

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**M.A 397/2015 IN O.A 975/2015 WITH M.A 399/2015
IN O.A 976/2015 WITH M.A 401/2015 IN O.A
977/2015 WITH M.A 403/2015 IN O.A 978/2015 AND
M.A 405/2015 IN O.A 979/2015**

**1. MISC APPLICATION NO 397 OF 2015
IN
ORIGINAL APPLICATION NO 975 OF 2015**

DISTRICT : PUNE

Smt Chandrakala Sadashiv Dibhal)
Working as Sister in charge)
At Sassoon General Hospital, Pune)
Residing at 503-A, Sundar Sankul,)
Off Magarpatta City Road,)
Hadapsar, Pune 411 028.)...**Applicant**

Versus

1. The Director,)
Govt. Dental College and)
Hospital Building,)
St. Georges' Hospital Compound)

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- Near CST Station,)
 Mumbai 400 001.)
2. The Dean,)
 B.J Medical College & Sassoon)
 General Hospital,)
 Pune 411 001.)...**Respondents**

**2. MISC APPLICATION NO 399 OF 2015
 IN
 ORIGINAL APPLICATION NO 976 OF 2015**

DISTRICT : PUNE

1. Smt Varsha Sudhakar Gaikwad,)
 Retired as Sister in charge)
 At Sassoon General Hospital, Pune)
 Residing at A/6, Mantri Niketan,)
 Dapodi, Pune 411 015.)
2. Smt Vimal Stephanes Bansode,)
 Retired as Sister in charge)
 At Sassoon General Hospital, Pune)
 Residing at A/6, Mantri Niketan,)
 Dapodi, Pune 411 015.)...**Applicants**

Versus

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1. The Director,)
 Medical Education & Research, [M.S])
 Govt. Dental College and)
 Hospital Building,)
 St. Georges' Hospital Compound)
 Near CST Station,)
 Mumbai 400 001.)

2. The Dean,)
 B.J Medical College & Sassoon)
 General Hospital,)
 Pune 411 001.)...**Respondents**

**3. MISC APPLICATION NO 401 OF 2015
 IN
 ORIGINAL APPLICATION NO 977 OF 2015
 DISTRICT : PUNE**

1. Smt Indira Vasudeo Nair,)
 Retired as Sister in charge)
 At Sassoon General Hospital, Pune)
 Residing at 2, Pancham Elite,)
 Tingrenagar, Airport Road,)
 Pune 411 015.)

2. Smt Sita Dileep Rasal,)
 Retired as Sister in charge)
 At Sassoon General Hospital, Pune)

Residing at 23, Sadguru Park,)
 410, Somwar Peth,)
 Mali Maharaj Mandir,)
 Pune 411 015.)...**Applicants**

Versus

1. The Director,)
 Medical Education & Research,[M.S])
 Govt. Dental College and)
 Hospital Building,)
 St. Georges' Hospital Compound)
 Near CST Station,)
 Mumbai 400 001.)
2. The Dean,)
 B.J Medical College & Sassoon)
 General Hospital,)
 Pune 411 001.)...**Respondents**

**4. MISC APPLICATION NO 403 OF 2015
 IN
 ORIGINAL APPLICATION NO 978 OF 2015**

DISTRICT : PUNE

1. Smt Deepti Dilip Sural,)
 Retired as Sister in charge)
 At Sassoon General Hospital, Pune)

Residing at E/2,)
 Mantri Riviera Bldg, Bhau Patil Rd,)
 Pune 411 020.)

2. Smt Chaya Prakash Jagdale,)
 Retired as Sister in charge)
 At Sassoon General Hospital, Pune)
 Residing at 232/1/28, Vidhatenagar)
 Baner, Aundh,)
 Pune 411 007.)...**Applicants**

Versus

1. The Director,)
 Medical Education & Research, [M.S])
 Govt. Dental College and)
 Hospital Building,)
 St. Georges' Hospital Compound)
 Near CST Station,)
 Mumbai 400 001.)
2. The Dean,)
 B.J Medical College & Sassoon)
 General Hospital,)
 Pune 411 001.)...**Respondents**

5. MISC APPLICATION NO 405 OF 2015
IN
ORIGINAL APPLICATION NO 979 OF 2015

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DISTRICT: PUNE

1. Smt Sushila Pradeep Salvi,)
Retired as Sister in charge)
At Sassoon General Hospital, Pune)
Residing at 512, Vaibhavnagar CHS)
Balaji Nagar, Pune-Satara Road,)
Pune 43.)

2. Smt Kusum Kailas Nangude,)
Retired as Sister in charge)
At Sassoon General Hospital, Pune)
Residing at E-504, Queen Garden,)
Near Lokamanya Hospital,)
Chinchwad Station,)
Pune 33.)...**Applicants**

Versus

1. The Director,)
Medical Education & Research,[M.S])
Govt. Dental College and)
Hospital Building,)
St. Georges' Hospital Compound)
Near CST Station,)
Mumbai 400 001.)

