

ORIGINAL APPLICATION NO. 696 OF 2024
(Shaikh S. Mohoddin Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri S.B. Patil, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities, are present.

2. At the request of learned P.O., S.O. to 02.08.2024 for filing affidavit in reply, if any.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

ORIGINAL APPLICATION NO. 679 OF 2024
(Kaveri V. Landge Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri Joslyn A. Menezes, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities, are present.

Shri S.B. Mene, learned counsel for respondent No.4 is **absent**.

2. Learned P.O. submits affidavit in reply on behalf of respondent No.3. The same is taken on record and copy thereof is given to other side.

3. Learned P.O. submits that the respondent Nos. 1 & 2 are adopting the affidavit in reply of respondent No.3.

4. List the matter for filing affidavit in rejoinder, if any and for filing reply of respondent No.4 on 09.08.2024.

MEMBER (J)

ORIGINAL APPLICATION NO. 130 OF 2024
(Madhukar J. Rokade & Ors. Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri H.P. Joshi, learned counsel for the applicants and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities, are present.

2. Learned P.O. submits affidavit in reply on behalf of respondent Nos. 2 & 3. The same is taken on record and copy thereof is given to other side.

3. Learned P.O. submits that the respondent No.1 is adopting the affidavit in reply filed on behalf of respondent Nos. 2 & 3.

4. List the matter for filing affidavit in rejoinder, if and for admission hearing on 30.08.2024.

MEMBER (J)

M.A.NO. 03/2024 IN O.A.NO. 1973/2023
(Dr. Shilpa N. Kulkarni Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri S.D. Joshi, learned counsel for the applicant and Smt. R.S. Deshmukh, learned Presenting Officer for the respondent authorities, are present.

Shri Kiran Jadhavar, learned counsel for respondent No.4, is **absent**.

2. At the request of learned P.O., S.O. to 19.08.2024 for filing affidavit in reply to M.A.

MEMBER (J)

ORIGINAL APPLICATION NO. 238 OF 2022
(Rajabai R. Kawadikar Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri S.D. Joshi, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities, are present.

2. At the request of learned P.O., S.O. to 19.08.2024 for hearing.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

ORIGINAL APPLICATION NO. 959 OF 2023
(Dr. Deepali A. Gavhane-Katte Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri A.D. Gadekar, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities, are present.

2. At the request of learned P.O., S.O. to 20.08.2024 for filing affidavit in reply on behalf of respondents.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

ORIGINAL APPLICATION NO. 422 OF 2024
(Ashok B. Markad Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri A.D. Gadekar, learned counsel for the applicant and Smt. R.S. Deshmukh, learned Presenting Officer for the respondent authorities, are present.

2. At the request of learned P.O., S.O. to 30.08.2024 for filing affidavit in reply on behalf of respondents.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

**ORIGINAL APPLICATION NO. 02 OF 2021
(Kiran S. Pawar Vs. State of Maharashtra & Ors.)**

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri S.G. Kulkarni, learned counsel holding for Shri A.S. Deshpande, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities, are present.

2. At the request of learned counsel for the applicant, S.O. to 22.08.2024.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

ORIGINAL APPLICATION NO. 156 OF 2023
(Anand Bansilal Karnawat Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Heard Shri Ganesh L. Solanke, learned counsel holding for Shri S.B. Solanke, learned counsel for the applicant and Smt. R.S. Deshmukh, learned Presenting Officer for the respondent authorities.

2. By way of filing this Original Application the applicant is challenging his transfer order.

3. Learned counsel for the applicant submits that during pendency of this Original Application the applicant came to be retired in the month of November, 2023. Learned counsel submits that this Original Application is now infructuous.

4. In view of above submissions and since the applicant is now retired, nothing survives for further consideration in this Original Application. The Original Application is accordingly disposed of as become instructions. No order as to costs.

MEMBER (J)

ORIGINAL APPLICATION NO. 786 OF 2024
(Raghunath B. Jadhav Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Heard Shri S.S. Tandale, learned counsel holding for Shri B.R. Kedar, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities.

2. Issue notices to respondents, returnable on 26.08.2024.
3. Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.
4. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.
5. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

//2// O.A.No. 786/2024

6. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

7. S.O. to 26.08.2024.

8. Steno copy and Hamdast is allowed to both parties.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

**M.A.ST.NO. 840/2024 IN M.A.ST.NO. 841/2024
IN O.A.ST. 427/2024
(Shivaji G. Shitole & Ors. Vs. State of Maharashtra & Ors.)**

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Smt. Manisha Deshmukh, learned counsel for the applicants, is **absent**. Smt. R.S. Deshmukh, learned Presenting Officer for the respondent authorities, is present.

