

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.15 OF 2019
IN
ORIGINAL APPLICATION NO.1159 OF 2017**

Smt. Surekha Rajaram Patil.)
W/O Rajaram Hrushna Patil,)
Age : Adult, Occu.: Housewife and residing at)
891, Khanbhag, Bhandavale Chawl,)
District : Sangli.)...**Applicant**

Versus

1. The Executive Engineer.)
Office of Construction Division, Zilla)
Parishad, Sangli.)
2. The Superintending Engineer.)
(B & C) Division, Kolhapur.)
3. The Secretary.)
Govt. of Maharashtra, Civil Construction)
Department, Mantralaya, Mumbai – 32.)...**Respondents**

Mr. A. Suryawanshi, Advocate for Applicant.

Ms. S.t. Suryawanshi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 26.03.2019

ORDER

1. Heard Shri A. Suryawanshi, learned Advocate for the Applicant and Ms. S.T. Suryawanshi, learned Presenting officer for the Respondents.

2. This M.A.No.15/2019 is filed by the widow of deceased Rajaram who was in Government service for condonation of delay of 27 years and 4 months in filing O.A. for grant of retiral benefits of the deceased Rajaram. Deceased Rajaram was working as Overseer and was promoted to the post of Deputy Engineer, Zilla Parishad, Sangli. By order dated 26.05.1978, he was transferred to Bombay Region and was relieved on 08.11.1978. However, he did not join new place of posting. Thereafter, he was subsequently transferred to Pune Region by order dated 18.12.1978. Still he did not join and was continuously absent. Therefore, departmental enquiry (D.E.) under Rule 8 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 was initiated. Consequently, he was removed from service by order dated 21.12.1989. He died on 20.02.2016. After his death, his widow has filed this present O.A. (O.A.No.1159/2017) along with application for condonation of delay of 27 years.

3. The Respondents opposed the application contending that the Applicant has absolutely no case even on merit for grant of any retiral benefits, since the deceased was removed from service by order dated 21.12.1989 and secondly, the delay of 27 years being extra-ordinary huge delay, it cannot be condoned.

4. The learned Advocate for the Applicant sought to contend that it is a continuous cause of action, and therefore, in fact, the O.A. has to be treated well within limitation. He sought to place reliance on the Judgment of Hon'ble Supreme Court in ***(2008) 2 SCC (L & S) 765 (Union of India Vs. Tarsem Singh) decided on 30th August, 2008.***

5. Whereas, the learned P.O. countered that in view of removal from service of the deceased, now question of grant of family pension or any other retiral benefits does not survive. The learned P.O. further contends that during life time, the deceased Rajaram did not avail any legal remedy and it is only after his death, his widow has filed the O.A. for grant of retiral benefits, which is devoid of merit and application for condonation of delay also deserves to be dismissed.

6. The facts stated above about the initiation of D.E, removal from service in 1989 and death of Rajaram on 20.02.2016 are not in dispute.

7. In so far as ground for condonation of delay is concerned, there is absolutely nothing in the application to make out a cause much less sufficient to condone the delay. All that Applicant stated that she has good case on merit for grant of retiral benefits of the deceased and she would suffer irreparable loss in case delay is not condoned. Such bald and vague statement can hardly be accepted to condone the delay of 27 years, which seems to be counted from the date of removal from service i.e. 21.12.1989.

8. The submission of the learned Advocate for the Applicant that the Applicant has continuous cause of action can hardly accepted in the present set of facts. There is nothing to show that the order of removal from service has been challenged by the deceased during his life time. Thus, the order of removal from service has attained finality. In such situation, it was for the deceased Rajaram to take recourse of law within permissible time either to challenge the order of removal from service or to claim compassionate pension. However, in this behalf, he did not take any steps during his life time. This being the position, the Applicant cannot be said to have continuous, recurring cause of action.

9. For continuous cause of action, there must be existing right and continuous wrong. However, in the present case, there exists no right in favour of Applicant to seek retiral benefits in view of removal from service of her husband which has gone unchallenged, and therefore, the question of continuous cause of action does not survive.

10. In **Tarsem's** case (cited supra), the Petitioner was working in the Army and was invalidated on medical ground. He had approached Hon'ble High Court in 1999 seeking direction to Union of India to pay disability pension. The Hon'ble High Court allowed the said Writ Petition and directed Union of India to grant him disability pension at the rates permissible. However, in so far as the arrears are concerned, the relief was restricted to 38 months prior to filing of Writ Petition. However, the Petitioner was not satisfied, and therefore, filed LPA contending that the disability being ought to have been paid from the date it failed due on 13.11.1983. His LPA was allowed. The said Judgment was challenged by Union of India before the Hon'ble Supreme Court. The order passed in LPA was set aside and the order for grant of disability pension for 38 months was restored. It is in that context, in Para No.5, the Hon'ble Supreme Court observed as follows :-

"5. 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 selected 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 part 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."

11. As such, this authority is of little assistance to the Applicant in the present case, as there exists no right in favour of Applicant, and therefore, the question of continuous cause of action does not survive. This being the position, it is difficult to accept the submission made by the learned Advocate for the Applicant that the Applicant has good case on merit. There is total inaction and negligence on the part of deceased during his life time. Therefore, the O.A. itself is not maintainable.

12. For the reasons stated above, the application for condonation of delay is dismissed.

13. In view of rejection of application for condonation of delay, the O.A. stands disposed of. No order as to costs.

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

Mumbai

Date : 26.03.2019

Dictation taken by :

S.K. Wamanse.

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