2. The Dean,)
B.J Medical College & Sassoon)
General Hospital,)
Pune 411 001.)...**Respondents**

Ms Swati Manchekar, learned advocate for the Applicants.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 21.03.2016

ORDER


1. Heard Ms Swati Manchekar, learned advocate for the Applicants and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. These Misc Applications were heard together and are being disposed by a common order as the prayers in the Misc Applications and the Original Applications are identical.

3. Learned Counsel for the Applicants argued that the Applicants were working in B.J Medical College and Sassoon General Hospital, Pune from where they


had retired. The Applicants are seeking benefit of G.R dated 1.4.2010, by which second benefit of Assured Career Progression Scheme (A.C.P) was made available to Government employees from 1.10.2006. However, the Applicants were not granted second benefit of ACP Scheme, though they have completed 12 years of service from 1.10.1994 and were in service on 1.4.2010. Learned Counsel for the Applicants argued that the Applicants are similarly situated persons to the Applicants in O.A nos 103/2013 and 104/2013 where the benefit of A.C.P Scheme was granted to the Applicants therein by order dated 20.12.2013 by this Tribunal. The Applicants have since retired from service. Learned Counsel for the Applicants contended that the Applicants have represented to the Respondents on 31.7.2014 (in O.A no 975/2015) since November 2011 (O.A no 976/2015), since October 2011 (O.A no 977/2015), since November 2011 (O.A no 978/2015) and since November 2011 (O.A 979/2015). All the Applicants have not received any reply to their representation. Learned counsel for the Applicants argued that there is no delay on the part of the Applicants in filing the Original Applications. However, by way of abundant caution, the Misc Applications for condonation of delay have been filed.

4. Learned Counsel for the Applicants argued that the Applicants were wrongly denied second benefit of




A.C.P Scheme from 1.10.2006, which they were entitled as per G.R dated 1.4.2010. In the case of **M.R. GUPTA Vs. UNION OF INDIA : (1995) 5 SCC 628**, Hon'ble Supreme Court has held that it is a right of a Government servant to be paid the correct salary throughout his tenure. In the case of **UNION OF INDIA Vs. TARSEM SINGH: (2008) 8 SCC 648**, Hon'ble Supreme Court has held that a service related claim based on a continuing wrong, cannot be denied due to delay or laches. In the case of payment or re-fixation or pay or pension relief may be granted inspite of delay as it does not affect the rights of third parties. Learned Counsel for the Applicants argued that the Applicants are being paid less pension every month due to denial of benefit of second A.C.P Scheme. This is a case of continuing wrong. The delay, if any, may therefore, be condone. At the most, arrears available to the Applicants could be restricted to a period of three years prior to the date of filing of the Original Applications.

5. Learned Presenting Officer (P.O) argued that all the Original Applications are time barred. The Applicants are claiming benefit of G.R dated 1.4.2010, while the Original Applications have been filed in the year 2015. The Applicants have not explained the reasons for delay in filing the Original Applications. These Original Applications are hopelessly time barred and no case has been made out for condonation of delay. Learned



Presenting Officer cited various judgment of Hon'ble Supreme Court including the judgment in the case of **STATE OF MAHARASHTRA & ORS Vs. S.M. KOTRAYYA & ORS : (1996) 6 SCC 267**, in which Hon'ble Supreme Court has held that the application filed belated after coming to know that in a similar case, relief has been granted, is not a proper justification for condonation of delay.

6. It is seen that the Applicants were denied the second benefit of A.C.P Scheme made applicable by G.R dated 1.4.2010 as they had allegedly refused promotion. The Applicants had since retired from service. They have not filed Original Applications seeking the benefit of G.R dated 1.4.2010 claiming that they had not refused promotion and were entitled to be given second benefit of A.C.P Scheme as per G.R dated 1.4.2010. The Applicants are relying on the judgment of Hon'ble Supreme Court in TARSEM SINGH's case (supra). Hon'ble Supreme Court has held that normally a service related claim will be rejected on the ground of delay and latches. However, one of the exceptions to the said rule is cases relating to continuing wrong. In case of continuing wrong, relief can be granted even if there is a long delay unless such relief affects other employees. In case of payment or re-fixation of pay or pension, relief may be granted as it does not affect the rights of third parties. The present Original



Applications are squarely covered by the aforesaid judgment of Hon'ble Supreme Court.

7. In view of the above, the delay in filing the present Original Applications is condoned. The arrears, if found payable shall be restricted to a period of three years prior to the date of filing the Original Applications. The Misc Applications are allowed accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 21.03.2016

Dictation taken by : A.K. Nair.