

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

MISC. APPLICATION NO. 55 OF 2013
WITH
MISC. APPLICATION ST. NO. 101/2013
IN
ORIGINAL APPLICATION ST. NO. 102 OF 2013

DIST. : AURANGABAD

1. Kisan Shenphad Magre,
Age. 60 years, Occu. : Service,
Vithalnagar, Cidco N-2,
Aurangabad.
2. Subhash Panditrao Pathak,
Age. 60 years, Occu. : Service,
Nageshwarwadi, Aurangabad.
3. S.P. Thorat,
Age. 58 years, Occu. : Service,
Office of the Regional Dairy Development
Officer, Govt. Milk Scheme, Aurangabad.
4. M.A. Dhakne,
Age. 57 years, Occu. : Service,
Office of the Regional Dairy Development
Officer, Govt. Milk Scheme, Aurangabad.
5. G.S. Jasoriya
Age. 60 years, Occu. : Service,
Office of the Regional Dairy Development
Officer, Govt. Milk Scheme, Aurangabad.
6. Ashok Tukaram Adhik,
Age. 60 years, Occu. : Service,
Office of the Regional Dairy Development
Officer, Govt. Milk Scheme, Aurangabad.
7. Shri Kashinath Mithu Ghuge,
Age. 60 years, Occu. : Service,
Office of the Regional Dairy Development
Officer, Govt. Milk Scheme, Aurangabad.

8. Krushnakant Trimbakrao Badmore,
Age. 58, 'Shriyash', Plot No. 46,
Prayagnar, Behind Mundhe Hospital,
Old Jalna, Jalna.
9. S.S. Wasane,
Age. 60 years, Occu. : Service,
Office of the Regional Dairy Development
Officer, Govt. Milk Scheme, Aurangabad.
10. Vithal Hari Garud,
Age. 61 years, Occu. : Service,
Office of the Regional Dairy Development
Officer, Govt. Milk Scheme, Aurangabad.
11. C.N. Hibane,
Age. 62 years, Occu. : Service,
Office of the Regional Dairy Development
Officer, Govt. Milk Scheme, Aurangabad.

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APPLICANTS

V E R S U S

1. The State of Maharashtra,
Through : Secretary,
Dairy Development Department,
Mantralaya, Mumbai – 32.
(Copy to be served on the C.P.O.,
MAT, Aurangabad.)
2. The Regional Dairy Development Officer,
Govt. Milk Scheme, Aurangabad.
3. The Dairy Development Commissioner,
Administrative Building, Khan Abdul
Gafarkhan Marg, Worli, Mumbai 400 018.

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RESPONDENTS

 APPEARANCE :- Shri Sandeep G. Kulkarni, learned
 Advocate for the applicants.

: Shri M.P. Gude, learned Presenting Officer
 for the respondents.

CORAM :- Hon'ble Shri Rajiv Agarwal, Vice Chairman (A)
AND
Hon'ble Shri B.P. Patil, Member (J)

DATE :- 24.03.2017

ORDER

1. The applicants have sought condonation of 37 years' delay caused in filing the O.A. seeking direction to re-fix their pay from the dates they completed 240 days in services and arrears of pay and allowances.

2. The applicants, who are initially appointed on daily wages basis, were subsequently made permanent by the respondents but not from the dates on which they have completed 240 days' service. Most of the applicants are now retired from the service on attaining the age of superannuation. They made representations to the respondents to grant them benefit of permanency from the dates when they completed 240 days of service, from time to time, but the respondents have not accepted their request. Thereafter they retired from the service. Because of lack of money and their illhealth they could not approach the Tribunal in time and, therefore, delay has caused for filing the O.A. seeking directions against the respondents. It is their

contention that the delay caused for filing the O.A. is not deliberate and intentional and it is bona-fide, therefore, they have prayed to condone the delay.

3. The respondent nos. 1 to 3 have filed affidavit in reply and resisted the claim of the applicants. It is their contention that the applicants have completed 240 days service before the year 1981 and they have already been regularized in service. The applicants except the applicant no. 4 and one Shri M.B. Mundhe have retired from the service on superannuation. They have filed the present original application 3 to 4 years after their retirement from service. Now they are claiming the relief to make them permanent from the year 1981. The delay caused in filing the original application is inordinate and there is no justifiable reason to condone the same and, therefore, the respondents prayed to dismiss the misc. application.

4. We have heard the arguments of Shri Sandeep G. Kulkarni, learned Advocate for the applicants and Shri M.P. Gude, learned Presenting Officer for the respondents.

5. The learned Advocate for the applicants submits that the applicants were initially appointed on daily wages basis and in due course they completed 240 days service and thereafter they

are made permanent, but not from the dates on which they have completed 240 days of service and, therefore, they are being put to financial loss not only in respect of fixation of pay but also regard to pensionary benefits. The applicants further submitted that due to old age, ill health and lack of money they could not approach the Tribunal by filing the O.A. in time and, therefore, the delay has occurred. They submitted that they have explained the delay properly and therefore, it is just and proper to condone the said delay.

