

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
CIVIL APPLICATION NO. 431 OF 2017 IN
ORIGINAL APPLICATION NO. 636 OF 2017 (S.B.)

Shri Sharad S/o Wamanrao Ghui,
Aged about 80 years, Occ. – Retired Assistant Registrar,
Cooperative Societies, Nagpur,
R/o Plot No. 13, Shyam Nagar, Near
Rahul Nagar, Somalwada,
Nagpur-440 025.

Applicant.

Versus

- 1) State of Maharashtra, through
Secretary, Department of
Co-operation and Textiles,
Mantralaya, Mumbai-32.
- 2) The Divisional Joint Registrar,
Co-operative Societies, Dhanwate,
Chambers (Annex) Sitabuldi,
Nagpur-12.
- 3) Commissioner of Co-operation and,
Registrar Co-operative Societies,
Maharashtra State, Pune-1.
- 4) Directorate of Handlooms, Department of
Handlooms, Power looms, Textiles,
State of Maharashtra, Old Secretariat,
Building, Civil Lines, Nagpur-1.

Respondents

Mrs.Gauri Venkatraman, the Id. counsel for the applicant.

Shri S.A.Deo, the Id. C.P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 21st day of December, 2017)

Heard Mrs. Gauri Venkatraman, the learned counsel for the applicant and Shri S.A.Deo, the learned C.P.O. for the respondents.

2. The O.A. No. 636/2017 has been filed wherein the applicant has claimed a direction to the respondents to provide his service book as well as one Shri L.N.Awatade. He has also been claiming directions to the respondents to claim deemed date on the post of Head Clerk w.e.f. 14/01/1963 and to fix the pay of the applicant correctly on the post of Head Clerk/ Superintendent w.e.f. 14/01/1963, i.e., the date on which the said pay scale was given to his Junior Shri L.N.Awatade. He has further claimed direction to give him deemed date on the post of Cooperative Officer, Class-I and to correctly fix the pay of the applicant on the post of Superintendent/ Cooperative Officer, Class-I w.e.f. 14/08/1972, i.e., date on which his Junior Shri L.N.Awtade was promoted and placed in this pay scale. The applicant is also claiming difference of amount / arrears on correct fixation of his pay w.e.f. 14/01/1963 and 04/08/1972 respectively.

3. This C.A. is filed for condonation of delay in filing the O.A. The applicant has stated that there is a bonafide cause for condoning the delay of 53 yrs. and 42 yrs. respectively in praying for correction in fixation of his pay and the said delay is unintentional and bonafide and that the applicant has made out sufficient causes for condoning the delay.

4. The Id. counsel for the applicant has placed reliance on the judgment in the case of **Union of India and others Vs. Tarsem Singh reported in (2008) 8 SCC 648 and in M.R.Gupta Vs. Union of India reported in (1995) 5 SCC 628.** The Id. counsel for the applicant submits that fixation of pay/ condonation is a continuing cause of action which arises on every time, when uncorrected pay or pension is paid to the applicant and, therefore, in fact, there is no delay at all and even otherwise such delay can be condoned in the interest of Justice.

5. The respondent no. 2 files the affidavit-in-reply and strongly objected the application for condonation of delay. It is stated that the applicant has preferred instant application after an inordinate delay of 53 yrs. The applicant is claiming fixation of pay and deemed date on the basis of false and concocted story alleged in the letter dated 05/12/1984. Such a letter was never received by the respondents. It is stated that said letter does not bear any counter-signature or stamp showing that respondent no. 2 had ever received such letter. The applicant's claim is

totally time barred and the applicant slept over of for his so-called rights for about 5 to 6 decades.

6. I have perused the Judgment on which the Id. counsel for the applicant has placed reliance. The first Judgment is in case of **M.R.Gupta Vs. Union of India reported in (1995) 5 SCC 628** in which the Hon'ble Apex Court has made following observations :-

Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting

mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. ([See Thota China Subba Rao and Others vs. Mattapalli Raju and Others](#), AIR 1950 Federal Court 1).

7. The Id. counsel for the applicant also placed reliance on the Judgment in case of **Pooran Singh Vs. Union of India & Ors.** in which the Hon'ble High Court of Delhi & the Hon'ble Supreme Court in the Judgment reported as **(2008) 8 SCC 648, Union of India & Ors. Vs. Tarsem Singh.** In both the cases the following observations are thus:-

It can be stated with certitude that when a junior in the cadre is conferred with the benefit of promotion ignoring the seniority of an employee without any rational basis the person aggrieved can always challenge the same in an appropriate forum, for he has a right to be considered even for ad hoc promotion and a junior cannot be allowed to march over him solely on the ground that the promotion granted is ad hoc in nature. Needless to emphasise that if the senior is found unfit for some reason or other, the matter would be quite different. But, if senior incumbents are eligible as per the rules and there is no legal justification to ignore them, the employer cannot extend the promotional benefit to a junior on ad hoc basis at his whim or caprice. That is not permissible.

