

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.232 OF 2020
IN
ORIGINAL APPLICATION NO.66 OF 2020**

Dr. Ashok S. Mane.)
Age : 70 Yrs, Occu.: Retired as Medical)
Officer, Yerawada Central Prison,)
Pune – 400 006 and residing at Ganesh)
Angan, Flat No.201, Survey No.27/3A/1,)
Munjaba Vasti, Dhanori, Pune – 15.)...**Applicant**

Versus

The State of Maharashtra.)
Through Principal Secretary,)
Public Health Department, Mantralaya,)
Mumbai – 400 032.)...**Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 04.02.2021

JUDGMENT

1. This is an application for declaration that there is no delay in filing of O.A. and in alternative for condonation of delay of eight and half years caused in filing the O.A. under Section 5 of Limitation Act.

2. Undisputed facts giving rise to filing of these proceedings are as under :-

(i) The Applicant was appointed as Medical Officer (Class-II) purely on ad-hoc basis by order dated 09.06.1994 as an earthquake affected person relaxing age limit and initially appointment was for one year or till the candidates selected by MPSC is made available.

(ii) The Applicant's appointment was thereafter continued as ad-hoc appointment and it came to an end on 30.06.2008 on attaining the age of 58 years.

(iii) In the meantime, the Government had issued Notification dated 02.02.2009 for absorption of temporary appointed Medical Officers who have completed three years of service on 31.12.2007 and in service on the date of notification.

(iv) After completion of tenure, the Applicant had filed O.A. No.1002/2011 before this Tribunal for regularization of service and retiral benefits contending that this stipulation/condition in Notification dated 02.02.2009 that a person should be in service on that date for regularization is arbitrary and prayed for regularization as well as retiral benefits including pension, etc.

(v) O.A.No.1002/2011 was dismissed by this Tribunal on 04.02.2015.

(vi) Being aggrieved by the decision of Tribunal, the Applicant has filed Writ Petition No.9310/2015 before Hon'ble High Court which was also dismissed on 03.04.2018.

(vii) Thereafter again, the Applicant has made representation dated 10.05.2019 to the Government contending that he had served for 14 years, and therefore, entitled at least for pension in

terms of Rule 30 of Maharashtra Civil Services (Pension) Rule, 1982 (hereinafter referred to as 'Rules of 1982' for brevity).

(viii) Since there was no response from the Government, the Applicant has filed the present O.A.No.66/2020 for grant of pension contending that even if his services are not regularized, he is entitled for pension in terms of Rules 30, 57 and 110 of 'Rules of 1982'.

(ix) Respondents have filed reply in O.A. denying the entitlement of the Applicant to the relief claimed in view of decision rendered by this Tribunal in O.A.1002/2011 and confirmed by Hon'ble High Court. Respondents also raised plea of limitation contending that O.A. is hopelessly barred by limitation.

(x) It is in view of objection on the point of limitation raised by the Respondents, the Applicant has filed this M.A.No.232/2020 on 29.09.2020 with a prayer of declaration that there is no delay in filing O.A. and in alternative prayed for condonation of delay of eight and half years.

(xi) During the pendency of these proceedings, the Respondent-Government had rejected the representation dated 15.05.2019 by order dated 28.09.2020 stating that Applicant's service was temporarily temporary and the Rules 30, 57 and 110 of 'Rules of 1982' referred by the Applicant applies only to regular appointment and in view of earlier round of litigation also, the Applicant is not entitled to pension.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to contend that even if the relief of regularization has been rejected in earlier round of litigation, still the Applicant having served for 14 years as a temporary employee, he is entitled to pension. As regard delay, he submits that the matter being related to pension, there is continuous and recurring cause of action. He further pleads that the Tribunal

should adopt liberal approach while considering the application for condonation of delay and delay be condoned.

4. Per contra, Shri A.J. Chougule, learned Presenting Officer has pointed out that in view of earlier round of litigation which has attained finality, the Applicant is not entitled to any relief. He has also pointed out that in earlier O.A, the claim was not pertaining to only regularization, but it was including for pension and other retiral benefits. Since O.A. was dismissed, now the Applicant cannot agitate the same issue by filing O.A. and in any case, O.A. is barred by limitation.

5. In view of the submission advanced, now let us see what was the relief claimed in O.A.No.1002/2011, which was as under :-

“(a) to allow the Original Application.

(b) to hold and declare that the requirement that for regularization they should be in service as on 02.09.2009, is arbitrary and has no nexus to the process of regularization.

(c) to direct the Respondents to reconsider Applicant’s case and to include the name of the Applicant in the G.R., whereby doctors similarly circumstanced but appointed on ad-hoc basis are regularized retrospectively from the date of their initial appointment, as ad-hoc Medical Officer.

(d) to direct the Respondents to grant all consequential benefits including pension, etc., since the Applicant has completed 14 yrs. of service without any break.

(e) to award the cost of application.”

6. As such, it is explicit that O.A.No.1002/2011 was not only pertaining to regularization but relief of retirement benefits were also claimed on the ground of rendering of 14 years of service. Apart, the perusal of Judgment in O.A.1002/2011 dated 04.02.2015 also reveals that the Tribunal has considered the relief of regularization as well as pension and dismissed the O.A. The Tribunal has observed that at the time of initial appointment, the Applicant was 44 years old and did not

undergo any selection process. The Applicant was not in service on the date of issuance of Notification dated 02.02.2009 which was the requirement for regularization, and therefore, the O.A. came to be dismissed.

