

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
MISC APPLICATION NO 346 O F 2018 IN O.A 554/2018
WITH
ORIGINAL APPLICATION NO 554 OF 2018**

DISTRICT : MUMBAI

Smt Rima Ramdas Tarkar)
Occ : Pensioner,)
R/o: E/309, III floor, Sukharta CHS Ltd,)
Mahadeo Palav Marg,)
Near Bharat Mata Cinema, Curry Road [E])
Lalbaug, Mumbai 400 012.)...**Applicant**

Versus

1. The Addl. Chief Secretary,)
Higher & Technical Education Dept,)
4th floor, Mantralaya Annexe,)
Mumbai 400 032.)
2. The Principal Secretary,)
Skill Development & Entrepreneurship)
Department, 5th floor, Main Building,))
Mantralaya, Mumbai 400 032.)
3. The Principal Secretary,)
[Accounts and Treasuries],)
Finance Department, 5th floor,)
Main Building, Mantralaya,)
Mumbai 400 032.)
4. The Director,)
Directorate of Vocational Education)

& Training, Maharashtra State,)
3, Mahapalika Marg,)
Opp. Metro Cinema,)
Mumbai 400 001.)...**Respondents**

Shri S.P Kanade, learned advocate for the Applicant.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula Bhatkar (Chairperson)**
Mrs Medha Gadgil (Member) (A)

DATE : **20.07.2022**

PER : **Justice Mridula Bhatkar (Chairperson)**

J U D G M E N T

1. As per the order of this Tribunal dated 5.3.2020, both the Misc Application and Original Application will be heard together at the time of final hearing. Hence, both the Misc Application and Original Application are heard together finally.

2. In this matter there is an inordinate delay of about 10 years and 4 months in filing the Original Application. Learned counsel for the applicant seeks declaration that the applicant is entitled to get the pay fixed as per order dated 2.5.2000 issued by the Deputy Director, Vocational Education and Training, Mumbai. He also prays for revision of pension and arrears of pension and also for refund with interest @ 18% from the date of recovery till the date of refund. The applicant also claims compensation of Rs. 50,000/- for the mental stress, agony and financial hardship he has suffered due to indifferent attitude and inaction on the part of the Respondents.

3. Learned counsel for the applicant submits that the applicant retired in the year 2013. Learned counsel for the applicant submits that his Service Book was sent for verification in the year 2007 and a query was made in the year 2009 by the Accounts Department. Pursuant to the said objection, amount of Rs. 18910/- was considered as excess to her salary and the said amount was recovered in ten equal instalments of RS. 1891/-. Learned counsel for the applicant submits that the District Vocational Education and Training, Thane, held that the objection about the pay fixation of the applicant was illegal and incorrect and therefore he wrote letter on 8.8.2012 to the Joint Director, Accounts and Treasuries, Konkan Bhavan, Navi Mumbai.

4. Learned counsel for the applicant submits that the applicant submitted her representations to the Respondents on 24.1.2013 to the Secretary, Finance Department, M.S, Mumbai. The said representation was forwarded to the Director, Vocational Education and Training, M.S, Mumbai by letter dated 1.11.2017 from the office of Skill Development and Entrepreneurship to decide the same. It was finally rejected by the Director, Vocational Education and Training by order dated 2.2.2018. Learned counsel for the applicant further submits that the pension of the applicant is every month affected because of the objection raised on the pay fixation of the applicant by the Respondents and hence it is a continuous cause of action. Thus, there is no delay in filing the present Original Application.

5. Learned P.O for the Respondents relied on the affidavit in reply dated 7.8.2019 filed by Respondents no 3 & 5 through Subhash B. Bhor, Deputy Director in the office of the Director, Accounts and Treasuries, M.S, Mumbai. Learned P.O relied on para 4 of the affidavit in reply and submitted that the pay of the

applicant was supposed to be fixed as per the provisions of the Notification dated 10.12.1998 under point 5 (Explanation-2), but the Respondent no. 4 had wrongly interpreted the said provision. In the present case, the pay of the applicant was fixed on 1.1.1996. The applicant was awarded the benefits of Time Bound Promotion w.e.f 2.1.1997, however, she claims for fixation of pay on the basis of time bound promotion w.e.f 1.7.1996, which is not at all admissible. The provisions of submitting option for fixation of pay is given due to implementation of Pay Commission within a period of two years. But in other cases, the option is to be submitted within 6 months from the date of extending such benefits. The pay of the applicant was fixed against the provisions of G.R dated 10.12.1998 and this was noticed by the Pay Verification Unit and therefore, by order dated 12.6.2007 the Head Master, Government Technical High School, Vasai, Dist-Thane has issued the order of recovery of an amount of Rs. 18190/- which was to be recovered in ten equal instalments of Rs. 1891/- from June 2007 onwards. Learned P.O further submitted that this is the date of cause of action, and the said order is not challenged by the applicant in the Original Application. Learned P.O further submits that there is no merit in the Original Application mainly on the ground of inordinate delay.

6. We have considered the submissions about the pay fixation of the applicant and we find that there is a substance in the submissions made by the learned Presenting Officer on the point of pay fixation and the recovery of Rs. 18190/-. At the outset, we make it clear that the condonation of delay is a first and major hurdle in the way of the applicant. Unless the applicant clears this, the Original Application cannot be entertained. Yet we looked into the same and found out whether gross injustice has been caused to the applicant and we are of the view that no injustice is

caused to the applicant. The order of recovery dated 12.6.2007 is the cause of action to approach the Tribunal. The submissions of the learned counsel for the applicant that the representation was pending before the concerned Department and the Department has accepted her representation and therefore, the applicant waited for such a long time to approach the Tribunal, cannot be accepted. Pendency of representation for years together cannot be a ground to extend the period of limitation. There may be assurances by the Department. However, for implementation of such assurances of the order, it is necessary to take legal recourse well within time as per the limitation. Due to the order of recovery and the objections raised in the pay fixation in the year 2007 there is bound to be continuous effect in the salary and pension. However, it cannot be considered as a continuous cause of action. The result or the effect may remain continuous, however, cause of action cannot be considered as it is a continuous cause of action. The applicant should have taken legal recourse against the Respondents well within the time. This delay of 10 years and 4 months cannot be justified and the explanation given about the pendency of the representation is not satisfactory and just.

7. In view of the above, the Misc Application seeking condonation of delay is dismissed. As the Misc Application is dismissed, the Original Application also stands dismissed.

Sd/-
(Medha Gadgil)
Member (A)

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 20.07.2022
Dictation taken by : A.K. Nair.