We have no trace of doubt that the respondents could have challenged the ad hoc promotion conferred on the junior employee at the relevant time. They chose not to do so for six years and the junior employee held the promotional post for six years till regular promotion took place. The submission of the learned counsel for the respondents is that they had given representations at the relevant time but the same fell in deaf ears. It is interesting to note that when the regular selection took place, they accepted the position solely because the seniority was maintained and, thereafter, they knocked at the doors of the tribunal only in 2003. It is clear as noon day that the cause of action had arisen for assailing the order when the junior employee was promoted on ad hoc basis on 15.11.1983.

8. The Id. P.O. submits that the applicant claim's is not simplisitor for correct fixation, but it depends upon grant of deemed date

of promotion and, therefore, both the Judgments relied upon by the applicant are not applicable to the present set of facts. Perusal of the relief sought by the applicant as per para no. 7.2, clearly shows that the applicant is not simply claiming proper fixation of pay scale, but his claim is dependent upon grant of deemed date of promotion. This can be understood by the prayer made by the applicant in para 7.2 which is as under:-

Direct the respondents to grant him deemed date on the post of Head Clerk wef 14/01/1963 fix the pay of the applicant correctly on the post of Head Clerk/ Superintendent w.e.f. 14/01/1963 i.e. the date on which the said scale was given to his junior Shri L.N.Awtade and he was promoted on the post of Head Clerk and further to grant deemed date on the post of cooperative officer I and correctly fixed the pay of the applicant on the post of Officer Superintendent/ Cooperative Officer-I w.e.f. 04/08/1972 i.e. the date on which his junior Shri Awtade was promoted and placed in this pay on the post of Cooperative Officer-I/ office Superintendent.

The reading of the aforesaid prayer thus makes it crystal clear that the applicant is not only claiming proper fixation but his claim for proper fixation of pay depends upon grant of deemed date of promotion for the post of Head Clerk w.e.f. 14/01/1963 and deemed date of promotion to the post of Office Superintendent / Cooperative Officer, Class-I, w.e.f. 04/08/1972 from the date on which his Junior Shri Awtade was promoted. It is not known as to why the applicant did not approach the competent authority for deemed date of promotion from 14/01/1963 and from 04/08/1972. It was, therefore, necessary for the

applicant to first claim deemed date of promotion from the date on which his junior Shri Awtade was promoted and after satisfaction of that claim, he should have claimed proper fixation of his pay. Without getting deemed date of promotion, the applicant cannot claim proper fixation. There are absolutely no reasons as to why applicant remained silent from 14/01/1963, when his junior was promoted to the post of Head Clerk and, thereafter from 04/08/1972 i.e. the date on which his junior Shri Awtade was promoted as Cooperative Officer, Class-I/ Office Superintendent. In such circumstances, the applicant's claim in 2017 for the first time for proper fixation of his pay cannot be said to be within limitation. If the applicant is being paid wrongly, it makes no difference as to for how many years he was paid wrongly for claiming proper fixation, but if his claim for proper fixation is dependent upon his deemed date of promotion, it was obligatory upon him to get that claim redressed from the proper authority first and then to apply for proper fixation. In my opinion, the applicant has miserably failed to prove that he was justified in not claiming such relief for almost 53 and odd years.

9. The Id. P.O. has placed reliance on a judgment reported in **State of Tripura and Ors. Vs. Arabinda Chakraborty & Ors., (2014) 6 Supreme Court Cases 460.** In this Judgment it has been held that claim of getting promotional benefits should not have been entertained by the

Tribunal and accepted by the Hon'ble High Court and would not even remotely attract concept of discretion. It was further observed by the Hon'ble Apex Court that his claim of promotion is based on concept of equality and equitability, it has to be claimed within reasonable time. In the present case the applicant remained silent for almost 53 yrs, though his junior was promoted. He never claimed deemed date of promotion and now after so many years i.e. after retirement, he is claiming fixation of proper pay scale on the ground that he should have been granted deemed date of promotion prior to 53 yrs. or so. No reasonable grounds have been made out for such delay and laches. I, therefore, do not find any merit in the application for condonation of delay and in fact, the applicant has failed to make out a case for condoning the delay. Hence the following order:-

ORDER

1. The C.A. 431/2017 for condonation of delay stands dismissed, subsequently the O.A.636/2017 stands dismissed.
2. No order as to costs.

Dated :-21/12/2017

**(J.D. Kulkarni)
Vice-Chairman (J).**

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