2. Even though the circulation is sought, none present for the applicant.
3. The office has raised an objection that the present Misc. Application for sue jointly is not maintainable.
4. In view of above, S.O. to 13.09.2024.

MEMBER (J)

ORIGINAL APPLICATION NO. 578 OF 2016
(C.H. Dongankar Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Heard Smt. Suchita Dhongde, learned counsel for the applicant, Shri D.M. Hange, learned Presenting Officer for the respondent authorities and Shri D.T. Devane, learned counsel for respondent Nos. 2 to 5.

2. The present matter is reserved for order.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

ORIGINAL APPLICATION NO. 795 OF 2022
(Dr. Vishwanath S. Biradar Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri A.D. Sugdare, learned counsel holding for Shri V.P. Golewar, learned counsel for the applicant and Smt. R.S. Deshmukh, learned Presenting Officer for the respondent authorities, are present.

2. This is a part heard matter.
3. Learned P.O. seeks time to file reply to the amended O.A. Time granted.
4. S.O. to 14.08.2024 for further hearing.

MEMBER (J)

ORIGINAL APPLICATION NO. 751 OF 2023
(Sakharam M. Ghodke Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri V.P. Savant, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities, are present.

2. Arguments are concluded.

3. S.O. to 26.08.2024 for production of citations by the parties.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

M.A.NO. 194/2022 IN O.A.ST.NO. 616/2022
(Sunil D. Kakade Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Heard Shri R.A. Joshi, learned counsel for the applicant and Smt. R.S. Deshmukh, learned Presenting Officer for the respondent authorities.

2. The Misc. Application No. 194/2022 in O.A.St.No. 616/2022 is hereby rejected for the reasons to follow.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

M.A.NO. 379/2023 IN O.A.NO. 97/2020
(Tukaram V. Sanap Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Heard Shri M.R. Andhale, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities.

2. Learned counsel for the applicant submits that the applicant has already challenged the order dated 20.12.2019 (Annexure -2) in the O.A.No. 97 of 2020, which is pending.

3. By way of filing the amendment application along with delay condonation application, the applicant seeks to challenge the order dated 28.12.2017. However, both the orders i.e. 20.12.2019 and 28.12.2017 are the same. So there is no reason for the applicant to challenge the earlier order. It would suffice the purpose if the order dated 20.12.2019 is challenged in the Original Application.

4. Learned counsel for the applicant thus does not want to press the Misc. Application seeking condonation of delay along with application for

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amendment. Both the Misc. Applications are accordingly disposed of as not pressed. No order as to costs.

5. List the Original Application for final hearing on 18.09.2024.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

**M.A.NO. 324 OF 2024 IN O.A.NO. 116 OF 2017
(Dr. Dhanraj W. Kendre Vs. State of Maharashtra & Ors.)**

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Heard Shri S.B. Solanke, learned counsel holding for Shri V.V. Deshmukh, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities.

2. By filing this Misc. Application the applicant is seeking restoration of O.A.No. 116 of 2017, which came to be dismissed in default on 02.07.2024.

3. Learned counsel for the applicant submits that due to some personal difficulty, he could not remain present before this Tribunal when the matter was called out on 02.07.2024 and also could not make an alternate arrangement to argue the matter. The absence of the applicant is not intentional or deliberate.

4. In view of same and for the reasons stated in the application, the Misc. Application deserves to be

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allowed. Hence, the following order:-

ORDER

The Misc. Application No. 324/2024 is allowed in following terms:-

- (A) The order dated 02.07.2024 passed by this Tribunal in O.A.No. 116/2017 is hereby recalled subject to costs of Rs. Two/- (Two Hundred only). The amount of costs to be paid to the Bar Association of this Tribunal and after depositing the said amount, the applicant shall produce the receipt before the office of this Tribunal.
- (C) Upon satisfaction of the costs as above, the O.A.No. 116/2017 be restored to its file.
- (D) The Misc. Application No. 324/2024 is accordingly disposed of.
- (E) The Original Application to come up on board on 29.08.2024 for final hearing.

MEMBER (J)

ORIGINAL APPLICATION NO. 174 OF 2017
(Dr. Madhav F. Jadhav Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri Saket Joshi, learned counsel holding for Shri A.S. Deshmukh, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities, are present.

2. At the request of learned P.O., S.O. to 08.08.2024 for final hearing.

MEMBER (J)

ORIGINAL APPLICATION NO. 632 OF 2021
(Harishchandra G. Lohkare Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri P.D. Suryawanshi, learned counsel for the applicant and Smt. R.S. Deshmukh, learned Presenting Officer for the respondent authorities, are present.

