

Thakur

[Spl/MAT/F-5/E]

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

NO.MAT/MUM/JUD/3067 /2016
Maharashtra Administrative Tribunal
Pay & Accounts Barrack Nos.3 & 4,
Free Press Journal Marg,
Nariman Point, Mumbai 400 021.

Date : 20 AUG 2016

**MISC. APPLICATION No. 307 OF 2016 IN
ORIGINAL APPLICATION NO.260 OF 2012,
(Sub :- Stopage of Increments)**

- 1 The State of Maharashtra, Through the Principal Secretary, Co-operation, Marketing & Textile Department, Mantralay, Mumbai-400 032.

.....**APPLICANT**
(Org.Respondents No.1)

VERSUS

- 1 Shri Shivling Keshav Pawar,
Age 57 years, Occ. Service as Joint
Director, R/o. Bhande Plot Square,
Umred Road, Nagpur.

...**RESPONDENT**
(Ori. Applicant)

(AND

- 1 The Director of Sericulture, M.S. Directorate, Umred Road, Nagpur

...**RESPONDENT No.2.**

Copy to : The C.P.O. M.A.T., Mumbai.

The applicant/s above named has filed an application as per copy already served on you, praying for reliefs as mentioned therein. The Tribunal on the 10th day of **August, 2016** has made the following order:-

APPEARANCE : Smt. N.G. Gohad, P.O. for the Applicant.(Ori.Respondents)
Shri A.V. Bandiwadekar, Advocate for the Respondent.(Ori.
Applicant)

CORAM : **HON'BLE SHRI RAJIV AGARWAL, VICE-CHAIRMAN.**
HON'BLE SHRI R.B. MALIK, MEMBER-(J)

DATE : **10.08.2016.**

ORDER : Order Copy Enclosed / Order Copy Over Leaf.

Anatal
19/8/2016
Research Officer,
Maharashtra Administrative Tribunal,
Mumbai.

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.307 OF 2016
IN
ORIGINAL APPLICATION NO.260 OF 2012**

The State of Maharashtra.

**)...Applicants
(Ori. Respondents)**

Versus

Shri Shivling Keshav Pawar.

**)...Respondent
(Ori. Applicant)**

**Ms. N.G. Gohad, Presenting Officer for Applicants (Ori.
Respondents)**

**Shri A.V. Bandiwadekar, Advocate for Respondent (Ori.
Applicant)**

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 10.08.2016

PER : R.B. MALIK (MEMBER-JUDICIAL)

ORDER

1. This Misc. Application seeks extension of time for compliance with our order dated 8.9.2015 in OA 987/2010 with OA 260/2012 in which earlier the MA for extension of

2



time was made being MA 621/2015. That application was in regard to the completion of enquiry. We rejected it. That rejection was challenged by way of **Writ Petition No.4596/2016 (The State of Maharashtra & Ors. Vs. Shivling K. Pawar, dated 28th April, 2016)**. There, by consent, the following order was made by the Hon'ble High Court.

"P.C.:

- 1] Heard learned counsel for the parties.
- 2] The following agreed order is made with the consent of learned counsel for the petitioners.
 - A] The impugned order dated 2 March 2016 made by the Maharashtra Administrative Tribunal, Mumbai (MAT) in Miscellaneous Application No.621 of 2015 in Original Application No.260 of 2012 is hereby set aside;
 - B] The time frame for compliance with the order made by the MAT in Original Application No.260 of 2012 is extended upto 31st May 2016. Mr. Vagyani, learned Government Pleader for the petitioners, makes an averment that the entire process including imposition of



penalty/punishment, as permitted by the MAT will be completed by the said date; and

C] Mr. Sagar Mane, learned counsel for the respondent, states that the respondent will not press the contempt petition being Contempt Petition No.4 of 2016 until 31 May 2016.

3] The petition is disposed of in the aforesaid terms.

4] All concerned to act on the basis of authenticated copy of this order.

(M.S.SONAK, J.) (CHIEF JUSTICE)"

2. The original Respondents then completed the enquiry and decided to impose the punishment which was actually imposed on 13.5.2016. The original Applicant has since preferred an appeal thereagainst on 9.6.2016. The Applicants now want that the time for compliance post the decision of the appeal be extended by three months.

3. We have perused the record and proceedings and heard Ms. N.G. Gohad, the learned Presenting Officer for the Applicants (Ori. Respondents) and Shri A.V.



