

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.140 OF 2020
IN
ORIGINAL APPLICATION NO.208 OF 2020**

DISTRICT : MUMBAI

Shri Didar Singh Bhag Singh Singh)
Age : 64 Yrs., Retired Assistant)
Commissioner of Police and having)
Residential Address as Ground Floor,)
Netto Apartment, New Kant Wadi, Off)
Perry Cross Road, Bandra (West),)
Mumbai - 400 050.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)
2. Commissioner of Police, Mumbai.)
Having Office at Crawford Market,)
Fort, Mumbai - 400 001.)...**Respondents**

Mr. M.D. Lonkar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 24.11.2020

JUDGMENT

1. This is an Misc. Application for condonation of delay of six years and six months made under Section 5 of Limitation Act in

O.A.No.208/2020 wherein relief is sought to quash the impugned orders dated 16.02.2011 and 12.08.2013 and to refund sum of Rs.10,81,104/- released towards increments during the tenure of service.

2. Shortly stated facts giving rise to the M.A. and O.A. are as under:-

The Applicant joined service as Police Sub Inspector on 23.01.1975 and after 34 years of service, retired as Assistant Commissioner of Police on 31.01.2013. In terms of Rule 3 of Maharashtra Government Servants (other than judicial department service) Marathi Language Examination Rules, 1987 (hereinafter referred to as 'Rules of 1987' for brevity), the Applicant was required to pass Lower Standard Marathi Language Examination before expiry of two years from the date of joining of service and also to pass Higher Standard Marathi Language Examination within two years from the date of passing Lower Standard Marathi Language Examination. However, the Applicant did not appear in the Marathi Language Examination. In terms of Rule 5 of 'Rules of 1987', a Government servant who failed to pass Marathi Language Examination within stipulated period was liable to have his increments withheld until he passes the examination under Rule 4 of 'Rules of 1987'. Despite this position, the increments were released and Applicant continued to avail all consequential service benefits. He made representation on 03.01.2011 for grant of exemption, but the same was not responded. It is only year 2011, the Applicant passed Lower Standard Marathi Language Examination and also passed Higher Standard Marathi Language Examination in 2012. At the fag end of his service, the Respondent No.2 served notice dated 02.08.2012 informing the Applicant that increments were released wrongly and the excess payment will be recovered. The Applicant submitted his reply on 07.08.2012 informing that he passed the examinations in 2011 and 2012 respectively and requested not to recover the increments paid to him.

3. The Respondent No.2 by letter dated 28.06.2013 sought recovery of excess payment of Rs.10,81,104/- which was paid to the Applicant by

way of increments during the tenure of his service and consequential pay. The Applicant himself deposited Rs.5,82,840/- on 28.10.2013 and also consented to adjust Rs.1,10,712/- from G.I.S. and remaining amount of Rs.3,87,552/- was recovered from gratuity.

4. It is on this background, the Applicant has filed O.A. registered as 208/2020 challenging the orders dated 16.02.2011 and 12.08.2013 whereby recovery of Rs.10,81,104/- was sought along with an application for condonation of delay to condone the delay of six years and six months caused in filing O.A.

5. The Respondents resisted the M.A. by filing Affidavit-in-reply inter-alia contending that no cause much less sufficient cause is made out to condone the delay, as the application is totally silent on the point of reason/ground which prevented the Applicant from filing O.A. within the period of limitation of one year as contemplated under Section 21 of Administrative Tribunals Act, 1985.

6. Shri M.D. Lonkar, learned Advocate for the Applicant sought to contend that the Applicant has good case on merit and made two-fold submissions. In the first place, he submits that it being continuous cause of action, it be declared that O.A. is within limitation and in alternative, he submits that the delay of six years and six months caused in filing O.A. be condoned, as the Applicant is subjected to discrimination and the impugned action of recovery itself is nullity.

7. Per contra, Shri A.J. Chougule, learned Presenting Officer has pointed out that no reason/ground is forthcoming so as to condone huge delay of six years and six months, and therefore, M.A. as well as O.A. is liable to be dismissed.

8. Shri M.D. Lonkar, learned Advocate for the Applicant tried to demonstrate that the Applicant has good case on merit for grant of exemption, but the representation made by the Applicant on 03.01.2011 was not considered by passing appropriate order and on the contrary,

the recovery was made. According to him, the impugned action of recovery itself is nullity, and therefore, O.A. be decided on merit by condoning the delay.

9. The learned Advocate for the Applicant referred the decisions rendered by this Tribunal to demonstrate that he has good case on merit. He referred to the decision in **O.A.No.783/2014 (Mr. Dulekha C. Khan Vs. The Secretary, Industries, Energy & Labour Department) decided on 01.07.2016**. In that case, the Applicant Dulekha Khan was retired in 2010. After his retirement, the Government granted exemption under Rule 4 of 'Rules of 1987' to him from passing Marathi Language Examination in 2012, but later, the order of exemption was recalled in 2013 without assigning any reason and pension was reduced. It is on that background, the Applicant Dulekha Khan had challenged the withdrawal of exemption order. The O.A. was allowed on the ground that once exemption was granted, it cannot be subsequently withdrawn without assigning any reason to the detriment of employee. As such, this decision is of little assistance to the Applicant in the present scenario.

