

**BEFORE THE HON'BLE MAHARASHTRA ADMINISTRATIVE
TRIBUNAL MUMBAI**

MISC. APPLICATION NO. /2024
IN
ORIGINAL APPLICATION NO. /2024

DIST-PUNE

SHARMILA SUKHDEV GHOLAIT

.. APPLICANT

Versus

THE STATE OF MAHARASHTRA&OTHERS


..RESPONDENT

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DATE ::- 16/08/2024
PLACE ::- AURANGABAD.


KAKASAHEB B. JADHAV
Advocate for applicant

**BEFORE THE HON'BLE MAHARASHTRA ADMINISTRATIVE
TRIBUNAL MUMBAI.**

MISC. APPLICATION NO. /2024
IN
ORIGINAL APPLICATION NO. /2024

DIST-PUNE

SHARMILA SUKHDEV GHOLAIT,
Age: 35 years, Occu. : Service as Clerk Typist,
(At present Suspended),
R/o: B-16, P-14, Devendranagar,
Mahabal Road, Jalgaon-425001.
Mob. No. 7218008672.
Email: golaitsharmila@gmail.com **.. APPLICANT**

VERSUS

- 1) The State of Maharashtra,
The Secretary, Revenue and Forest Department,
Mantralaya, Mumbai-32
- 2) The Divisional Commissioner, (Revenue)
Pune Division, Council Hall Vidhan Bhavan,
Bund Garden Road, Camp, Pune-411001.
- 3) The District Collector,
Collector Office, Finance Road,
Agarkar Nagar, Pune-411001.
- 4) The Tahsildar,
Tahsil Office, Indapur,
Dist. Pune. **..RESPONDENTS**

MISC. APPLICATION FOR DELAY CONDONATION.

I, SMT. SHARMILA SUKHDEV GHOLAIT, Age: 35 years,
Occu. : Service as Clerk Typist, (At present Suspended), R/o: B-16, P-
14, Devendranagar, Mahabal Road, Jalgaon-425001, do hereby state on
oath as under:-

BEFORE ME

Sharmila

B.S. DHONDE PATIL
Notary Govt. of India
Reg. No.: 3763

01) The applicant submits that, the applicant has filed the original application challenging the impugned suspension order dtd. 30/05/2018 issued by the respondent no. 3, thereby placing the applicant under suspension from the post of Clerk, office of Dy. Collector Office, Land Acquisition No. 11, Pune. The applicant is also seeking directions to the respondent no. 2 & 3 to revoke the suspension of the applicant and reinstate her on the post of Clerk in the office of the Dy. Collector Office, Land Acquisition No. 11, Pune forthwith. The applicant is also seeking directions to the respondents to grant her all the consequential benefits including pay and allowances from 91st day of suspension order in view of the judgment delivered by the Hon'ble Apex Court in case of the Ajaykumar Choudhry V/s Union of India and as per the G.R. dtd. 9.7.2019. The applicant is also seeking directions to the respondent no. 3 to consider and decide the applications submitted by the applicant for revocation of suspension order. The copy of impugned order dtd. 30/05/2018 is annexed as ANNEXURE-A-1.

02) The applicant submits that, till today the suspension order is not revoked and the respondents have not paid the subsistence allowance to her from the date of suspension order. Till today review of suspension is also not taken by the respondents. As such, the applicant is not getting subsistence allowance and she has cause of action in each month. Therefore, there is continuous cause of action to the applicant to challenge the suspension order. The applicant is claiming monetary reliefs and reinstatement in service and therefore, she has every month cause of action. The copy of judgment of the Hon'ble Apex Court are annexed as ANNEXURE-A-2-Colly..



BEFORE ME

B.S. DHONDE PATIL
Notary Govt. of India
Reg. No.: 3763

03) The applicant states that, the applicant was initially appointed on the post of Clerk Typist on 29.02.2008 by the District Collector, Jalgaon and posted her at Tahsil Office Erandol, Dist. Jalgaon. Thereafter, the applicant got married and submitted the application for inter district transfer from Jalgaon to Pune. The respondent no. 1 issued the order dtd. 2.9.2013, thereby granted the permission for inter district transfer of the applicant from Jalgaon to Pune and the respondent no. 3 issued the transfer/posting order dtd. 6.11.2013 and posted her as a Clerk, Food Supply Officer, office Pune on vacant post. While working with the respondents in the office of the Food Supply Officer, Pune, the services of the applicant was allotted to the office of the Dy. Collector, Land Acquisition No. 11, Pune.

