IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

MISC. APPLICATION NO.400 OF 2019
IN
ORIGINAL APPLICATION NO.745 OF 2019

DISTRICT : PUNE

Shri Gorakh Kishan Gaikwad)
Aged 62 years, Occ. Nil, Retiered as)
Sales Tax Inspector from the office)
Of GST, Vimantal Road, Yerwada,)
Pune – 6, R/o. C/o Sudhir M. Kale,)
Bhairav Nagar, Galli No.12, Dhanori,)
Pune – 18.)**...Applicant**

Versus

1. The Commissioner of Sales Tax, (M.S.))
Mumbai, having o/at Vikrikar Bhavan,)
Mazgaon, Mumbai 400 010.)

2. The State of Maharashtra, through)
Principal Secretary, Finance)
Department, O/at. Mantralaya,)
Mumbai 32.)**...Respondents**

Shri A. V. Bandiwadekar, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 09.01.2020

JUDGMENT

1. This application for condonation of delay of year and five months caused in filing O.A. to challenge the order passed by the Disciplinary Authority dated 02.11.2016 whereby punishment of 6% reduction of pension permanently under Section 27 of Maharashtra Civil Services (Pension) Rules, 1982 r/w Section 6 and 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (herein after referred to as MCS (D & A) Rules 1979 for brevity) have been imposed.

2. Shri A.V. Bandiwadekar, learned Counsel for the Applicant submits that as the Applicant is getting 6% less pension at every month there is continuous and recurring cause of action, and therefore, delay deserves to be condoned, if any. He further submits that Applicant was simultaneously prosecuted in Criminal Case which resulted in his acquittal on 23.02.2018. According to him, Applicant was waiting for exoneration from the Criminal Case, and therefore, he cannot be said guilty of laches. He sought to placed reliance on the decision of ***Hon'ble Supreme Court in (2008) 2 SCC (L & S) 765 Union of India & Ors V/s Tarsem Singh,*** wherein Para No.7, Hon'ble Supreme Court held as follows :-

> " 7. *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 re-opening 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 re-fixation 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. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High 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."

3. He further referred to Para No.27 of the decision of Hon'ble Bombay High Court in ***2004 (1) Mh.L.J 581 Madanlal Sharma V/s State of Maharashtra*** which is as follows:-

"27. Thus, the issue of delay by itself need not detain the Tribunal in entertaining a genuine grievance agitated before it and more specifically the issue of recovery of salary, subsistence allowance or the punishment of dismissal or removal. In the instant case, we have noted that ex facie the actions of the respondents could not be sustained and it is manifest from the record that the respondents acted in utter disregard to the service rules and the service jurisprudence. In addition, the Tribunal failed to examine the implications of such a dismissal order purportedly passed on 6-1-1987 when the petitioner had retired from Government service as on 31-10-1984 pursuant to the provisions of Rule 10(1) of the Pension Rules. In service matters, when the grievance relates to continued denial of legitimate financial dues and the punishment of loss of job, a combined approach of head and heart is required to be followed. This is not a case where the delinquent employees sat quiet for all the times and suddenly appeared before the Court/Tribunal. In fact, the record suggests that he was persistently following the respondents and praying from time to time the release of salary, as well as, subsistence allowance. The last letter of 10th November, 1986 addressed by the Education Department, Zilla Parishad, Nanded, to the petitioner, also indicated that the enquiry initiated against him awaited the final decision from the competent authority which was promised to be expedited."

4. In nutshell, learned Counsel for the Applicant submits that this is the case of continuous cause of action, and therefore, delay deserved to be condoned.

5. Per contra, Smt. Kranti Gaikwad, learned Presenting Officer strongly oppose the application contending that in present case, Applicant had accrued cause of action on 02.11.2016 itself and this is not a case of continuous cause of action. She has, further, pointed out that Applicant has not filed appeal before the Competent Authority under Rule 17 of MCS (D & A) rules 1979, and therefore, this O.A. filed belatedly is not maintainable.