Bandiwadekar, the learned Advocate for the Respondent (Ori. Applicant).

4. By a common order disposing of the two OAs, one of them being OA 987/2010 (Bombay) which was OA 809/2009 at Nagpur came to be allowed thereby quashing and setting aside the proceedings including the charge-sheet. Another OA came to be decided by giving the directions contained in concluding Para 34 thereof. That Paragraph, in fact, needs to be fully reproduced for having a proper grasp of the controversy herein.

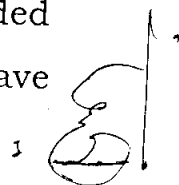
“34. The order made by the State of Maharashtra in the Cooperation, Marketing and Textile Department No. रेशीम-१४०८/प्र.क्र.२५४/रेशीम कक्ष, मंत्रालय, dated 18th May, 2010 (Annexure ‘A-21’, Page 191 of the paper book) and the appellate order dated 10th January, 2012 (Annexure ‘A-25’, Page 218 of the paper book) both stand quashed and set aside. The matter stands remanded to the disciplinary authority to act in accordance herewith from the stage of the receipt of the report of the Enquiry Officer dated 25/26th September, 2008 in D.E. No.5/2004. The disciplinary authority shall after giving an

opportunity of being heard to the Applicant shall consider the whole matter afresh in accordance with the law and observations made herein. The disciplinary authority shall decide the matter on or before 31st December, 2015. The Applicant shall appear before the disciplinary authority on 21st September, 2015 on which date, the further course of action shall be decided, so that the matter must be decided finally by 31st December, 2015. The disciplinary authority shall within one week from his order inform the same to the Applicant. If the time limit herein prescribed is not kept, the Applicant shall stand exonerated and the charge shall be taken as quashed and set aside without any further reference to this Tribunal. In that case, the Applicant shall be entitled to all pensionary and retiral benefits as if no DE took place against him. In case, the Applicant was aggrieved by the order of the disciplinary authority, he shall prefer an appeal within the prescribed time limit and if no time limit is prescribed, then within four weeks thereof. In case the appeal is preferred, the same shall be decided within two months thereof, failing which the detailed directions given just

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now in relation to the disciplinary authority shall apply to the appellate authority as well in toto. The Original Application No.260/2012 is allowed in these terms with no order as to costs.

5. Now, the above extract would make it clear that there were two distinct limbs of the order. The first limb being the directions with regard to conclusion of the departmental enquiry by the disciplinary authority. For that, as already mentioned at the outset, the Respondents as is there wont overshot the time limit. Their move for extension failed before us. The Hon'ble High Court was pleased to make the order by consent which has been fully reproduced hereinabove. Thereafter, the disciplinary authority being the State Government made the order imposing punishment on the Applicant on 13.5.2016 whereagainst an administrative appeal has been preferred by the Applicant and it is here that the second limb of the above referred order comes into play. We had directed that in case, the Applicant was aggrieved by the order of the disciplinary authority which indeed he has been now, he would prefer an appeal which also he has done now within the time limit prescribed. There was then the direction that if the appeal was preferred, the same be decided within two months thereof. The said appeal should have



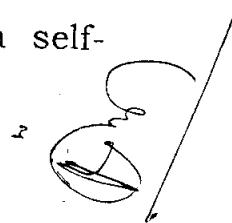
been decided by 8th August, 2016 and it seems that even the preliminaries have not been completed, and therefore, it will not be possible for the Respondents to keep the deadline. The appeal is pending before His Excellency the Governor of Maharashtra.

6. Regardless of whatever order is ultimately made herein, we must make it very clear that some kind of a chart annexed to this MA is a classic instance of an attempt to cover up the indolence by the Department of Cooperation, Marketing and Textile in so far as the steps to get the appeal decided was concerned. Much as they would like to insist that the matter was pending before the appellate authority, and therefore, they would not be in a position to do anything, it is only a pretext, a ruse as it were to hide their lack of diligence. Quite pertinently, the first real reaction on the part of the said Department was by way of a letter of 14.7.2016 which was about one month five days after the appeal was lodged with the appellate authority by the present Respondent. It is very clear therefrom that the Secretariate of Hon'ble Governor promptly wrote to the said Department as early as on 17.6.2016 itself whereby they must have sought the necessary information so as to process the appeal. But the first reaction from Cooperation Department was not earlier