7. The Hon'ble High Court also in Writ Petition No.9310/2015 filed against the decision rendered by the Tribunal has considered the claim of absorption as well as pension and confirmed the finding recorded by the Tribunal that the Applicant was not in service on the date of issuance of Notification dated 02.02.2009, and therefore, not entitled to the relief claimed. In Para Nos. 12 and 14, the Hon'ble High Court held as under:-

***12.** As regards Mr. Warunjikar's second contention, it is necessary to note that the relief of pensionary benefits claimed by the petitioner was a relief in the nature of "consequential benefits". This is clear from reading prayer clause (d) of the petitioner's O.A. Since, the petitioner has made out no case entitling him for absorption or regularization, which was in fact the main relief in his original application, there is no question of the petitioner, being granted any consequential benefits.*

***14.** Since, the petitioner was an earthquake affected person, the petitioner secured employment on compassionate basis. This was itself, a concession or a relaxation granted to the petitioner taking into consideration that he was an earthquake affected person. In the absence of absorption/regularisation, the petitioner cannot, as a matter of right, insist upon payment of any pension. Even otherwise, assuming that there exists any power of relaxation in the matter of qualifying service, the same, cannot be demanded as a matter of right."*

8. It is thus manifest that O.A.No.1002/2011 was not only relating to regularization of service but the relief of retiral benefits namely pension, etc. were also claimed and both the claims were dismissed with detailed reasoning. Admittedly, the said Judgment had attained the finality.

9. Since the Judgment in O.A.1002/2011 has attained finality and the matter in issue now raised in the present O.A. was also the matter in issue directly and substantially in earlier round of litigation, the principles of *res-judicata* are attracted and it is not open to the Applicant to ask for the same relief by filing fresh O.A.

10. Needles to mention that making of representation again and again would not extend the period of limitation.

11. True, while considering the application for condonation of delay, the Tribunal/Court should adopt justice oriented approach and where the delay is reasonably explained, the same deserves to be condoned, so as to decide the matter on merit.

12. However, in so far as the facts of present case are concerned, it is explicit that the matter in issue is already decided in earlier round of litigation which had attained the finality. The submission of learned Advocate for the Applicant that earlier O.A. was only for regularization is totally incorrect. The present O.A. is nothing but asking for same relief by twisting the facts by applying legal brain. The submission advanced by the learned Advocate for the Applicant that matter being only relating to pensionary claim, there is recurring and continuous cause of action is totally fallacious and misconceived. The analogy of continuous wrong would apply where right to pension is established and not otherwise. It is only in case where employee establishes his right to get pension but the same has been denied to him, in that event only, it could be termed as a continuous or recurring cause of action. In the present case, the Applicant found not entitled for regularization in terms of Notification dated 02.02.2009 and his relief for regularization as well as pension has been dismissed on merit. Suffice to say, the Applicant is attempting to revive the dead claim which had already adjudicated on merit and mere representation again and again as well as the decision rendered thereon by the authority will not give fresh cause of action to what was otherwise clearly dead as well as finally adjudicated claim.

13. Reliance placed on **2004(1) Mh.L.J. 581 (Madanlal Sharma Vs. State of Maharashtra)** wherein it has been observed in Para No.27 that the issue of delay itself need not detain the Tribunal in entertaining the genuine grievance agitated before it and more specifically the issue of

recovery of salary, the subsistence allowance or the punishment of dismissal or removal is totally misconceived. In that case, the matter was pertaining to suspension, initiation of belated D.E. and dismissal without following due process of law, rather in utter disregard to the service rules and service jurisprudence. It is in that context and in fact situation, the delay held not fatal. Therefore, this Judgment is of no assistance to the Applicant.

14. Shri Bandiwadekar, learned Advocate for the Applicant further referred to the decision in O.A.905/2017 decided with M.A.698/2019 dated 03.11.2020 whereby M.A. for condonation of delay and O.A. was allowed and relief of regularization of service was granted. In that case, the Applicant therein was appointed with due process of law viz. selection through Divisional Selection Board on clear vacancy, having found fulfilling all criteria and throughout service of 32 years treated as regular employee granting all other service benefits. It is in that context, in fact situation, the O.A. and M.A. was allowed, which is not the case here.

15. Suffice to say, the O.A. itself is hit by principle of *res-judicata* and not maintainable. No case is made out to condone the delay. In fact, there is absolutely no cause of action for filling the present O.A. in view of earlier round of litigation decisions on merits. As stated above, mere filing of representation again and again and decision rendered thereon would not give fresh cause of action where issue is already adjudicated finally on merit and had attained the finality.

16. The totality of aforesaid discussion leads me to sum-up that no case is made out to condone the delay and M.A. deserves to be dismissed. The O.A. being not maintainable for the reasons stated above, the O.A. is also not maintainable stated above. Hence, the following order.

ORDER

- (A) Misc. Application No.232 of 2020 is dismissed.
- (B) Original Application No.66 of 2020 being not maintainable also stands dismissed.
- (C) No order as to costs.

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

Mumbai

Date : .02.2021

Dictation taken by :

S.K. Wamanse.

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