

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**MISCELLANEOUS APPLICATION NO.372 OF 2023**

**WITH**

**ORIGINAL APPLICATION NO.524 OF 2023**

**DISTRICT : RAIGAD**

Shri Pramod Nrusinh Atre, )  
Age 60 years, Retired Tracer from the office of )  
Respondent No.2, R/o Omkar Datta, 205, Ziral Ali, )  
Near Datta Mandir, A/P/T Pen, District Raigad )..Applicant

Versus

1. The Project Director & Superintending Engineer, )  
Kharland Development, Circle Thane, )  
Sinchan Bhavan, Fourth Floor, Kopari Colony, )  
Thane (E) )
2. The Executive Officer, )  
Kharland Survey & Investigation Department, )  
Pen, District Raigad )
3. The State of Maharashtra, )  
Through Principal Secretary, )  
Water Conservation & Command Area )  
Development, Water Resources Department, )  
Mantralaya, Mumbai 400032 )..Respondents

Shri A.V. Bandiwadekar – Advocate for the Applicant

Smt. Archana B.K.– Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)  
DATE : 18<sup>th</sup> January, 2024

### **J U D G M E N T**

1. This MA No.372/2023 is filed for condoning the delay of 4 years in filing this OA No.524/2023. Ld. Advocate for the applicant pointed out that the applicant had filed a Review Application dated 4.5.2017 before respondent no.3 against the order dated 29.1.2015 passed by respondent no.3. He states that applicant remained unauthorizedly absent from duty between 13.7.1993 to 1.3.2007 and the decision taken in that behalf with the concurrence of the Finance Department held that this constitute break in service as per Rule 47(1)(a) of the M.C.S. (Pension) Rules, 1982. The reason given for the delay was that the applicant was suffering from mental illness for which he was taking medical treatment. He further stated that medical board had certified that the applicant was suffering from Depression in Remission between 13.7.1993 to 1.3.2007. He felt that the representation dated 4.5.2017 would be decided as early as possible but it was not decided. Ld. Advocate for the applicant relies on the judgment of the Hon'ble Supreme Court in Esha Vs. Managing Committee (2014) 2 SCC (L&S) 595 and submits that delay be condoned.

2. Ld. PO opposes the submissions of the Ld. Advocate for the applicant. She relies on the affidavit in reply dated 12.10.2023 filed by Surersh Hanumant Sawant, Executive Engineer, Kharland Survey & Investigation Division, Pen, District Raigad, on behalf of respondent no.3. The cause of action arose on 29.1.2015 when a decision was taken by the respondent no.3. It is pointed out that the applicant was unauthorizedly absent from the office from 13.7.1993 to 1.3.2007. It is further stated that the applicant was unauthorizedly absent for more than 13 years and

had a habit to remain absent from office without permission. Further during his unauthorized absence he did not produce documents regarding his illness. Therefore, Ld. PO submits that delay may not be condoned and MA may be dismissed.

3. Considered the submissions of both the sides. It is an undisputable fact that applicant remained unauthorisedly absent from 13.7.1993 to 1.3.2007. It is seen that a medical certificate dated 1.3.2007 was given when it was diagnosed that the applicant was found suffering from Depression in Remission. The order was passed by Water Resources Department on 29.1.2015 stating that applicant's absence was unauthorized. Relevant portion of the said letter reads as under:

“श्री. अत्रे यांची दि. १३.०७.१९९३ ते दि. ०१.०३.२००७ पर्यंतची अनधिकृत गैरहजेरी, महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम १९८२ मधील नियम ४७ (१) अ नुसार, त्यांच्या सेवेत खंड ठरतो. सेवेत खंड पडल्यास कर्मचाऱ्याचा मागील सेवेवरील हक्क गमावला जातो. त्यामुळे त्यांना कोणतेही लाभ अनुज्ञेय ठरणार नाहीत. या निर्णयामुळे त्यांना पूर्वीच्या सेवेचे कोणतेही लाभ जसे वेतन संरक्षण, वेतनवाढी, रजा, सेवाअंतर्मत आशवासित प्रगती योजना, जुने निवृत्तीवेतन अनुज्ञेय राहणार नाहीत.

श्री. अत्रे हे दि. ०२.०३.२००७ पासून कामावर हजर झाल्यापासून आता ७ वर्षात ते अनधिकृत गैरहजर न राहता नियमित सेवेत कार्यरत असावेत अशी धारणा आहे. म्हणून अत्यंत सहानुभूतिपूर्वक विचार करून श्री. अत्रे यांची नियमबाह्यरित्या केलेल्या पुनर्नियुक्तीस खालील अटीच्या अधीन राहून मान्याता देण्यात येत आहे.

१. श्री. अत्रे यांचे वेतन, दि.०२.०३.२००७ रोजी पुनर्नियुक्तीनंतर सहाव्या वेतन आयोगाच्या अनुषंगाने अनुसूचक पदास विहित केलेल्या वेतनसंरचनेतील किमान वेतनावर निश्चित करण्यात यावे.
२. श्री. अत्रे यांना परिभाषित अंशदान निवृत्तीवेतन योजना लागू राहिल. त्यानुसार त्यांचे खाते उघडणे, त्यांच्या वेतनातून अंशदान जमा करण्याबाबतची कार्यवाही करण्यात यावी.”

4. After this unauthorized leave the applicant was allowed to join the office with note of confirmation deed that hence forth without permission he would not remain absent and orders given by Government would be

binding on him and he would not raise any objection. Therefore, the decision taken by respondent no.3 in letter dated 29.1.2015 is binding on the applicant.

5. The issue revolves around delay in filing the OA. It is abundantly clear that cause of action arose on 29.1.2015 and the OA was filed on 3.5.2023. Thus, there is delay of more than 8 years. It has been noted time and again that mere filing of representation is not sufficient ground for condoning such inordinate delay. No evidence has been given of his mental illness for the period after 2015. Such a long and unexplained delay cannot be condoned.

6. In view of the above, MA for condoning the delay is dismissed. Hence, OA does not survive and the same is also dismissed. No order as to costs.

Sd/-

**(Medha Gadgil)**  
**Member (A)**  
**18.1.2024**

Dictation taken by: S.G. Jawalkar.