2. In response to the order dated 25.01.2024 learned P.O. has placed on record copies of certain communications. However, the learned P.O. seeks time to file additional affidavit in reply. Time granted.

3. Learned counsel for the applicants submits that the copies of the said communications are received by him today itself before this Tribunal. Learned counsel for the applicant also seeks time to go through the said communications. Time granted.

4. S.O. to 13.08.2024 for hearing.

MEMBER (J)

**ORIGINAL APPLICATION NO. 644 OF 2021
(Dilip B. Wani Vs. State of Maharashtra & Ors.)**

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Smt. Suchita A. Dhongde, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities, are present.

2. S.O. to 20.09.2024 for hearing.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

ORIGINAL APPLICATION NO. 913 OF 2022
(Varsha V. Gaikwad Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri V.B. Wagh, learned counsel for the applicant, Smt. R.S. Deshmukh, learned Presenting Officer for the respondent authorities and Shri D.T. Devane, learned counsel for respondent Nos. 3 & 4, are present.

2. Learned P.O. seeks leave to file affidavit in reply on behalf of respondent Nos. 1 & 2 for which the learned counsel for the applicant has no objection. Leave granted. The reply is accepted and copy thereof is already given to other side.

3. Learned counsel appearing for respondent Nos. 3 & 4 submits that the respondent Nos. 3 & 4 are adopting the affidavit in reply filed on behalf of respondent Nos. 1 & 2.

4. List the matter for filing affidavit in rejoinder, if any and for admission hearing on 27.08.2024.

MEMBER (J)

ORIGINAL APPLICATION NO. 54 OF 2023
(Sayyed Shafi Sayyed Lal & Ors. Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri P.V. Suryawanshi, learned counsel for the applicants and Smt. R.S. Deshmukh, learned Presenting Officer for the respondent authorities, are present.

2. In compliance with the order dated 14.03.2024 learned P.O. has filed the affidavit of respondent No.4 on 16.07.2024. The paragraph No. 8 of the said reply is important which is reproduced herein below:-

“8. I say and submit that, as per this communication office of the Director General of Police, Mumbai has communicated to our office on dated 04/12/2023 by sending copy of Government Home Department letter PAA 0312/ /29/11/2023 and calculate the arrears of the remuneration of the part time sweepers is court cases. As per this, our office send a table format of the arrears of remuneration.

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O.A. 54/2023

That, the Director General of Police, Mumbai i.e. respondent No.2 also on dated 02/04/2024 directed to respondent no.4 to send information in two types:

- 1) या कार्यालयाकडून शासनास सादर करण्यात आलेले दि. 08/12/2023 च्या प्रस्तावासोबतच्या विविरणपत्रातील नमूद त्यांच्या कार्यालयातील/आस्थापनेवरील सर्व अंशकालीन सफाई कामगारांच्या वेतन/मानधनाच्या थकबाकीची रक्कम समाविष्ट आहे काय?
- 2) असल्यास सादर अंशकालीन कामगाराव्यतिरिक्त इतर अंशकालीन सफाई कामगारांची मानधनाच्या थकबाकीची रक्कम समाविष्ट करणे बाकी नसल्याबाबत प्रमाणपत्र सादर करावे.

*I further submit that, as per letter dated 02/04/2024, 12/06/2024 of the Director General of Police, Mumbai our office communicated on dated 15/04/2024, 13/06/2024 and 03.07.2024 about above mentioned two points/information forwarded to Government of all part time sweepers in their offices or establishment mentioned in proposal dated 08/12/2023. The copies of aforesaid communications are annexed herewith and marked as **ANNEXURE R-12 to R-15***

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O.A. 54/2023

3. It thus appears that though the proposal has been submitted to respondent No.1 in the format as directed, however, the respondent No.1–Government has not passed any effective order on the said proposal yet.

4. Learned P.O. is directed to take specific instructions in this regard from the respondent No.1 and in case if the respondent No.1 fails to give the instructions to the learned P.O. as directed, the respondent No.1 or his authorized representative shall remain present before this Tribunal on the next date.

5. Learned P.O. is directed to communicate this order to the respondent No.1 forthwith.

6. Steno copy and hamdast is allowed to learned P.O. to communicate this order to respondent No.1.

7. S.O. to 24.08.2024 for hearing.

MEMBER (J)

ORIGINAL APPLICATION NO. 170 OF 2023
(Balkrushna M. Joshi Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri R.A. Joshi, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities, are present.