04) The applicant submits that, on 23.11.2016 the applicant had submitted the application to the Dy. Collector, Land Acquisition No. 11, Pune requesting to grant her earned leave from 22.11.2016 to 30.11.2016 and from 1.12.2016 to 28.2.2017 as extraordinary leave due to illness of the family member, she went at Jalgaon. Thereafter, also she had submitted the leave application for the period from 1.3.2017 to 30.6.2017 as earned leave and from 1.7.2017 to 30.8.2017 as extraordinary leave.

05) The applicant submits that, on 12.12.2017 the Dy. Collector, Land Acquisition no. 11, Pune issued the show cause notice to the applicant and called the explanation from the applicant as to why the disciplinary action should not be taken against her as the applicant was on Leave from duty without permission. On 22.12.2017 the applicant had submitted the reply to the show cause notice to the respondents. Without

Shubait

BEFORE ME


B.S. DHONDE PATIL
Notary Govt. of India
Reg. No.: 3763

considering the reply filed by the applicant to the show cause notice, the respondent no. 3 issued the impugned order, thereby suspended the applicant from the post of Clerk Typist on the ground that, the applicant is absent without permission since 21.11.2016. Till today the respondents have not taken the review of the suspension nor paid the allowance. No departmental enquiry is initiated against the applicant by the respondents as on date.

06) The applicant submits that, on 6.7.2018 the applicant had submitted the application to the Dy. Collector, Land Acquisition no. 11, Pune and requested that, at present it is impossible to attend the office personally. On 31.12.2020 the applicant has submitted the application to the Tahsildar, Indapur i.e. the respondent no. 4 and requested to allow him to join in his office. But, she was not allowed to join on duty by the respondent no. 4. The application is not replied till today. The copy of application dtd. 31.12.2020 is annexed as ANNEXURE-A-3.

07) The applicant submits that, on 27.3.2024 the applicant has submitted the application to the respondent no. 4 and requested to allow her to join in the duty. It was also submitted that, due to family dispute and medical problems she could not present. It is also submitted that, there was covid-19 from March, 2020 to February, 2022 and therefore, it was very difficult to her to attend the office. It is also submitted that, she was went on 31.12.2020 to the office, but at that time Tahsildar was not present and therefore, she submitted the joining report to the office. There was no communications from the respondents to the applicant. The copy of application dtd. 27.3.2024 is annexed as ANNEXURE-A-4.

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BEFORE ME

B.S. DHONDE PATIL
Notary Govt. of India
Reg. No.: 3763

08) The applicant submits that, on 11.6.2024 the applicant has submitted the application to the respondent no. 3 and requested that, she is under suspension since last 6 years. She requested that, 90 days are completed from the date of suspension. Therefore, requested to reinstate her in service. The copy of application dtd. 11.6.2024 is annexed as ANNEXURE-A-5.

09) The applicant submits that, the applicant has filed the criminal cases at Jalgaon court and same are pending at Jalgaon. So also, the subsistence allowance are also not paid to her by the respondents and therefore, the financial condition of the applicant is very weak and she is unable to bear the expenses of the fess. The delay caused in filing original application is not intentional and deliberate. This Hon'ble Tribunal was please to condone the delay in identical matters in which more than five years delay. The delay is caused due to family problems of the applicant. As such, delay of 5 years and 2 months caused in filing the original application may kindly be condoned in the interest of justice. The copies of orders passed by this Hon'ble Tribunal, Aurangabad bench will be submitted at the time of hearing if requires.

10) The applicant submits that, the applicant has filed the Original Application No.809/2024 with Misc. Application No. 348/2024 before this Hon'ble Tribunal, Aurangabad bench challenging the suspension order dtd. 30.5.2028, but same is withdrawn by order dtd. 09.08.2024 with liberty to file at appropriate place. The copy of order dtd. 09.08.2024 passed in Original Application No.809/2024 with Misc. Application No. 348/2024 is annexed as ANNEXURE-A-6.

BEFORE ME



B.S. DHONDE PATIL
Notary Govt. of India
Reg. No.: 3763




11) The applicant submits that, till today the applications are not replied nor suspension revoked. The subsistent allowance also not paid to the applicant till today and therefore, the financial condition is very poor. The suspension order is issued with malafide intention to drag the applicant in serious case. The suspension cannot be continued beyond 90 days from the date of suspension as per the directions of the Hon'ble Apex Court. The G.R. dtd. 9.7.2019 is also issued by the State Govt. and directed to revoke the suspension if the charge sheet is not issued within 90 days. Till no charge sheet is served to her for departmental enquiry and review of the suspension is not taken. Therefore, continuation of suspension longer period is illegal. Therefore, there is merits in the original application. There is continuous cause of action to her to challenge the suspension order. As such, the delay of 5 years and 2 months may kindly be condoned in the interest of justice and the original application may kindly be decided on merits.