than 14th July, 2016 and it was submitted to the Secretariate of the Hon'ble Governor on 16th July, 2016. The time of two months was thus running away without the Cooperation Department doing anything tangible. As if just to create a record, they wrote another communication of 1st August, 2016 to the Secretariate of the Hon'ble Governor seeking to know the status of the appeal. On the practical side of it, one does not have to mention as to what all was required to be done if the Cooperation Department was really serious about the matter. But for all one knows, lack of diligence or deliberate dragging of feet was manifestly clear from the entire conduct of the said Department. **We direct the Principal Secretary of the said Department to enquire into the matter and fix the responsibility and take necessary action, if a case is made out, under intimation to this Tribunal within three months, even if MA shall no more remain pending.**

7. Turning now to the other aspect of the matter, the point is as to whether despite the conduct of the Cooperation Department, a case for extension of time is still made out. Mr. Bandiwadekar, the learned Advocate for the original Applicant while analyzing our order fully extracted above in the OA told us that it was a self-



operating order and if the time limit is not kept, the consequences would follow. According to him, the regard being had to the language of the order, such as it is, this Tribunal really has no jurisdiction now to extend the time for it was a self-operating order.

8. The learned P.O. Ms. Gohad apart from acclaiming the conduct of the Cooperation Department which perhaps she was bound to do, bound as she is by her brief told us that the said Department shall make no further request for any extension. In the application, the extension of three months is sought, but the learned P.O. perhaps was content with the time of two months.

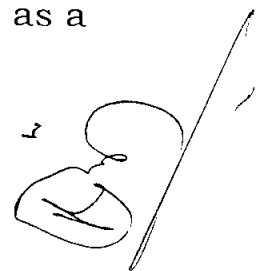
9. Now, in our opinion, while the doctrine of functus officio cannot be just given a go-bye for the asking and if a recalcitrant litigant like the Cooperation & Textile Department exhibits total disdain to the directions of a judicial forum, then that would all the more the reason why the said forum would be slow in extending any relief. However, at the end of the day, ultimately, to do justice is the prime function and duty of the judicial authorities and in this case, quasi-judicial authority. We do not think that the matter could be placed as high as Mr. Bandiwadekar did questioning our very jurisdiction to extend the time in

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such circumstances. Manner of exercise of jurisdiction is undoubtedly equally important and in certain circumstances more important than the existence of jurisdiction. But to espouse a theory of total absence of jurisdiction is not something that can pass muster with the objective anvil in such matters. In fact, although the provisions of the Code of Civil Procedure do not apply in terms to the proceedings before the Administrative Tribunals, but still the general principles can be made applicable. This becomes clear also from the plain text of Section 22 of the Administrative Tribunals Act, 1985. There is a certain inherent power inter-alia enshrined in Section 148 of the Code of Civil Procedure and a few Rules of Order 41 thereof to the details whereof we need not go for the purposes hereof, which reserve the power of the Tribunal to extend time in a deserving case, even if the order was what Mr. Bandiwadekar described as self-operating.

10. The above conclusion would be fortified by the fact that the original Applicant himself gave consent before the Hon'ble High Court for a further extension of time in the Writ Petition carried from the dismissal of Cooperative Department's MA for extension of time by us. Therefore, if the right of the party is there, then it cannot be stated as a



blanket proposition that there is total absence of power in the Tribunal for the reasons stated by the learned Advocate Shri Bandiwadekar. In our opinion, the order of the disciplinary authority having been made post Writ Petition, we should exercise our jurisdiction and power to grant one last chance now that the matter is in appeal. We make it clear that this is the first and last extension and that the Cooperation Department should not even move us for any extension henceforth.

11. In accordance with the observations in the preceding Paragraph, last extension is given to the present Applicants and the time to dispose of the appeal of the original Applicant is extended till 30th September, 2016. No further extension shall be granted. **The Principal Secretary of Cooperation Department shall comply with our directions in Paragraph 6 above.** The Misc. Application is allowed in these terms with no order as to costs.

sd/-08-16
WIK
(R.B. Malik)
Member-J
10.08.2016

sd/-08-16
(Rajiv Agarwal)
Vice-Chairman
10.08.2016

Mumbai
 Date : 10.08.2016
 Dictation taken by :
 S.K. Wamanse.

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Amal
19/8/2016
 Asst. Registrar/Research Officer
 Maharashtra Administrative Tribunal
 Mumbai.