2. S.O. to 29.08.2024 for hearing.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

ORIGINAL APPLICATION NO. 197 OF 2023
(Dnyanoba L. Dahiphale Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri S.B. Solanke, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities, are present.

2. At the request of learned counsel for the applicant, time granted for filing affidavit in rejoinder, if any.

3. S.O. to 30.08.2024 for filing rejoinder, if any and for hearing.

MEMBER (J)

ORIGINAL APPLICATION NO. 473 OF 2023
(Pragati R. Chondekar Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri Ajay S. Deshpande, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities, are present.

Shri A.S. Shelke, learned counsel for respondent No.3, is **absent**.

2. Learned counsel for the applicant on instructions submits that the applicant has already joined the place of transfer. This Tribunal has also observed that the purpose of said transfer is now over.

3. Learned Presenting Officer submits that in view of ensuing Assembly Election of the State of Maharashtra, the same issue about the home district of the applicant would be again crop up.

4. Learned counsel for the applicant on instructions in this regard submits that the transfer of the applicant may be considered in the annual general transfer of the year 2025 for Aurangabad.

//2// O.A. 473/2023

5. Learned P.O. seeks time to take specific instructions in this regard. Time granted.
6. S.O. to 19.08.2024 for hearing.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

ORIGINAL APPLICATION NO. 900 OF 2023
(Ankush T. Patil Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri B.S. Deshmukh, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities, are present.

Shri S.P. Sartale, learned counsel for respondent No.5, is **absent**.

2. Learned counsel for the applicant seeks time to file affidavit in rejoinder. Time granted.
3. Learned P.O. is directed to call the original record and proceedings on the next date.
4. S.O. to 22.08.2024 for hearing.

MEMBER (J)

ORIGINAL APPLICATION NO. 1031 OF 2023
(Dr. Pradeep M. Thakkarwad Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri S.S. Dambe, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities, are present.

2. It appears that the order dated 02.07.2024 passed by this Tribunal is yet not complied with and the learned P.O. though communicated this order to the respondents, there are no further instructions.

3. In view of above, issue notice to respondent No.1 as to why contempt proceedings should not be initiated.

4. S.O. to 14.08.2024 for hearing.

MEMBER (J)

**ORIGINAL APPLICATION NO. 1044 OF 2023
(Hussaini A. Samra Vs. State of Maharashtra & Ors.)**

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri V.B. Wagh, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities, are present.

2. At the request of learned P.O., S.O. to 20.08.2024 for hearing.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

ORIGINAL APPLICATION NO. 33 OF 2024
(Mayuresh M. Kendre Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri S.S. Tandale, learned counsel holding for Shri B.R. Kedar, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities, are present.

2. It appears that the order dated 02.07.2024 is not complied with despite the fact that the learned P.O. has communicated the said order dated 02.07.2024. On the other hand the learned P.O. has received the communication dated 30.07.2024 wherein it is informed by the Government that on 30.07.2024 the departmental charge-sheet has been served on the applicant and certain time is required to place the suspension case of the applicant before the review committee.

3. Even if belatedly the departmental charge-sheet has been served upon the applicant, however, the fact remains that the ratio laid down by the Hon'ble Apex court in the case **Ajay Kumar**

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O.A. 33/2024

Choudhary Vs. Union of India & Anr. has not been followed. Even for more than one year the suspension case of the applicant is not placed before the review committee. Despite the order dated 02.07.2024, the respondent No.1 has not reinstated the applicant by revoking the suspension order. Needless to state here that even after revocation of suspension order departmental enquiry can be proceeded with.

4. In view of above, issue notice to respondent No.1 as to why contempt proceedings should not be initiated against him.

5. S.O. to 14.08.2024 for hearing.

MEMBER (J)

SAS ORAL ORDER 31.07.2024

ORIGINAL APPLICATION NO. 302 OF 2024
(Seema V. Jadhav Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Heard Shri Sunil P. Koli, learned counsel for the applicant, Smt. R.S. Deshmukh, learned Presenting Officer for the respondent authorities and Shri V.P. Kadam, learned counsel for respondent No.4.

2. I have heard learned counsel appearing for the parties for some time.

3. Learned P.O. is directed to call the original record and proceedings and also take instructions about the Circulars and Government Resolutions issued by the Government in this regard determining the criteria to consider the residence of particular person.

4. S.O. to 21.08.2024 for hearing.

MEMBER (J)

ORIGINAL APPLICATION NO. 451 OF 2024
(Madhuri L. Shelke Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Shri A.V. Thombre, learned counsel holding for Shri S.S. Thombre, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities, are present.

2. Learned P.O. submits that the respondent Nos. 1,2 & 5 are adopting the affidavit in reply filed on behalf of respondent Nos. 3 & 4.
3. Learned counsel for the applicant seeks time to file affidavit in rejoinder. Time granted.
4. S.O. to 20.08.2024.

MEMBER (J)

ORIGINAL APPLICATION NO. 570 OF 2024
(Pranjal P. Patil Vs. State of Maharashtra & Ors.)

WITH

ORIGINAL APPLICATION NO. 571 OF 2024
(Navnath P. Sonawane Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Heard Shri A.S. Deshmukh, learned counsel for the applicants in both the O.As. and Shri Ajay Deshpande, learned special counsel for the respondent authorities in both the O.As.

2. I have heard learned counsel for the applicants and learned special counsel for some time.

3. Though the learned special counsel Shri Ajay Deshpande has produced the original record, however, he himself has not gone through the record. Similarly learned counsel for the applicants has not received the copy of said record.

4. S.O. to 07.08.2024 for above.

MEMBER (J)

ORIGINAL APPLICATION NO. 773 OF 2024
(Pawan Kisanrao Shelar Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORAL ORDER :

Heard Shri V.B. Wagh, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities.

2. Learned counsel for the applicant submits that the purpose of filing this Original Application will be served if the directions are given to the respondent Nos. 1 & 2 in terms of prayer clause 'B'.

3. Learned counsel for the applicant submits that the applicant came to be suspended by order dated 26.03.2024. However, till date no departmental charge-sheet has been served on him nor the suspension case of the applicant is placed before the review committee. The applicant seeks directions to respondent Nos. 1 & 2 to place the suspension case of the applicant before the review committee formed in the office of respondent No.2 and take the decision about revocation of suspension order forthwith.

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4. Learned Presenting Officer submits that the appropriate order may be passed.

6. In case the suspension order dated 26.03.2024 as against the applicant is not reviewed by the committee in terms of the G.R. dated 09.07.2019 so also the ratio laid down by the Hon'ble Apex Court in a case **Ajay Kumar Choudhary Vs. Union of India & Anr.**, the respondent Nos. 1 & 2 shall place the suspension case of the applicant before the review committee as expeditiously as possible preferably within the period of three weeks from the date of this order and after placing the suspension case of the application before the review committee, the review committee shall decide the same as expeditiously as possible.

7. In view of above, this Original Application stands disposed of. No order as to costs.

MEMBER (J)

O.A.NOS. 603 TO 609 & 780 ALL OF 2017
(Jaideep Ambadas Limbale & Ors. Vs. The State of Maharashtra
& Ors.)

CORAM : Justice Shri P.R. Bora, Vice Chairman
AND
Shri Vinay Kargaonkar, Member (A)

DATE : 31.07.2024

ORAL ORDER :

Shri Avinash S. Deshmukh, learned counsel for the applicants and Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities in all these matters, are present.

2. S.O. to 26.08.2024. Interim relief granted earlier to continue till then.

MEMBER (A)

VICE CHAIRMAN

ORAL ORDER 31.07.2024-HDD

O.A.NOS. 107, 491, 493, 572, 573, 474 & 575 ALL OF 2023

(Sanjay V. Nagamwad & Ors. Vs. The State of Maharashtra & Ors.)

**CORAM : Justice Shri P.R. Bora, Vice Chairman
AND**

Shri Vinay Kargaonkar, Member (A)

DATE : 31.07.2024

ORAL ORDER :

Shri Dhananjay Chinchole, learned counsel holding for Shri J.J. Patil, learned counsel for the applicants and Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for the respondent authorities in all these matters, are present.

2. Learned Chief Presenting Officer has filed affidavit in reply on behalf of respondent No. 3 in O.A. No. 575/2023 and the same is taken on record and copy thereof has been served on the other side.

3. S.O. to 22.08.2024.

MEMBER (A)

VICE CHAIRMAN

ORAL ORDER 31.07.2024-HDD

ORIGINAL APPLICATION NO. 156 OF 2024
(Rajesh D. Kale Vs. The State of Maharashtra & Ors.)

CORAM : Justice Shri P.R. Bora, Vice Chairman
AND
Shri Vinay Kargaonkar, Member (A)

DATE : 31.07.2024

ORAL ORDER :

Shri M.R. Kulkarni, learned counsel for the applicant and Shri V.G. Pingle, learned Presenting Officer for the respondent authorities, are present.

2. Learned Presenting Officer has filed affidavit in reply on behalf of respondent No. 3 and the same is taken on record and copy thereof has been served on the learned counsel for the applicant.

3. S.O. to 29.08.2024.

MEMBER (A)

VICE CHAIRMAN

ORIGINAL APPLICATION NO. 425 OF 2024
(Urmila B. Chothe Vs. The State of Maharashtra & Ors.)

CORAM : Justice Shri P.R. Bora, Vice Chairman
AND
Shri Vinay Kargaonkar, Member (A)

DATE : 31.07.2024

ORAL ORDER :

Shri V.B. Wagh, learned counsel for the applicant and Shri V.G. Pingle, learned Presenting Officer for the respondent authorities, are present.

2. Learned Presenting Officer has filed affidavit in reply on behalf of respondent No. 1 and the same is taken on record and copy thereof has been served on the learned counsel for the applicant.

3. S.O. to 26.08.2024. The interim relief granted earlier to continue till then.

MEMBER (A)

VICE CHAIRMAN

ORIGINAL APPLICATION NO. 426 OF 2020
(Sunil S. Pagare Vs. The State of Maharashtra & Ors.)

CORAM : Justice Shri P.R. Bora, Vice Chairman
AND
Shri Vinay Kargaonkar, Member (A)

DATE : 31.07.2024

ORAL ORDER :

Shri Avinash S. Deshmukh, learned counsel for the applicant and Shri Mahesh B. Bharaswadkar, learned Chief Presenting Officer for the respondent authorities, are present.

2. S.O. to 20.08.2024. The interim relief granted earlier to continue till then.

MEMBER (A)

VICE CHAIRMAN

ORIGINAL APPLICATION NO. 427 OF 2020
(Rahul B. Choudhary Vs. The State of Maharashtra & Ors.)

CORAM : Justice Shri P.R. Bora, Vice Chairman
AND
Shri Vinay Kargaonkar, Member (A)

DATE : 31.07.2024

ORAL ORDER :

Shri Avinash S. Deshmukh, learned counsel for the applicant and Shri V.G. Pingle, learned Presenting Officer for the respondent authorities, are present.

2. S.O. to 20.08.2024. The interim relief granted earlier to continue till then.

MEMBER (A)

VICE CHAIRMAN

ORAL ORDER 31.07.2024-HDD

ORIGINAL APPLICATION NO. 28 OF 2023
(Vijay R. Sarole Vs. The State of Maharashtra & Ors.)

CORAM : Justice Shri P.R. Bora, Vice Chairman
AND
Shri Vinay Kargaonkar, Member (A)

DATE : 31.07.2024

ORAL ORDER :

Shri P.G. Suryawanshi, learned counsel holding for Shri S.B. Talekar, learned counsel for the applicant and Shri V.G. Pingle, learned Chief Presenting Officer for the respondent authorities, are present.

Shri K.F. Shingare, learned counsel for respondent No. 3 (**absent**).

2. S.O. to 21.08.2024. The interim relief granted earlier to continue till then.

MEMBER (A)

VICE CHAIRMAN

ORIGINAL APPLICATION NO. 209 OF 2024
(Gajanan A. Tupe Vs. The State of Maharashtra & Ors.)

CORAM : Justice Shri P.R. Bora, Vice Chairman
AND
Shri Vinay Kargaonkar, Member (A)

DATE : 31.07.2024

ORAL ORDER :

Shri A.B. Rajkar, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities, are present.

2. Learned Presenting Officer has filed affidavit in reply on behalf of respondent Nos. 1 & 3 and the same is taken on record and copy thereof has been served on the other side.

3. S.O. to 22.08.2024.

MEMBER (A)

VICE CHAIRMAN

M.A.NO. 328/2024 IN O.A.NO. 308/2024
(Swamidas V. Chobe Vs. The State of Maharashtra & Ors.)

CORAM : Justice Shri P.R. Bora, Vice Chairman
AND
Shri Vinay Kargaonkar, Member (A)

DATE : 31.07.2024

ORAL ORDER :

Shri V.B. Wagh, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for the respondent authorities, are present.

2. Learned Presenting Officer has filed affidavit in reply on behalf of respondent No. 1 in O.A. No. 308/2024 and the same is taken on record and copy thereof has been served on the other side.

3. S.O. to 08.08.2024.

MEMBER (A)

VICE CHAIRMAN

ORAL ORDER 31.07.2024-HDD

M.A. No. 194/2022 in O.A. St. No. 616/2022
(Sumit Datta Kakade Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

ORDER

Heard Shri R.A. Joshi, learned counsel for the applicant and Smt. Resha Deshmukh, learned Presenting Officer for the respondent authorities.