12) HENCE IT IS PRAYED THAT,

- A) This Misc. Application may kindly be allowed.
- B) The delay of 5 years and 2 months caused to file the original application challenging the impugned suspension order dtd. 30/05/2018 issued by the respondent no. 3 may kindly be condoned and the original application may kindly be decided on merits.
- C) Any other equitable and suitable relief may kindly be granted in favour of applicant in the interest of justice.

Date ::- 13/08/2024

Place ::- Chh. Sambhajanagar


KAKASAHEB B. JADHAV
Advocate for Applicant



BEFORE ME

B.S. DHONDE PATIL
Notary Govt. of India
Reg. No.: 3763

VERIFICATION

I, SMT. SHARMILA SUKHDEV GHOLAIT, Age: 35 years, Occu. : Service as Clerk Typist, (At present Suspended), R/o: B-16, P-14, Devendranagar, Mahabal Road, Jalgaon-425001, do hereby state on oath that the contents of this Misc. Application from Para No. I to X are true and correct to the best of my personal knowledge.

Hence verified on 13st day of August, 2024 at Chh. Sambhajinagar.

Identified &

Deponent

Explained by

K. B. Jadhav

K. B. Jadhav
Advocate

Sharmila

SHARMILA SUKHDEV GHOLAIT

AFFIDAVIT

Solemnly Affirmed Before Me By Shri / Smt.
Sharmila SUKHDEV GHOLAIT
Age 35 Service
R/o Jalgaon
Tq. Jalgaon Jalgaon
Who Identified as Adv K-B-Jadhav
Whom He/ She is Personally Known.

NOTED & REGISTERED
AT Sr. No. 14054/2024
THIS DOCUMENT CONTAINS
7 PAGES

BEFORE ME

Sheskar Shrinani Chande Patil
13-8-24
Advocate & Notary Public of India
AREA-AURANGABAD DIST.
(Mob.) : 9822242637 (Reg. No. 3763)

13 AUG 2024

Sharmila



**BEFORE THE HON'BLE MAHARASHTRA ADMINISTRATIVE
TRIBUNAL MUMBAI.**

MISC. APPLICATION NO. /2024
IN
ORIGINAL APPLICATION NO. /2024

DIST-JALGAON/PUNE

SHARMILA SUKHDEV GHOLAIT

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DATE ::- 16/08/2024
PLACE ::- AURANGABAD.


KAKASAHEB B. JADHAV
Advocate for applicant

ANNEX A -1

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- वाचले:- १) पमई संकलनाकडील शोरापत्र क्र. पमई/कावि/२/२०१८ दि.१४/०२/२०१८ लगत
उपजिल्हाधिकारी कार्यालय भूसंपादन क्र.११, पुणे यांचेकडील अहवाल क्र . उभुसं/११/आस्था/
कावि / ८१७/२०१७ दि. ०४/०१/२०१८.
२) महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ मधील नियम ४ चे पोटनियम (१) (अ)

जिल्हाधिकारी कार्यालय,पुणे
महसुल शाखा
क्रमांक- पमम / ५१० / एक
पुणे-१, दिनांक ३०/०५/२०१८

आदेश

ज्याअर्थी, उपजिल्हाधिकारी कार्यालय भूसंपादन क्र.११, पुणे यांनी वाचले क्र.१ अन्वये श्रीमती शर्मिला एस. घोलाईत, लिपीक या दि. २१/११/२०१६ पासून विनापरवाना गैरहजर असलेबद्दल व त्यांचेवर शिस्तभंगाची कारवाई करण्यबद्दल अहवाल सादर केलेला आहे.

त्याअर्थी, मी, जिल्हाधिकारी पुणे, महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ चे नियम ४ चे पोटनियम (१) (अ) अन्वये प्रदान करणेत आलेल्या शक्तीचा वापर करुन श्रीमती एस.एस. घोलाईत, लिपीक या दि. २१/११/२०१६ पासून विना परवाना गैरहजर असलेने त्यांना शासन सेवेतून तात्काळ निलंबित करित आहे आणि ते पुढील आदेश काढले जाईपर्यंत निलंबित राहतील.

३) याद्वारे, आणखी असाही आदेश देण्यात येत आहेत की, प्रस्तुत आदेश अंमलात असेपर्यंत, श्रीमती एस.एस. घोलाईत, लिपीक, उपजिल्हाधिकारी कार्यालय भूसंपादन क्र.११, पुणे यांचे मुख्यालय ~~तहसिलदार इंदोपूर~~ हे राहिल. त्यांना ~~तहसिलदार इंदोपूर~~ यांचे पूर्वपरवानगी शिवाय मुख्यालय सोडता येणार नाही.