6. The learned P.O. submitted that the cause for applicants arose in the year 1981 itself. The applicants were made permanent thereafter and they have not challenged the earlier order during their service tenure and after 3 to 4 years of their retirement on superannuation, they have challenged the said order by filing the O.A. The respondents submitted that there is inordinate delay in filing the O.A. and the said delay is not properly explained by the applicants.

7. We have perused the record carefully. On perusal of the record it is crystal clear that the applicants had joined their services in the years 1974, 1975, 1976, 1978 etc. A chart regarding date of their joining, date of completion of 240 days'

service has been annexed at Exh. R-1 (paper book page 14 of the M.A. no. 55/2013) which is reproduced as below :-

अ. क्र.	कर्मचा-यांचे नांव सर्वश्री	रोजंदारीवर कामास लागल्याचा दिनांक	रोजंदारीवर २४० दिवस पूर्ण केल्याचा दिनांक	सेवा केल्याचा तपशील दिनांक	नियमित पदनाम	सेवानिवृत्तीचा दिनांक	शेरा
१	२	३	४	५	६	७	८
१.	किसन शेनफड मगरे	१४.६.७५	१४.२.७६	१.१२.७८	समय लेखक	२८.२.२०१०	
२.	सुभाष पंडीतराव पाठक	१४.२.७६	१४.१०.७६	१०.२.७७	लिपीक	३१.७.२००९	
३.	एस.पी. थोरात	५.६.७८	५.६.७९	३४.९.७९	मजदुर	३१.५.२००७	
४.	एम.ए.ढाकणे	२४.१.७८	२४.९.७८	१.१२.७९	दुग्ध परिचर	--	सेवेत आहेत
५.	जी.एन.जसोरिया	१६.९.७४	१६.५.७५	२६.९.७८	लिपीक	३१.८.२००८	
६.	अशोक तुकाराम अदीक	२८.६.७५	२८.२.७६	१.४.७७	लिपीक	३०.४.२०११	
७.	काशीनाथ मिठू घुगे	१२.२.७६	१२.८.७७	१.५.७९	मजदुर		
८.	कृष्णकांत त्रिंबकराव बदमोरे	१९.२.७५	१६.१०.७५	१.७.७८	लिपीक	३०.९.२०१०	
९.	एस.एस. वासने	२६.५.७५	१०.१.७६	२८.९.७८	लिपीक	३०.६.२०१२	
१०.	विठ्ठल हरी गरुड	२९.९.७६	२९.५.७७	१.५.७९	लिपीक	३०.६.२००९	
११.	सी.एन. हिबाणे	११.४.७६	११.१२.७६	२२.८.७९	लिपीक	३०.४.२०११	
१२.	आर. टी. घुगे		१५.२.७८	१६.२.७८	लिपीक	१.१०.२००७	
१३.	एम.बी.मुढे	२०.१०.७४	१२.६.७५	२.६.७८	दुग्ध परिचर		सेवेत आहेत

8. On perusal of the said chart, it appears that, most of the applicants have completed their 240 days services in the year 1975 onwards. The applicants retired in the year 2007 onwards, they have not put their said grievance as claimed in the O.A. during their service tenure. There is an inordinate delay in claiming the relief by the applicants. They are claiming that the similarly situated employees have received the reliefs as claimed

in the O.A. and they have claimed the said reliefs on the ground of parity.

9. In this regard a reference may be made to the judgment of Hon'ble Supreme Court in the case of **STATE OF UTTAR PRADESH AND OTHERS VS. ARVIND KUMAR SRIVASTAVA AND OTHERS [(2015) 1 SCC 347]**, wherein the Hon'ble Supreme Court has held as under :-

“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated

persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the

decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

10. The principle laid down in the above judgment of Hon'ble Supreme Court is most appropriately applicable in the present case and the case of the present applicants is squarely covered by the said judgment of the Hon'ble Supreme Court. There are laches on the part of the applicants in claiming the relief as sought in the original application and the delay of 37 years as caused in filing the original application has not been explained properly & satisfactorily by the applicants. The applicants have not shown just and reasonable cause which prevented them to approach the Tribunal in time for seeking the reliefs as claimed in the original application and, therefore, in our view, the said delay

of 37 years caused in filing the O.A. is inordinate. In these circumstances, in our view, the applicants are not entitled to claim the reliefs as there is no justifiable reason to condone the delay. Consequently, the misc. application deserves to be rejected. Hence, we pass the following order :-

ORDER

- (i) The M.A. no. 55/2013 filed by the applicants for condonation of delay caused in filing the O.A. is hereby dismissed.
- (ii). In view of dismissal of M.A. no. 55/2013, the M.A. st. no. 101/2013, which is filed by the applicants for permission to sue jointly and the original application st. no. 102/2013 itself are also disposed of.

No order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)