2. There is a delay of 08 years and 22 days caused in filing the accompanying Original Application.

3. Learned counsel for the applicant submits that father of the applicant died while in service on 29.07.2010. He was working on the post of Forest Guard under respondent No. 3. He left behind mother of the applicant, applicant himself and two daughters as his legal heirs. The applicant was minor at the time of death of his father. The G.R. 11.09.1996 prescribes that the legal heirs of deceased Government servant are permitted to apply on compassionate ground after attaining the age of majority, in case the heir was minor at the time of death of Government servant. On 03.01.2012, the applicant has submitted an application seeking appointment on compassionate ground. By communication dated 16.01.2012, the

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respondent No. 2 has informed to the applicant that his application seeking appointment on compassionate ground cannot be entertained, as the same has been submitted belatedly.

4. Learned counsel for the applicant submits that being aggrieved by the same the applicant has approached this Tribunal by filing the accompanying Original Application, to which 08 years and 22 days delay has been caused. Learned counsel submits that the relief claimed in the O.A. is not going to affect any third party and refusal of the reliefs on the ground of delay and laches would certainly affect the legal rights of the applicant. The applicant was 18 years old at the time when the order was communicated to him. The applicant was not in a position to understand the implication of the order communicated to him by the department. Learned counsel submits that close relatives of the applicant have asked him to challenge the said communication and as such, the applicant has decided to approach this Tribunal by filing the accompanying Original Application. Learned counsel for the applicant submits that the delay is not intentional or deliberate one and there is no inaction

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on part of the applicant. Learned counsel thus submits that the delay may be condoned.

5. The respondent Nos. 1 to 3 have filed their affidavit in reply thereby resisted the present application seeking condonation of delay. Learned Presenting Officer submits that the applicant has filed Original Application in the year 2022 challenging the order dated 16.01.2012 issued by respondent No. 2. Learned P.O. submits that the delay is required to be counted from 16.01.2012 and the applicant has not explained the delay properly caused in filing the accompanying Original Application. Learned Presenting Officer submits that there is inaction on part of the applicant in not approaching this Tribunal within stipulated period. Learned P.O. submits that there is an inordinate delay caused in filing the accompanying Original Application, for which no satisfactory explanation has been tendered by the applicant. Learned P.O. submits that the present Misc. Application seeking condonation of delay is liable to be dismissed.

6. In a case of **Bichitrananda Behera Vs. State of Orissa and others in Civil Appeal No. /2023(Special Leave Petition (Civil) No. 16238/2017)**, the Hon'ble

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Supreme Court had an occasion to consider the case on the ground of delay and laches especially in service matter. In para No. 21 the Hon'ble Supreme Court quoted earlier view taken in a case of **Union of India V. Tarsem Singh, (2008) 8 SSC 648** and made the following observations :-

“(A) Union of India v Tarsem Singh, (2008) 8 SCC 648:

“To summarise, 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 refixation 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

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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)

(B) Union of India v N Murugesan, (2022) 2 SCC 25:

“Delay, laches and acquiescence

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.

Laches

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

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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.

Acquiescence

24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other.

25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is

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essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis.”

(emphasis supplied)

(C) Chairman, State Bank of India v M J James, (2022) 2 SCC 301:

"36. What is a reasonable time is not to be put in a straitjacket formula or judicially codified in the form of days, etc. as it depends upon the facts and circumstances of each case. A right not exercised for a long time is non-existent. Doctrine of delay and laches as well as acquiescence are applied to non-suit the litigants who approach the court/appellate authorities belatedly without any justifiable explanation for bringing action after unreasonable delay. In the present case, challenge to the order of dismissal from service by way of appeal was after four years and five months, which is certainly highly belated and beyond justifiable time. Without satisfactory explanation justifying the delay, it is difficult to hold that the appeal was preferred within a reasonable time. Pertinently, the challenge was primarily on the ground that the respondent was not allowed to be represented by a representative of his choice. The respondent knew that even if he were to succeed on this ground, as has happened in the writ proceedings, fresh inquiry would not be prohibited as finality is not attached unless there is a legal or statutory bar, an aspect which has been also noticed in the impugned judgment. This is highlighted to show the prejudice caused to the appellants by the delayed challenge. We would, subsequently, examine the question of acquiescence and its judicial effect in the context of the present case. Xxx

38. In *Ram Chand v. Union of India* [*Ram Chand v. Union of India*, (1994) 1 SCC 44] and *State of U.P. v. Manohar* [*State of U.P. v. Manohar*, (2005) 2 SCC 126] this Court observed that if the statutory authority has not performed its duty within a reasonable time, it cannot justify the same by taking the plea that the person who