४) श्रीमती एस.एस. घोलाईत, लिपीक यांना त्यांच्या निलंबनाच्या कालावधीत निलंबन निर्वाह भत्ता देणे संबंधित खालीलप्रमाणे आदेश देण्यात येत आहेत.

(अ) निलंबन कालावधीत श्रीमती एस.एस. घोलाईत, लिपीक यांनी खाजगी नोकरी स्विकारू नये किंवा धंदा करुन नये. त्यांनी तसे केल्यास ते दोषारोपास पात्र ठरतील व त्या अनुषंगाने त्यांचेविरुद्ध कारवाई करणेत येईल. तसेच ते निलंबन निर्वाह भत्ता गमाविणेंस पात्र ठरतील.

(ब) निलंबन कालावधीत निलंबन निर्वाह भत्ता जेव्हा जेव्हा देण्यात येईल त्यावेळी खाजगी नोकरी स्विकारली नाही किंवा खाजगी धंदा व व्यापार करित नार्ही, अशा तः-हेचे प्रमाणपत्र श्रीमती एस.एस. घोलाईत, लिपीक, यांनी दयावयाचे आहे.

(क) महाराष्ट्र नागरी सेवा (पदग्रहण अवधी, स्वीयेत्तर सेवा आणि निलंबन, बडतर्फी व सेवेतून काढून टाकणे यांच्या काळातील प्रदाने) नियम १९८१ चे नियम ६८ मधील तरतुदीनुसार श्रीमती एस.एस. घोलाईत, लिपीक यांना निलंबन निर्वाह भत्ता व इतर पूरक भत्ते देण्यात येतील.

प्रति,

श्रीमती एस.एस. घोलाईत, लिपीक (उपजिल्हाधिकारी कार्यालय भूसंपादन क्र.११, पुणे, यांचे कार्यालयामार्फत)



(नवल फिशोर राण)
जिल्हाधिकारी पुणे

T-C
K. J. Kulkarni

M.R. Gupta vs Union Of India & Ors on 21 August, 1995

Supreme Court of India

M.R. Gupta vs Union Of India & Ors on 21 August, 1995

Equivalent citations: 1996 AIR 669, 1995 SCC (5) 628

Author: J S Verma

Bench: Verma, Jagdish Saran (J)

PETITIONER:

M.R. GUPTA

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT 21/08/1995

BENCH:

VERMA, JAGDISH SARAN (J)

BENCH:

VERMA, JAGDISH SARAN (J)

VENKATASWAMI K. (J)

CITATION:

1996 AIR 669

1995 SCC (5) 628

1995 SCALE (5) 29

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT VERMA, J.

Leave granted.

The only question for decision is : Whether the impugned judgment of the Tribunal dismissing as time barred the application made by the appellant for proper fixation of his pay is contrary to law? Only a few facts are material for deciding this point.

The appellant joined the service of the State of Punjab as Demonstrator in the Government Polytechnic in 1967. Thereafter, he joined service in the railways in 1978. The appellant claimed that the fixation of his pay on his joining service in the railways was incorrect and that he was entitled to fixation of his pay after adding one increment to the pay which he would have drawn on 1.8.1978 in accordance with Rule No. 2018 (N.R.S.N. 6447) equivalent to Fundamental Rule 22-c. The

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representation of the appellant to this effect was rejected before coming into force of the Administrative Tribunals Act, 1985. The appellant then filed an application on 4.9.1989 before the Tribunal praying inter alia for proper fixation of his initial pay with effect from 1.8.1978 and certain consequential benefits. The application was contested by the respondents on the ground that it was time barred since the cause of action had arisen at the time of the initial fixation of his pay in 1978 or latest on rejection of his representation before coming into force of the Administrative Tribunals Act, 1985. The subsequent representations made by the appellant for proper fixation of his pay were alleged to be immaterial for this purpose.

The Tribunal has upheld the respondents' objection based on the ground of limitation. It has been held that the appellant had been expressly told by the order dated 12.8.1985 and by another letter dated 7.3.1987 that his pay had been correctly fixed so that he should have assailed that order at that time "which was one time action". The Tribunal held that the raising of this matter after lapse of 11 years since the initial pay fixation in 1978 was hopelessly barred by time. Accordingly, the application was dismissed as time barred without going into the merits of the appellant's claim for proper pay fixation.

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

M.R. Gupta vs Union Of India & Ors on 21 August, 1995

and Others vs. Mattapalli Raju and Others, AIR 1950 Federal Court 1).

Learned counsel for the respondents placed strong reliance on the decision of this Court in S.S. Rathore vs. State of Madhya Pradesh, [1989] Supp. 1 SCR 43. That decision has no application in the present case. That was a case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case.

