of limitation and challenged both the orders. Therefore, there is no delay while lodging the Appeal before Respondent No.2. However, Respondent No.2 raised the objection about delay. Therefore, the Petitioner preferred an application for condonation of delay, however, on 29-11-2022, the Respondent No. 2 passed the impugned order and rejected the application for condonation of delay without proper consideration of facts and law. Therefore, the impugned order passed by Respondent No.2 is illegal, bad in law and prayed to quash and set aside the same.

6. Per contra, Mr. N.S. Tekale, the learned AGP appearing for Respondent No.2 canvassed that under charge sheet dated 22.07.2011, the petitioner was charged for the misconduct of unauthorized absenteeism. The said charge was enquired through the Enquiry Officer in the departmental enquiry. The enquiry officer submitted a report on 30.08.2014 holding that the charge against the Petitioner is partly proved in respect of his unauthorized absenteeism. Thereafter, on 14.01.2015, Respondent No.2 passed the order under Rule 4 of the Service Rules, 1964 and imposed penalty of stoppage of two annual

increments. So also, the suspension period was not treated as duty period. On 16.09.2021, the Respondent No.2 passed an order and confirmed the penalty and not treated the suspension period as duty period. The Petitioner filed departmental appeal before the Respondent No.2 after lapse of six years period and said Appeal is barred by limitation. Therefore, on 29.11.2022, Respondent No.2 passed the impugned order and rejected the application for condonation of delay.

7. It is further canvased on behalf of the Respondents that, the Petitioner was unauthorizedly absent w.e.f. 19.12.2012. The said charge is duly proved in domestic enquiry. The disciplinary authority passed the order on 06-01-2022 and declined to treat the suspension period as duty period, therefore, there are two independent cause of actions and limitation to file appeal independently starts from the date of passing of respective orders. However, the Petitioner has filed the appeal on 06.01.2022 i.e. much after lapse of six years and that too without assigning any reason. Therefore, the impugned order passed by Respondent No.2 is just and proper, hence, prayed for dismissal of the Petition.

8. It is not in dispute that the Petitioner was served with show cause notice dated 22.07.2011 alongwith charge-sheet for his misconduct of

unauthorized absence from duty w.e.f. 24.11.2009 to 09.12.2010, which is misconduct within the ambit of Rule 3 of the Service Rule 1964. The Petitioner duly replied said notice. It is an admitted fact that, during the enquiry, the Petitioner was suspended w.e.f. 19.12.2012. The Petitioner was duly paid all the subsistence allowances during his suspension period. The enquiry officer submitted a report dated 30.08.2014 holding that charge No.1 against the Petitioner is partly proved. The Petitioner has not challenged the veracity of the enquiry report. On 14-01-2016, Respondent No. 3- competent authority passed an order with due consideration of the Petitioner's reply and awarded punishment of withholding two annual increments permanently.

9. Needless to say that, on 21st March, 2021, the Petitioner submitted an application with the Block Education Officer and prayed for treating suspension period as duty period. Indeed, on 16.09.2021, the Respondent No.3 passed an order and declined to treat the suspension period from 20.02.2013 to 20.01.2016 as duty period but treated same as suspension period. Further, the period of unauthorized absence w.e.f. 19.12.2012 to 19.02.2013 treated as special leave (leave without pay) under Rule 63 of the Maharashtra Civil Services (Leave) Rules, 1981.

10. No doubt, the Petitioner filed an Appeal on 06.01.2022 after lapse of six years period from the first order dated 14.01.2016. Rule 16 of Service Rule, 1964 provides limitation of three months for lodging departmental appeal. The Petitioner failed to explain the delay of six years properly. Therefore, Respondent No.2 passed the impugned order and rejected the appeal, which can not said to be faulty.

11. In **Union of India Vs. Tarsem Singh, (2008) 8 SCC 648**, the Hon'ble Supreme Court held that, "normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in

spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

(emphasis supplied).

12. In ***Union of India v N. Murugesan, (2022) 2 SCC 25***, the Hon’ble Supreme Court laid down principles while consideration of delay and laches and observed as under:

“20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would

be one of estoppel. The question of prejudice is also an important issue to be taken note of by the court.

21. The word “laches” is derived from the French language meaning “remissness and slackness”. It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence.

13. In the case in hand, it prima facie appears that on 06.01.2022, the Petitioner presented an appeal before Respondent No.2-Additional Commissioner challenging the order dated 14.01.2016 and 16.09.2021 passed by Respondent No.3. Since the Petitioner is a teacher by profession, having very much knowledge about passing of order dated 14.01.2016 by the Respondent no.3, but the Petitioner failed to challenge said order of punishment of stoppage of two annual increments within stipulated period. Needless to say that, on 21.03.2021, the Petitioner submitted an application before the Education Officer and prayed for treating his period w.e.f. 19.12.2012 to 20.02.2013 as special leave and suspension the period from period w.e.f. 21.02.2013 to 20.01.2016 as duty period. However, on 16.01.2021, Respondent No.1 passed an order and refused to treat suspension period as duty period. The Petitioner failed to avail statutory remedy within stipulated period and no substantial grounds set out for condonation of delay. The Petitioner does not appear to be vigilant and has belatedly filed the appeal. Therefore, considering the law laid down in case of **Tarsem Singh and N. Murugesan, (supra)**, the impugned order passed by Respondent No.2 does not appear illegal, bad in law. Therefore, no interference is called at the hands of this Court.

14. In view of the above **the Writ Petition is dismissed.** Rule is discharged.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan