

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****CIVIL APPLICATION No. 338 of 2021****In ORIGINAL APPLICATION No. 245/2021 (D.B.)**

Ramesh Krushnarao Yewale,
Aged 50 years, Occ. Govt. Servant,
R/o Superintendent Quarter,
Raj Bhawan, Sadar, Nagpur-01.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary of Governor,
Rajbhawan, Mumbai-35.
- 2) The Comptroller of household to the
Government of Maharashtra, Rajbhawan,
Mumbai-35.
- 3) Mr. Mokshavir B. Patil,
Additional Comptroller to Governor Household,
Raj Bhawan, Mumbai-35.

Respondents.

**S/Shri R.V. & N.R. Shiralkar, S.S. Khedkar, Advocates for the
applicant.**

Shri R.R. Shetty, Special Counsel for respondent nos.1&2.

**Shri P.S. Wathore & Mrs. K.P. Wathore, A. Bobade, Advocates for
respondent no.3.**

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Justice M.G. Giratkar,
Member (J).**

Date of Reserving for Judgment : 27th January,2022.

Date of Pronouncement of Judgment : 9th February,2022.

JUDGMENT

Per : Member (J).

(Delivered on this 9th day of February, 2022)

Heard Shri R.V. Shiralkar, learned counsel for the applicant and Shri R.R. Shetty, learned Special Counsel for respondent nos.1&2. None for respondent no.3.

2. This is an application for condonation of delay moved by the applicant on the ground that the applicant came to know about appointment of respondent no.3 when the respondent nos.1&2 have filed their reply.

3. It is submitted that the applicant was appointed as Assistant Garden Supervisor by order dated 14/05/1996. The respondent no.3 was appointed as Assistant Garden Supervisor by order dated 15/2/1998. The respondent nos.1&2 granted promotion / appointment to the respondent no.3 on the post of Garden Superintendent w.e.f. 1/3/2004. The applicant is challenging the promotion / appointment of respondent no.3 on the post of Garden Superintendent. Again the respondent no.3 is promoted on the post of Additional Comptroller to the Governor Household dated 20/5/2020. It is contended by the applicant that in the O.A., the applicant has

challenged the promotion of respondent no.3. He has also claimed deemed date of promotion. As per his contention, he was appointed in the year 1996, whereas, the respondent no.3 was appointed in the year 1998, therefore, the applicant is senior to the respondent no.3. Hence, promotion granted to respondent no.3 on the post of Garden Superintendent is illegal. His further promotion on the post of Additional Comptroller to the Governor Household as per order dated 20/5/2020 is also illegal.

4. It is submitted by the applicant that there was no limitation to claim deemed date of promotion. For the first time, the applicant came to know that the respondent no.3 was appointed on the post of Garden Superintendent w.e.f. 1/3/2004 and therefore he has amended the O.A. and challenged the appointment of respondent no.3. It is contended that for the first time he came to know about appointment after receipt of copy of reply and therefore there is no delay in filing the O.A. The applicant also submitted that he is claiming deemed date of promotion. It is a continuous cause of action. Hence, in view of the Govt. G.R. dated 6/6/2002 there is no limitation prescribed for claiming deemed date of promotion. At last, submitted that if there is any delay in filing the O.A., it be condoned.

5. The application is strongly opposed by the respondent nos.1&2. It is submitted that respondent no.3 was appointed on the

post of Garden Superintendent in the year 2004 since then the applicant not challenged his appointment order, therefore, the O.A. is time barred. Hence, it is liable to be dismissed.

6. Heard Shri R.R. Shetty, learned Special Counsel for respondent nos.1&2. None appeared for respondent no.3. As per the submission of learned Special Counsel, the appointment on the post of Garden Superintendent was made by respondent nos.1&2 in the year 2003. The applicant not challenged the said appointment order, therefore, the O.A. is time barred. The learned counsel has submitted that making several representations will not automatically condone the delay. Hence, the O.A. is liable to be dismissed. In support of his submission pointed out following decisions –

“(i) S.S. Rathore Vs. State of Madhya Pradesh (1989) 4 SCC, Page 582.

(ii) Suneeta Aggarwal Vs. State of Haryana & Ors. (2000 SCC (L&S) page 313).

(iii) State of Bihar & Ors. Vs. Kameshwar Prasad Singh & Ano (2000 SCC (L&S), Page 845).”

7. Shri R.V. Shiralkar, learned counsel for the applicant has submitted the applicant was never informed that the posting of respondent no.3 on the post of Garden Superintendent was fresh

appointment. Before the DPC dated 22-1-2004 / 3-3-2004 willingness of applicant and respondent no.3 were called for promotion of the post of Garden Superintendent. The DPC was held on 22-1-2004 / 3-3-2004, but in the order retrospective effect was given for appointment / promotion of respondent no.3. He was promoted from that date i.e. from 1/3/2004. Thereafter in the year 2020, the applicant and respondent no.3 were called for promotion on the post of Additional Comptroller to the Governor Household. The applicant secured more marks, but wrongly the respondent no.3 is promoted on the said post.

8. The learned counsel R.V. Shiralkar has submitted that there is no limitation provided for claiming deemed date of promotion in view of the G.R. dated 6/6/2002. At last submitted that the cause of action is continuous one there is no delay in filing of O.A. The application is moved for abundant precaution only after the filing of reply.

9. The learned counsel has submitted that the applicant came to know after filing the reply that the posting of respondent no.3 on the post of Garden Superintendent is not by way of promotion, but by way of appointment. The applicant is also challenging the subsequent promotion of respondent no.3 in the year 2020. Moreover

he is also claiming deemed date of promotion. Hence, if any delay, is liable to be condoned.

10. Before deciding the issue of limitation, it will be proper to advert some material facts in the O.A. There is no dispute that the applicant was appointed as Assistant Garden Supervisor on 22/5/1996. The respondent no.3 was appointed as Assistant Garden Supervisor on 15/2/1998, therefore, there is no dispute that the applicant was senior to respondent no.3. In the year 2003, the respondent nos.1&2 issued one letter dated 3/11/2003 to the applicant asking him as to whether he is willing to join at Mumbai on promotion on the post of Garden Superintendent. On 24/11/2003, the applicant informed that due his personal difficulty, he could not join, but on 29/12/2003 he again informed that he is seniormost Assistant Garden Supervisor and therefore he be promoted after the retirement of M.L. Kumbhar.

11. It is contention of the respondents that respondent no.3 shown his willingness and therefore respondent no.3 alongwith others were called for interview and the post was filled by nomination as per the DPC dated 27/1/2004 (signed on 1-3-2004, 3-3-2004).

12. Thereafter, in the year 2020 the respondent no.3 came to be promoted on the post of Additional Comptroller to the Governor

Household. The applicant has challenged both the orders of respondent no.3.

13. It is contention of the respondents that the first promotion of respondent no.3 on the post of Garden Superintendent was not promotion, but it was nomination / appointment. It is pertinent to note that applicant and respondent no.3 were directed to give their willingness to join at Mumbai on the post of Garden Superintendent on promotion. The applicant though not given his willingness, but on 29/12/2003 shown his willingness to join at Mumbai on promotion on the post of Garden Superintendent. In fact, there is no procedure for calling willingness on promotion.

14. The DPC was held on 27/1/2004 (3/3/2004). From the minutes of meeting, it appears that there was no rule for promotion for the post of Garden Superintendent, therefore, it was decided to fill the said post by nomination amongst the Garden Supervisors. It is mentioned in the DPC note that the applicant R.K. Yewale who is senior in the cadre, is not willing to accept the appointment, therefore, the respondent no.3 Mr. M.B. Patil can be considered as he has shown willingness without any condition. It is pertinent to note that before the DPC dated 27/1/2004, the applicant had already shown his willingness by letter dated 29/12/2003. This letter was not put up

before the DPC. In fact, there is no procedure for calling the willingness for the promotion.

15. The learned Special Counsel Shri R.R. Shetty for respondent nos.1&2 has pointed out various decisions in the case of **S.S. Rathore Vs. State of Madhya Pradesh, I (1989) 4 SCC, 582** It is held by Hon'ble Supreme Court as under –

“ (20) we are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle.”

16. The learned Special Counsel has pointed out particular para i.e. para-20. But from reading of the Judgment it is clear that it was a Civil Suit for declaration. Now it is well settled law that the Section 5 of the Limitation Act, is not applicable to the Suit. Hence, the cited decision is not applicable to the case in hand.

17. In the case of **Suneeta Aggarwal Vs. State of Haryana & Ors., (2000 SCC (L&S) Page 313)** it is held in para-4 as under –

“(4) We have heard learned counsel for the parties. Narration of the afore stated facts would show that the appellant had disintitiled herself to seek relief in the W.P. filed by her before the High Court. The appellant did not challenge the order of Vice Chancellor declining to accord approval to her selection and, on the contrary, she applied afresh for the said post in response to re-advertisement of the post without any kind of protest. Not only did she apply for the post, but she also appeared before the Selection Committee constituted consequent upon re-advertisement of the post and that too without any kind of protest, and on the same day she filed a W.P. against the order of Vice Chancellor declining to accord his approval and obtained an ad-interim order. In the W.P. she also did not disclose that she had applied for the post consequent upon the second advertisement. The appellant having appeared before the Selection Committee without any protest and having taken a chance, we are of the view that the appellant is estopped by her conduct from challenging the earlier order of Vice chancellor. The High Court was justified in refusing to accord any discretionary relief in favour of the appellant. The W.P. was rightly dismissed.”

18. It is pertinent to note that cited Judgment is not applicable to the case in hand, because, the applicant was not given any opportunity to appear before the DPC. The applicant had already informed the respondent nos.1&2 vide letter dated 29/12/2003 about his willingness to join at Mumbai, but he was not given any opportunity. Hence the cited Judgment is not applicable to the case in hand.

19. In the case of **State of Bihar & Ors. Vs. Kameshwar Prasad Singh & Ano. (2000 SCC (L&S) Page 845)** the Hon'ble Supreme Court has held that *"power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. The Supreme Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits-----"*

20. In case of **B.S. Bajwa & Ano. Vs. State of Punjab & ors., 1998 (1) SC,57.** The Hon'ble Supreme Court has held as under-
"Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the single Judge and, therefore, the judgments of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the order aforesaid persons and the rights inter se had crystallised which ought not to have been re-opened after the lapse of such a long period. At every stage the others were promoted before B.S. Bajwa and B.D.Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be re- opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under [Article 226](#) and to reject the writ petition."

21. The learned Special Counsel has pointed out Para-14 of the Judgment in case of **Union of India & Ors. Vs. M.K. Sarkar (2010)**. In para-14 the observations of in the case of **C. Jacob Vs. Direct of Geology and Mining (SCC pp.122-23, para9)** were reproduced –

14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in [C. Jacob vs. Director of Geology and Mining & Anr. - 2009 \(10\) SCC 115](#) :

"(9)The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to `consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

22. The learned Special Counsel has submitted that in view of this observation, the several representations cannot extend the time of limitation.

23. It is pertinent to note that the applicant is claiming that the appointment of respondent no.3 itself is illegal. He came to know after

filing of reply that it was not a promotion, but it is a nomination / appointment and therefore cited Judgment is not applicable.

24. The learned Special Counsel has pointed out the Judgment of **Y. Ramamohan & Ors. Vs. Government of India & Ors.,2002 SCC (L&S) 911.** The Hon'ble Supreme Court has held as under –

**“ The question whether the discretion of the court or the Tribunal should be exercised for condoning the laches would depend upon the facts and circumstances of each case. In the case in hand, when the Tribunal itself has recorded a finding in the earlier case that the gradation list had been duly communicated in the year 1983, it has to be assumed that the applicants knew of the gradation list assigning them the year of allotment as 1976, in 1983, and therefore so-called representation filed by the appellants to the Central Government after disposal of the earlier application filed by the direct recruits is nothing but a subterfuge to get a period of fresh limitation. This method adopted by the appellants disentitles them to any relief. That apart, the gradation list of the year 1983 allotting 1976 as the year of allotment to the appellants has almost settled the seniority list, which need not be disturbed after this length of time.”*

25. The cited Judgments by the side of respondent nos.1&2 are not applicable, because, the issue as to whether the appointment of respondent no.3 on the post of Garden Superintendent in the year 2004 is legal and correct is to be decided. The respondent no.3 is appointed / promoted retrospectively by discarding the claim of applicant. The applicant is challenging further promotion of

respondent no.3 in the year 2020. He is also claiming deemed date of promotion.

26. As submitted by Shri R.V. Shiralkar, Id. counsel for the applicant, there is no limitation to claim deemed date of promotion. All these issues are to be decided on merit, therefore, the case of the applicant cannot be thrown out without considering the issues raised by him.

27. In the case of **Collector, Land Acquisition, Anantnag & Ano. Vs. Mst. Katiji & Ors., AIR 1987 SCC, 1353**, The Hon'ble Supreme Court has held as under –

- *“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
- 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
- 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
- 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”*

28. The grounds raised by the applicant appears to be convincing to the Court. The applicant gave willingness for promotion

on the post of Garden Superintendent. Though the applicant initially shown not willingness, but on 29/12/2003 he had shown willingness. But his letter was not kept before the DPC dated 27/1/2004, therefore, the DPC wrongly come to the conclusion that the applicant was not willing to join at Mumbai. On that ground the applicant was not promoted / appointed on the post of Garden Superintendent. Whereas, the respondent no.3 though junior to the applicant came to be promoted / appointed on the post of Garden Superintendent subject to the approval of rule. In fact, there was no such rule in the year 2004 for the appointment / promotion of the post of Garden Superintendent. If it was a appointment, then procedure for appointment is to be followed by the Authority. The applicant not only challenging the appointment / promotion of respondent no.3 of the year 2004, but also challenging the promotion of the year 2020. The applicant is also claiming deemed date of promotion. Hence, the O.A. is within limitation, therefore, the C.A. is allowed. The delay if any is condoned.

(Justice M.G. Giratkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 09/02/2022.

*dnk..

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 09/02/2022.

Uploaded on : 09/02/2022*..