6. Applicant was subject to D.E. and by order dated 02.11.2016, punishment of imposition of 6% permanent reduction in pension was imposed. Material to note that charges framed in D.E. (Charge Nos.2, 3 and 4) were not related to Criminal case. Charge No.2 was pertaining to submission of misleading information to the office stating that Applicant was ill though in fact during that period he was in fact in police custody. As such, though he was in police custody from 01.04.2013 to 04.04.2013 and again in magistrate custody from 04.04.2013 to 09.04.2013, he had submitted an application to the office for grant of leave on medical ground. Insofar as Charge No.3 is concerned, it relates to frequent availment of leave on false medical certificates. Whereas, Charge No.4 pertains to attempt to bring political or other outside influence in matter of suspension of the Applicant by making representation to various political or other organization. Suffice to say, the said charges were not in any way connected to

Criminal Case. It appears that Applicant was arrested for the offence under Section 498A, 306 r/w 347 of IPC. However, he was acquitted in Criminal Case on 23.02.2018 whereas in D.E. he was held guilty for Charge No.2 and 3. This being the position, the submission advanced by learned Counsel for the Applicant that applicant was waiting for decision of Criminal Case, and therefore, he is not guilty of lapses can hardly be accepted. The charges framed and proved against Applicant in D.E. were altogether different and had nothing to do with charges or incidence giving rise to the Criminal Case. Suffice to say, there was no justification for waiting for decision of Criminal Case and for challenging the order of Disciplinary Authority within limitation.

7. The punishment was imposed on 02.11.2016. On that date itself cause of action accrued to the applicant for filing appeal before Competent Authority. However, he remained silent and filed present O.A. (without filing appeal before Competent Authority) on 29.07.2019 which ought to have been filed within one year form the date of punishment imposed on 02.11.2016.

8. Insofar as judgment in ***Tarsem Singh's*** case (cited supra) is concerned, present case cannot be said of recurring or continuous cause of action as per the dicta of Hon'ble Supreme Court. It is only in case of continuing wrong, it creates continuing source of injury. In the present case, cause of action accrued on the date of order of punishment. The submission advanced by learned Counsel for the Applicant that because of punishment the Applicant is getting less pension in every months, and therefore, it is continuous cause of action is

fallacious. Release of less pension is the effect of misconduct proved against the Applicant. It cannot be said continuing injury or wrong. It is not result of unlawful act and therefore principle of continuous course of action does apply. If interpretation suggested by learned Counsel is accepted, it will render the law of limitation redundant. In that situation, there will be no certainty or finality of the matter in issue which is not intended in law. Once the Applicant got cause of action on the date of order of punishment, limitation starts from the date of punishment order and O.A. ought to have been filed within the period of limitation as contemplated under Section 21 of the Administrative Tribunal Act 1985. Insofar as decision of ***Mandanlal Sharma's*** case (cited supra) is concerned, observation reproduced in Para 27 of judgment itself makes it clear that it was the matter relating to dismissal order purportedly passed on 06.01.1987 though infact petitioner therein retired from Government service on 31.10.1984. It is in that context, the Hon'ble High Court held that grievance relates to continued denial of legitimate financial dues and the punishment of loss of job, a combined approach of head and heart is required to be followed. In that case, it was further noticed that Applicant therein was persistently following department and prayed to release his salary as well as subsistence allowance. The Hon'ble High Court observed that it was not a case where delinquent employee sat quite for all times. It is in that context, suspension order was quashed. Thus, basically the judgment related to legality of suspension order and not on the point of limitation. Therefore, in my considered opinion, this judgment is of little assistance to Applicant.

9. In so far as facts of the present matter is concerned the record clearly exhibits that Applicant did not take any steps either for filing appeal before Competent Authority or to file O.A. As such, it clearly exhibits that Applicant is dormant and not vigilant person and, therefore, law of limitation will not assist to such person who slept over his right for years together.

10. True, while considering application for condonation of delay, Court or Tribunal is required to adopt justice oriented approach and hyper technical approach should be avoided. However, at the same time, there must be sufficient case to the satisfaction to the Court or Tribunal to show that Applicant was prevented by filing proceeding due to some sufficient or reasonable reasons within a period of limitation. The Applicant was in Government service and cannot take plea of ignorance. There is a delay of one year and five months in filing O.A. which is not at all explained so as to condone the same. Suffice to say there is no sufficient cause contemplated under Section 5 of Limitation Act.

11. Besides, the Applicant has filed O.A. without challenging the order of punishment before Appellate Authority as stipulated under Rule 17 of MCS (D& A) Rules 1979. On this point also, O.A. is not maintainable in law.

12 The totality of aforesaid discussion leads me to sum up that Applicant has failed to establish that he had got sufficient reason to condone the delay. The ground mentioned as discussed above cannot be termed sufficient reasons so as to condone huge delay of one year and five months.

13. Misc. Application is, therefore, dismissed.

14. No order as to cost.

Sd/-

(A.P. KURHEKAR)
Member-J

Place :Mumbai
Date : 09.01.2020
Dictation taken by : VSM
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