10. The learned Advocate for the Applicant further referred to the decision rendered by this Tribunal in **O.A.782/2014 (Mohammed S.M. Gaus Vs. The Secretary, Industries, Energy & Labour Department) decided on 19.08.2016**. In this case, the Applicant Mohammed Gaus was retired on 31.05.2011 and after two years from retirement, by order dated 03.12.2013, he was informed that he cannot be exempted from passing Marathi Language Examination and the order dated 03.12.2013 was challenged in the O.A. The O.A. was allowed on the ground that after retirement, the Respondents ought to have granted exemption from passing Marathi Language Examination. As such, this decision is also of little assistance for the condonation of delay in the present scenario. Similarly, the decision rendered by this Tribunal in **O.A.534/2008 (Smt. Yogita S. Maru Vs. The Administrative Officer, E.S.I.S.) decided on 12.02.2009** is also of no assistance to the Applicant in the present scenario. In that case, initially, the Department itself granted permission

to Smt. Yogita Maru by letter dated 4th October, 2006 to appear in the examination though she had joined service way back in 1976. It is on the basis of permission granted by the Department, the Applicant Smt. Yogita Maru appeared and passed the examination. However, subsequently, by order passed on 20.05.2008, the recovery of Rs.2,42,193/- was sought towards increments released. It is in fact situation, having found that Respondents themselves granted permission for passing examination, the action of recovery held arbitrary and O.A. was allowed. Likewise, the decision rendered in **O.A.1045/2012 (Shri Omprakash B. Jedia Vs. The State of Maharashtra) decided on 13.06.2013** is also of no assistance to the Applicant to condone the delay. It is on the point of discrimination on merit. In that case, though the Applicant therein did not pass Marathi Language Examination contemplated under 'Rules of 1987', the increments were released. Later, the recovery was sought. In O.A, the Applicant had pointed out that the Department has granted exemption to various employees, and therefore, on the ground of parity, he should have been granted exemption from passing Marathi Language Examination. Accordingly, the O.A. was allowed having found that the Applicant therein was subjected to discrimination.

11. Shri Lonkar, learned Advocate for the Applicant further referred to the decision of Hon'ble Supreme Court in **Civil Appeal No.11527/2014 (State of Punjab & Ors. Vs. Rafiq Masih) decided on 08.12.2014** wherein the recovery from retired employee is held impermissible under the situation covered in Para No.12 of the Judgment, which is as follows:-

“12. *It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law.*

- (i) *Recovery from employees belong to Class-III and Class-IV services (or Group 'C' and Group 'D' services).*
- (ii) *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) *Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) *Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) *In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

12. As regard continuous cause of action, the reliance was placed on the decision of Hon'ble Supreme Court in **(2008) 8 SCC 648 (Union of India Vs. Tarsem Singh)**. In that case, the Respondent Tarsem Singh was invalidated out of Army service on medical ground by order dated 13.11.1983. However, he belatedly approached Hon'ble High Court in 1999 seeking relief of disability pension. The Writ Petition was allowed and directions were issued for grant of disability pension, but in so far as arrears were concerned, the relief was restricted to 38 months prior to filing of Writ Petition. The Respondent Tarsem Singh being unsatisfied filed letters patent appeal for claiming disability pension from 13.11.1983. The Division Bench of Hon'ble High Court allowed letters patent appeal and granted disability pension from 13.11.1983. Against it, Union of India approached Hon'ble Supreme Court and the question was posed whether direction for grant of disability pension for the period of 16 years was justified instead of restricting it to three years. It is in that context, the Hon'ble Supreme Court clarified what is meant by continuing wrong and order of Division Bench directing payment of disability pension from the date it fell due was set aside and it was restricted to 38 months prior to filing of Writ Petition. In Para No.7, the Hon'ble Supreme Court held as under :-

“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.”

13. Now turning to the facts of the present case, as stated above, the recovery was effected and completed in 2013 only. Indeed, the Applicant himself deposited Rs.5,82,840/- by Cheque and consented for deduction of Rs.1,10,712/- from G.I.S. Whereas, remaining sum of Rs.3,87,552/- was deducted from gratuity. As such, all this exercise was completed in 2013. This being the position, the cause of action accrued to the Applicant in 2013 itself. He retired on 31.01.2013. Therefore, O.A. ought to have been filed within one year from the order of recovery as provided under Section 21 of Administrative Tribunals Act, 1985. However, the Applicant remained silent spectator for years together.

14. Indeed, the Applicant had initially filed O.a.1175/2018 challenging orders of recovery and for refund of amount, but it was not filed along with application for condonation of delay. When O.A.No.1175/2018 was taken up for hearing, the learned Advocate for the Applicant withdrew the O.A. with permission to file afresh with application for condonation of delay. Accordingly, the O.A. was disposed of on 15.03.2019. Thereafter, this O.A. is filed on 09.03.2020 that is after one year from disposal of O.A.No.1175/2018.

15. Now turning to the aspect of condonation of delay, needless to mention that the Applicant was required to establish sufficient cause for not filing O.A. within one year. If sufficient cause is shown, then Court/Tribunal has discretion to condone the delay in judicious manner. It is equally true that one should not adopt hyper-technical approach and instead there should be liberal approach while considering the application for condonation of delay. However, existence of sufficient cause for not filing O.A. within time is condition precedent for exercise of discretion. Material to note that no explanation whatsoever for not filing O.A. within time or grounds which prevented the Applicant from not filing O.A. within stipulated period is either pleaded nor established. There is absolutely no explanation for the delay of six years and six months. All that, the Applicant was harping that he has good case on merit which is hardly relevant consideration. In absence of any such explanation of delay, there is hardly any room to exercise the discretion. In absence of any such explanation, it is impossible to construe non-existing ground or reason as sufficient reason to condone the delay. The delay cannot be condoned as a matter of judicial generosity.

16. Indeed, the fundamental rule is to see whether the Applicant has been reasonably diligent in pursuing the remedy within the period of limitation and whether because of certain situation, he was prevented from doing so. However, there is absolutely no iota of explanation as to why the Applicant did not file O.A. within the period of limitation. Indeed, he earlier filed O.A.No.1175/2018 which was also filed without making an application for condonation of delay and having noticed the same, it was withdrawn. Thus, the Applicant was aware but he remained silent spectator for years together. He is not laymen. In other words, there is total inaction and negligence on the part of Applicant to seek judicial remedy within the period of limitation. True, mere length of delay will not disentitle the person claiming condonation of delay, if there is sufficient explanation about the cause which prevented the Applicant from availing judicial remedy within a period of limitation. As such, the

existence of sufficient cause is *sine-qua-non* for exercising judicial discretion, which is completely missing. Not a single reason even for name sake is forthcoming for delay of six years and six months and all that, it was argued that the Applicant was subjected to discrimination and have a good case on merit.

17. The submission advanced by the learned Advocate for the Applicant that no order was passed on the representation made by the Applicant on 03.01.2011 for grant of exemption, and therefore, delay is not relevant is fallacious and misconceived. Section 21(1)(b) clearly mandates that where representation has been made about any such grievance and no order is passed on such representation within six months, in that event also, judicial remedy has to be availed within one year from the date of expiry of period of six months. Whereas, in the present case, no such judicial remedy was availed within total period of 18 months from the representation dated 03.01.2011. The cause of action accrued to the Applicant after the expiration of 18 months' period, but he choose not to avail legal remedy and remained silent spectator for more than six years.

18. Unless sufficient cause is established and delay is condoned, the decision of Hon'ble Supreme Court in **Rafiq Masih's** case which pertained to non-recovery from retired employee cannot be considered, and therefore, the reference of the same is premature. It does not advance a case of Applicant a little bit in so far as the issue of condonation of delay is concerned.

19. Reliance placed by learned Advocate for the Applicant on the decision of Hon'ble Supreme Court in **AIR 1996 SC 2520 (J.N. Ganatra Vs. Morvi Municipality)** is misplaced. In that case, the order of dismissal from service was found not in accordance to Rule 35 of Morvi City Municipal Officers and Servants, Conduct, Discipline, dismissal, Penalty and Appeal Rules, 1960. It was found that the power of

dismissal was not exercised the way it was required to be done under the Rules. It is in that context, the Hon'ble Supreme Court held that the dismissal is illegal and void, and therefore, Suit for declaration that dismissal is illegal would not be governed by limitation prescribed under Section 253 of Gujarat Municipalities Act, 1963. Whereas, in the present case, admittedly, the Applicant failed to pass Marathi Language Examination within stipulated period and was not entitled to the increments but the same were released inadvertently. After noticing the mistake, it was recovered after giving notice dated 02.08.2012 (Page No.36 of P.B.) which was relied by the Applicant on 07.08.2012 (Page No.37 of P.B.). As such, when the action is taken in consonance with the provisions of law, it does not lie in the mouth of Applicant to contend that the orders of recovery are illegal.

20. In the present situation, it cannot be termed as a case of continuous cause of action, as it was one time action completed in the year 2013 itself. However, the Applicant did not avail the judicial remedy and remained silent spectator for more than six years. He is not vigilant and he is guilty of negligence, laches and inaction. In such situation, the delay cannot be condoned only on the premises that the Applicant has arguable case on merit. Sufficient cause which is condition precedent to condone the delay is completely non-existing in view of absence of his pleading to that effect. This being the position, the decision referred by the learned Advocate for the Applicant is of hardly of any assistance to him to condone the delay.

21. The totality of aforesaid discussion leads me to conclude that no case is made out to condone the delay. Hence, I proceed to pass the following order.

ORDER

(A) Misc. Application No.140/2020 is dismissed.

- (B) Consequently, Original Application No.208/2020 is also dismissed being barred by limitation.
- (C) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 24.11.2020

Dictation taken by :

S.K. Wamanse.

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