For the aforesaid reasons, this appeal has to be allowed. We make it clear that the merits of the appellant's claim have to be examined and the only point concluded by this decision is the one decided above. The question of limitation with regard to the consequential and other reliefs including the arrears, if any, has to be considered and decided in accordance with law in due course by the Tribunal. The matter is remitted to the Tribunal for consideration of the application and its decision afresh on merits in accordance with law. No costs.

T.C
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SUPREME COURT CASES

(2008) 8 SCC

9. For the foregoing reasons the appeal partly succeeds. The impugned order is set aside. During the pendency of the petition before the High Court, the appellants are permitted to complete the incomplete construction work done by them at their own risk and cost. The High Court is requested to dispose of the matter on merits without being inhibited by this order granting interim relief to the appellants as early as possible and without any avoidable delay.

10. No costs.

(2008) 8 Supreme Court Cases 648

(BEFORE R. V. RAVEENDRAN AND L.S. PANTA, JJ.)

UNION OF INDIA AND OTHERS

Appellants:

Versus

TARSEM SINGH

Respondent.

Civil Appeals Nos. 5151-52 of 2008†, decided on August 13, 2008

Limitation — Continuing wrongs — Recurring/successive wrongs — Difference explained — Continuing wrong is a single wrong causing continuing injury — Recurring/successive wrong on the other hand occurs periodically giving rise to distinct and separate cause of action — Service matter claims, held, normally are rejected either on limitation where limitation period is prescribed, or on the ground of delay/laches where there is no limitation — An exception to this principle is however the cases of continuing wrong which can be entertained despite delay — The exception however does not apply where interests of a third party, as in the case of seniority or promotion, are affected — In the case of consequential reliefs like arrears for the past period, principles relating to recurring/successive wrongs apply — Delayed claim relating to disability pension — Held, arrears should have been restricted to three years prior to filing of writ petition — Administrative Tribunals Act, 1985 — S. 21 — Limitation — Pension — Disability pension — Arrears should be restricted to three years prior to filing of writ petition (Paras 4 to 8)

The respondent was declared invalid from army service on 13-11-1983. He however approached the High Court as late as in 1999 for grant of disability pension. His writ petition was allowed by the Single Judge but grant of arrears was restricted to a period of three years and 2 months (total 38 months) prior to filing of writ petition. The Division Bench however allowed the respondent arrears from 13-11-1983 itself.

The question was whether relief could be granted to the respondent from 13-11-1983 itself despite the fact that there was considerable delay on his part in approaching the High Court.

Allowing appeal, the Supreme Court held as above.

† Arising out of SLPs (C) Nos. 3820-21 of 2008. From the Final Judgments and Orders dated 6-12-2006 and 23-2-2007 of the High Court of Punjab and Haryana at Chandigarh in LPA No. 573 of 2002 in CM No. 99 of 2007

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Balakrishna Savalram Pitfari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan, AIR 1959 SC 798; *M.R. Gupta v. Union of India*, (1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186; *Shiv Dass v. Union of India*, (2007) 9 SCC 274 : (2007) 2 SCC (L&S) 395, *relied on*

Appeals allowed

K-M/38908/CL

Advocates who appeared in this case :

B. Datu, Additional Solicitor General (Ashok K. Srivastava and B. Krishna Prasad, Advocates) for the Appellants;

Neeraj K. Jain and Ugra Shankar Prasad, Advocates, for the Respondent.

Chronological list of cases cited

- | | |
|--|---------------------------|
| 1. (2007) 9 SCC 274 : (2007) 2 SCC (L&S) 395, <i>Shiv Dass v. Union of India</i> | <i>on page(s)</i>
651a |
| 2. (1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186. <i>M.R. Gupta v. Union of India</i> | 650c-d |
| 3. AIR 1959 SC 798, <i>Balakrishna Savalram Pitfari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan</i> | 650a |

The Order of the Court was delivered by

R.V. RAVEENDRAN, J.— Leave granted. Heard learned counsel for the parties.

2. The respondent while working in the Indian Army was invalidated out of army service, in medical category, on 13-11-1983. He approached the High Court in 1999 seeking a direction to the appellants to pay him disability pension. A learned Single Judge by order dated 6-12-2000 allowed the writ petition and directed the appellants to grant him disability pension at the rates permissible. Insofar as arrears are concerned, the relief was restricted to thirty-eight months prior to the filing of the writ petition. The respondent was also directed to appear before the Re-survey Medical Board as and when called upon by the appellants. The appellants did not contest the said decision and granted disability pension to the respondent and also released the arrears of disability pension for 38 months.

3. The respondent however was not satisfied. According to him the disability pension ought to be paid from the date it fell due on 13-11-1983. He therefore filed a letters patent appeal. The said appeal was allowed by the Division Bench of the High Court by judgment dated 6-12-2006. The Division Bench held that the respondent was entitled to disability pension from the date it fell due, and it should not be restricted to a period of three years and two months prior to the filing of the writ petition. By a subsequent modification order dated 23-2-2007, the Division Bench also granted interest on the arrears at the rate of 6% per annum. The said judgment and order of the Division Bench is challenged in this appeal. The only question that therefore arises for our consideration is whether the High Court was justified in directing payment of arrears for a period of 16 years instead of restricting it to three years.

4. The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A "continuing wrong" refers to a single wrongful act which causes a continuing injury. "Recurring/

successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in *Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneswar Maharaj Sansthan*¹ explained the concept of continuing wrong (in the context of Section 23 of the Limitation Act, 1908 corresponding to Section 22 of the Limitation Act, 1963): (AIR p. 807, para 31)

"31. ... It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

5. In *M.R. Gupta v. Union of India*² the appellant approached the High Court in 1989 with a grievance in regard to his initial pay fixation with effect from 1-8-1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of continuing wrong and recurring wrongs and reversed the decision. This Court held: (SCC pp. 629-30, para 5)

"5. ... 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

¹ AIR 1959 SC 798

² (1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186

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limited extent of proper pay fixation, the application cannot be treated as time-barred...."

- a 6. In *Shiv Dass v. Union of India*³ this Court held: (SCC p. 277, paras 8 & 10)

b "8. ... The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

c * * *
10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. ... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

d 7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

g 8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of

h

3 (2007) 9 SCC 274 : (2007) 2 SCC (L&S) 395

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(2008) 8 SCC

arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances. a

9. In view of the above, these appeals are allowed. The order of the Division Bench directing payment of disability pension from the date it fell due, is set aside. As a consequence, the order of the learned Single Judge is restored. b

(2008) 8 Supreme Court Cases 652

(BEFORE TARUN CHATTERJEE AND H.S. BEDI, JJ.)

MANJUL SRIVASTAVA

Appellant;

Versus

GOVERNMENT OF UTTAR PRADESH
AND OTHERS

Respondents. c

Civil Appeals Nos. 1758-59 of 2002†, decided on August 29, 2008

A. Competition Law — Monopolies and Restrictive Trade Practices Act, 1969 — S. 36-A — Unfair trade practice — Only one of the two conditions/guarantee of plot allotment satisfied — Effect of — Scheme of GDA plot allotment dependent upon timely payment of amount reserved for allotment as well as being successful in the draw of lots — Appellant though complying with the condition of timely payment, being unsuccessful in the draw of lots — Appellant aggrieved as GDA cancelled the allotment and refunded reserved amount — MRTP Commission rejecting the claim of the appellant for allotment, held, justified — Contract Act, 1872 — Ss. 31 to 33 — Contingent contract d e

B. Town Planning — Allotment/Auction of Flats/Plots/Houses/Shops by Housing Board/Development Authority — “Plot reserved” if amounts to “plot allotted” — Ghaziabad Development Authority’s Govindpur Housing Scheme of 1988 — Letter dated 10-2-1989 intimating reservation of Category D plot in the name of the appellant and stipulated conditions — Interpretation of the words “plot reserved” and “plot allotted” — Money was paid for “plot reserved” — “Plot allotted” was to be finally done after a draw of lots — Held, “plot reserved” and “plot allotted” are different aspects altogether — Therefore, money paid for “plot reserved” would not mean that the plot has been allotted f

The appellant applied for allotment of a residential plot pursuant to an advertisement of GDA (Ghaziabad Development Authority) after depositing registration fees for an amount of Rs 7210 on 10-2-1989. GDA issued a reservation letter to the appellant reserving plot, Category D in her name and further requiring her to deposit the entire balance amount of Rs 62,240 towards the estimated cost. After the lapse of almost nine years, more particularly on g

† From the Final Judgments and Orders dated 9-5-2001 and 7-12-2001 of the Monopolies and Restrictive Trade Practices Commission, New Delhi in CA No. 154 of 1998 and RA No. 37 of 2001 in CA No. 154 of 1998 respectively h

T.C.
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PB Jadhav
Ja

दिनांक 31/12/2020

प्रति,
मा. तहसिलदार इंदूर

विषय :- रुजू होणे बाबत .

संदर्भ :- मा. जिल्हाधिकारी कार्यालय, पुणे

क्रमांक - पमम/५१०/एक, दिनांक 30/१/20१८

महोदय,

मी श्रीमती शर्मिला सुकेदेव घोलाईत मिषिक, वरील
संदर्भात विषयानुसार विनंती अर्ज करीत की मला वरील आदेशाप्रमाणे
निलंबित केल्यानंतर मुख्यालय म्हणून तहसिल कार्यालय, इंदूर
दिलेले आहे. तरी मी आज दिनांक 31/12/2020 रोजी हजर
होत आहे असा हजेरा मला हजर करून घेणेय विनंती आहे .

