



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

953 WRIT PETITION NO. 8430 OF 2024

RAVI ASHRUBA DHUMAL

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS ADDITIONAL
COMMISSIONER AND ANOTHER

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Advocate for the Petitioner : Mr. Undre Vikram Shivaji

AGP for Respondent/State : Mr. V.S. Badakh

Advocate for Respondent no.2 : Mr.Bhise Bhausahab B.

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CORAM : ROHIT W. JOSHI, J.

DATED : 18th June, 2025

PER COURT :

1. Statutory Appeal preferred under Rule 12 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 came to be dismissed in default by the Appellate Authority namely the Additional Commissioner, Chhatrapati Sambhajinagar, vide order dated 10.10.2022. The petitioner filed application for restoration of the appeal on 9th October, 2023, which came to be rejected vide order dated 18.07.2024. The learned AGP and learned counsel for respondent no.2 contended that there is no provision in the Rules for restoration of the appeal. The learned counsel for the petitioner has not pointed out any provision enabling the authority to restore appeal dismissed in default.

2. As has been held in the matter of ***Rajeev Hitendra Pathak and others Vs. Achyut Kashinath Karekar and another: M.O.H. Leathers Vs. United Commercial Bank*** reported in ***(2011) 9 SCC 541***, in absence of express provision for restoration, the authority dismissing the proceeding in default does not have jurisdiction to restore the same.

3. The said judgment arises out of provisions of the Consumer Protection Act. Earlier there was diversion with respect to power of State Commission to restore matters dismissed in default and to set aside *ex parte* orders. Whereas, in case of ***Jyotsana Arvindkumar Shah and others Vs. Bombay Hospital Trust*** reported in ***1999 (4) SCC 325***, it was held that such power cannot be exercised in the absence of express enabling provision, in the subsequent judgment in the matter of ***New India Assurance Co. Ltd., Vs. R. Srinivasan*** reported in ***2000 (3) SCC 242***, it was held that power to restore a proceeding dismissed in default and to set aside *ex parte* orders is inherent power. This diversion of opinion was noticed in the matter of ***Rajeev Hitendra Pathan and others Vs. Achyut Kashinath Karekar and another*** reported in ***2007 (7) SCC 667*** and the matter was referred to a Larger Bench. The reference is answered holding that the earlier view that the power to restore proceeding dismissed in default and to set aside *ex parte* orders must be expressly provided is upheld. While answering the reference, in paragraph no.34, it is held as under :-

"On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the Statute and derive their power from the express provisions of the Statute. The District Forums and the State Commissions have not been given any power to set aside ex prate orders and power of review and the powers which have not been expressly given by the Statute cannot be exercised."

4. In view of the aforesaid legal position, it needs to be held that in the absence of enabling provision, the Additional Commissioner will not have jurisdiction to restore appeal dismissed in default.

5. In view of the above, the order passed by the appellate authority refusing to restore the appeal does not warrant interference.

6. Perusal of Rule 15 of the said Rules will indicate that every order passed by the appellate authority is revisable before the State Government. It will be open for the petitioner to avail of the said alternate remedy to challenge the order dated 10.10.2022 dismissing the appeal in default. The petition is disposed of granting liberty to the petitioner to avail of the said alternate remedy, if he so desires.

7. Time spent in prosecution of the present petition shall be

excluded while computing the period of limitation for filing revision.

[ROHIT W. JOSHI]
JUDGE

sga/