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has been deprived of his rights has not approached the appropriate forum for relief. If a statutory authority does not pass any orders and thereby fails to comply with the statutory mandate within reasonable time, they normally should not be permitted to take the defence of laches and delay. If at all, in such cases, the delay furnishes a cause of action, which in some cases as elucidated in Union of India v. Tarsem Singh [Union of India v. Tarsem Singh, (2008) 8 SCC 648 : (2008) 2 SCC (L&S) 765] may be continuing cause of action. The State being a virtuous litigant should meet the genuine claims and not deny them for want of action on their part. However, this general principle would not apply when, on consideration of the facts, the court concludes that the respondent had abandoned his rights, which may be either express or implied from his conduct. Abandonment implies intentional act to acknowledge, as has been held in para 6 of Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. [Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409 : 1979 SCC (Tax) 144] Applying this principle of acquiescence to the precept of delay and laches, this Court in U.P. Jal Nigam v. Jaswant Singh [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] after referring to several judgments, has accepted the following elucidation in Halsbury's Laws of England : (Jaswant Singh case [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] , SCC pp. 470-71, paras 12-13)

“12. The statement of law has also been summarised in Halsbury's Laws of England, Para 911, p. 395 as follows:

‘In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and

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the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.'

13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

39. Before proceeding further, it is important to clarify distinction between "acquiescence" and "delay and laches". Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation

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is completed, which conduct reflects his assent or accord. He cannot afterwards complain. [See Prabhakar v. Sericulture Deptt., (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149. Also, see Gobinda Ramanuj Das Mohanta v. Ram Charan Das, 1925 SCC OnLine Cal 30 : AIR 1925 Cal 1107] In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. [See Krishan Dev v. Ram Piari, 1964 SCC OnLine HP 5 : AIR 1964 HP 34] Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. [See "Introduction", U.N. Mitra, Tagore Law Lectures — Law of Limitation and Prescription, Vol. I, 14th Edn., 2016.] However, acquiescence will not apply if lapse of time is of no importance or consequence.

40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331 : (1992) 194 ITR 584] Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation."

(emphasis supplied)"

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7. As observed by the Hon'ble Apex Court, 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.

8. In the instant case, the relief claimed in the Original Application is in respect of compassionate appointment, which issue would in no way affect the settled rights of third party, even if it is reopened by

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condoning the delay. Though there is an inordinate delay caused in approaching this Tribunal, however, it is well settled that in case of both i.e. delay and laches destroy the remedy but not the right.

9. In the facts of the present case, the applicant was young person. After death of his father when he was 18 years old, he was informed that his application for appointment on compassionate appointment cannot be entertained on account of delay. The applicant has filed the application for appointment on compassionate ground after attaining the age of superannuation. Though there is a considerable delay in approaching this Tribunal to challenge the order passed by the department, however, even the issue is belatedly reopened that would not affect the rights of third party. I am thus inclined to condone the delay.

10. Initially it was pronounced on Dias that the present Misc. Application is liable to be rejected. However considering the latest view of the Hon'ble Apex Court in a case of **Bichitrananda Behera Vs. State of Orissa and others** (cited supra), I am inclined

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to condone the delay caused in filing the accompanying Original Application subject to some costs by the applicant. Hence, the following order :-

ORDER

- (i) The Misc. Application No. 194/2022 is hereby allowed.
- (ii) The delay of 08 years and 22 days caused in filing the accompanying O.A. under Section 19 of the Administrative Tribunals Act, 1985 is hereby condoned, subject to payment of costs of Rs. 1000/- (One Thousand Only) to be paid by the applicant. The amount of costs shall be paid to the M.A.T. Bar Association within a period of one month from the date of this order.
- (iii) Upon satisfaction of the costs as above, the accompanying O.A. be registered and numbered by taking in to account other office objection/s, if any.
- (iv) The M.A. accordingly disposed of.

MEMBER (J)

O.A. St. No. 616/2022

(Sumit Datta Kakade Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 31.07.2024

O R D E R

Heard Shri R.A. Joshi, learned counsel for the applicant and Smt. Resha Deshmukh, learned Presenting Officer for the respondent authorities.

2. After registration, issue notices to respondents, returnable on 23.10.2024.

3. Tribunal may take the case for final disposal at once and separate notice for final disposal shall not be issued.

4. Applicant is authorized and directed to serve on respondent/s intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of the case. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

5. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

6. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.

7. S.O. to 23.10.2024.

8. Steno copy and Hamdast is allowed to both parties.

MEMBER (J)