आपली नम्र कर्मचारी

Shilpa

(श्रीमती शर्मिला सु. घोलाई)

तहसिलदार कार्यालय इंदूर

आयुक्त को. संकलन

मिषिक

च/अ/म/...

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दिनांक 27/03/2021

प्रति,
मा. तहसिलदार इंदोपुर

विषय :- हजर करून घेणे बाबत.

आर्जदार :- श्रीमती शर्मिला सुकदेव घोळईत, रा. जळगाव

महोदय,

मी श्रीमती शर्मिला सुकदेव घोळईत, लिपिक विनंती अर्ज करणे की. मा. जिल्हाधिकारी कार्यालय पुणे चांचेकडील आदेश क्रमांक - पमम/510/एक.पुणे-1, दिनांक 30/05/2018 चुरगार मळा निवांरना नंतरचे मुख्यतः इंदोपुर तहसिल कार्यालय दिगेले आहे. माझा साभरचा कौटुंबिक वाद आणि माझ्या माहेरच्या कुटुंबातील सदस्यांची वैयक्तिक परिस्थितीमुळे मला निलंबन काळावधीत दिलेल्या ठिकाणी हजर होणे तेव्हाच्या परिस्थितीत शक्य नव्हते. कारण माझी अडचण ही होती की माझ्या साभरचे लोक हे नेहमी मला मोठे पैसे आणण्यासाठी चास द्यावे आणि पैशांसाठी माझ्याशी झगडा करून त्यांनी मला घराबाहेर काढून देत, त्यामुळेच मला तात्काळ माझ्या माहेरी जळगाव येथे जाव लागत होते. त्यावेळेस ही माझी वैयक्तिक अडचणही उद्भवणे यांच्याच्या मनास्थितीत नव्हते, यादरम्यान माझ्या साभरच्या लोकांचा विचार लक्षात घेऊन माझ्या घराबाहेर पाहणी न करता मला बाहेरी पुणे येथे श्रम दिले तर बरे होईल आणि घराबाहेर आण आणणे परिस्थितीत उत्तम काळ पुणे जिल्ह्यात आणण्याची वेळ येणार नाही व मला कामावर पण हजर होता येईल यासाठी मी त्यांच्याशी वांगवार फोन वर विनंती करून पण त्यांनी हे मान्य केले नाही आणि पैसे असतील तर घ्यायचे अस यांमिळव, त्यांनी पैशांची मागणी सातत पुढी करून माझ्या माहेर त्यांना शक्य नव्हता. आणि पुणे जिल्ह्यात राहण पण वरुणा झेतली मी नोकरीवरून राजीनामा देण्याचा निर्णय घेतला तसे मी आपली मा. उपजिल्हाधिकारी मूख्यपादन क्र. 11, पुणे यांनी कार्यालयास पोहोचणे बरेही दिले होते. पण त्यांनी मला प्रत्यक्ष येऊन वरिष्ठ कार्यालयास राजीनामा देण्याबाबत कळविले होते. याबाबत कोरोनामुळे लोकांकडून आलेले जळगाव वरून होणारे

