



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

WRIT PETITION NO. 11357 OF 2024

Pratik Bhagwan Patil

VERSUS

The State Of Maharashtra Through Principal Secretary And Others

Mr. D. K. Rajput, Advocate for Petitioner

Mr. P. D. Suryawanshi, Advocate for Respondents/Zilla Parishad

Mr. S. N. Kendre, AGP for Respondent Nos. 1 and 2/State

CORAM : R. M. JOSHI, J.

DATE : 01st April, 2025

PER COURT :-

1. This petition takes exception to the order dated 09.07.2024 passed by the Additional Divisional Commissioner, Chatrapati Sambhaji Nagar in Appeal 2022/ZP/Appeal No. 1/CR-86 wherein delay caused in filing restoration application came to be rejected.

2. Learned counsel for petitioner submits that the petitioner is dismissed employee. He preferred appeal before the Additional Divisional Commissioner under the Provisions of Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964. The said appeal was filed in time. However as the counsel for the petitioner did not inform about the progress of the proceedings, ultimately, the said appeal came to be dismissed

by order dated 14.06.2023. Again, petitioner was advised to prefer the Second Appeal. Ultimately, when it was found by the petitioner that it was open for him to move an application before the Appellate Authority for restoration of the appeal, appeal came to be filed after the period of 117 days. The Additional Divisional Commissioner has refused to entertain the said application on the ground that there is no explanation provided by the petitioner therefor which according to him is erroneous finding. He also submits that the petitioner was perusing wrong remedy before the forum which has resulted into causing delay. According to him and the facts of the case, the delay is satisfactorily explained and hence, deserves to be accepted.

3. Learned counsel for contesting respondents vehemently opposed the petition on the ground that the party who has not filed the proceedings within a period of limitation, cannot be permitted to take advantage of his own wrong.

4. There is no dispute about the fact that the order of dismissal issued against the petitioner dated 13.01.2022 was challenged by filing Appeal 2022/ZP/Appeal No. 1/CR-86 within a period of limitation. This indicates that petitioner was always serious in taking exception to the order of dismissal and had initiated the proceedings in time. There is no denial of the fact that the

petitioner filed this appeal through Advocate. It is his case that for want of knowledge and information from the Advocate, said proceeding was not attended and resulted into dismissal thereof. From the application for condonation of delay, it is clear that the petitioner has pursued wrong remedy and which is sole reason for causing of delay in preferring application for restoration. Thus, this is not the case, wherever there is no sufficient explanation/reason provided for condonation of delay.

5. Thus, petitioner has given sufficient reason for condonation of delay and in the facts of the case, no malafides can be attributed against the petitioner for not preferring the said application in time.

6. In view of this, impugned order cannot sustain and hence, set aside. Application for condonation of delay stands allowed. Additional Divisional Commissioner to register the appeal preferred by petitioner and decide the same in accordance with law on merits within a period of 90 days.

(R. M. JOSHI, J.)

bsj