पुण्यांत येण मला जमल नाही. कोशेला तो शेडे निर्वास हटवून तो
 प्रवास करवावेच्य झाले तेंशी मी दिनांक ३०/१२/२०२० रोजी
 पुणे येथे समवन येवुन मा. तहसिलदार, माहभूल न्याया, विजय
 पुणे यांचेकडेय माजीनामा देवासाठी लेखी अर्ज दिवा तेव्हाला
 संतानिग संकलन लिपिक शान्तेशी या विषयावर बोळून मला
 सांगितले की, तुम्हाला दिलेला ठिकाणी आदि हजर तेव्हाच
 त्यांनी सांगितल्याप्रमाणे मी दिनांक ३१/१२/२०२० रोजी तहसिल
 कारालय बंधूपूर येथे हजर होवासाठी आले तेव्हा मा. तहसिलदार
 गेंडम या कार्यालयीन कामानिमित्त बाहेर (गोडवून) ला होवा
 मी त्यांनी वाट बघत ५.०० वाजेपर्यंत थांबले गेंडमशी बोल देवा
 नसलेले मो. ओ. त्या ठिकाणी त्यांना समवन जाऊन बोट शक्ति
 का? अशी विचारणा केल्यावर आस्थापना लिपिक शान्तेशी
 फोन वरून बघावून सांगितले की गेंडम कामात असल्यान प्रत्यक्ष
 आला बोट शकतार नाहीत तर तुम्ही तुम्हाला रुजू अहवाल
 टपालातून दिवा तरी जालेली मी माझा रुजू अहवाल टपालातून
 आस्थापना लिपिक शान्ते कडे देव्यावर मो. हरी जळगात येजे
 जाऊन राहिल्यासाठी माझा साभान होऊन शेवू शकते का? उा. जी
 परवानगीसुद्धा तहसिलदार गेंडम यांचेकडून घेवून जळगावला बाहेर
 तर पुनः शान्ते दिवशी आस्थापना लिपिक शान्ते मला फोन करुन
 सांगितले की, तुम्ही कार्यालयात येवु नका तहसिलदार गेंडमशी
 सांगला नाही सांगितलेय आणि तुम्ही गेंडमला न भेटता तुम्हाला
 रुजू अहवाल टपालात टाकून निघून येताय असे सांगितले
 आणि तुम्ही जि. का. पुणे येथे जाऊन विचार की मी कुठे हजर
 रहावे यावर मी त्यांना सांगितले की, तहसिल कार्यालयात
 प्रत्यक्ष न येता मी आदि तरिण्ड कार्यालयीन समवन भेटून
 विचारुनच तुम्हाला उडे हजर होवासाठी आले होते. आणि नया
 तुम्हाला बोलावण्यासुद्धा फोनवर माहभूल न्याया जि. का. पुणे येथी न
 संतानिग संकलन लिपिक शान्तेशी कडून दिले तुम्ही ती लिपिकी
 मा. तहसिलदार गेंडम यांना फोन करुन सांगितली आणि त्यांना
 राहमतिनेच मी टपालात माझा रुजू अहवाल दिवा. उतक्या
 गांव येवुन प्रत्यक्ष न भेटता माझा रुजू अहवाल टपालातून
 का देईल? आणि आज तुम्ही मागा हे सांगून येव्याय नकोर का

'देत' आहेत. बरीच काशलिय तुमच्याकडे जायला सांगतात
 तुम्ही पण त्यांचेकडेस जा म्हणताय? कोणत्यासाठी सा-
 परिस्थितीत आदिमा प्रवास करणे कठीण झाले आहे.
 वेळेवर बांध उपलब्ध नाही जळगाव ते पुणे आणि पुणे ते
 इंदापूर इथे कृपया गाळा फिरवू नका? ही माझी विनंती
 आहे. यावर त्यांनी मला पुन्हा फोन करून सांगितले की
 आम्ही कोणता काशलियार्शी सातिसरावर बेळगे कळून
 तुमच्या लेखी कळवू पण त्यांनी मला आजवर गावात
 काहीएक कळविले नाही. यानंतर पण गाळा पुणे जिल्ह्यात
 प्रत्यक्ष न येण्यास कारणां म्हणजे माझ्या सासऱ्यांना
 पेळगांसाठी जाय तर देतच होते पण त्यानंतर त्यांनी माझ्या
 घरी येवून माझ्यासकट घट्ट्या लोकांना हामकी दिवी तुम्ही
 पुढाफाती आयपास घरी निदेशणात घर पुढाफाती लोकांचे
 वाहणार नाही. आम्हाला पैसे देत नाही तर नोकरी करू देवून
 तुमचा पण फायदा होवू देणार नाही. त्यामुळे मी या विनंतीने
 नेवू नसकले नाही. मी याबाबत पोलिस अधीक्षक जळगाव
 यांनी अंतर्गत अशावेळी गोळ्या देहता सांगितेकडे गारार
 जाविस्ते तक्रार देली आहे. पण ते तक्रारीसाठी
 हजर आलेले नसत. शेवटी या विनंतीने पोलिस स्टेशनात पत्र
 दिले त्या पत्रावरून पोलिसांनी सर्व चौकशी करून त्यांच्याविषय
 ओळखी - ४९६ आणि Domestic Violence दुर्तकात गुन्हा दाखल
 करून अहवाल दिलेला आहे. तसेच मी स्वतः त्यांचे विस्ते
 जळगाव गेलीन सांगतांनात दावा दाखल केलेला आहे.
 ओळखी मी सापुडे पुणे जिल्ह्यात आल्यावर मला मुंबईला
 अशेच आणी मला याच पण गिळेत. मी उपासपतिती माझी
 सर्व खरी परिस्थिती वर नमूद केलेली आहे. किंवा तो काही
 हातून तो मी हरवून गुददारा केलेला नाही माझ्या या परिस्थिती
 या यहा नमुनेपूर्वक विचार करून मला पुन्हा कामावर हजर करून
 द्यावे अशी माझी नम्र विनंती आहे. शाशाही मी पहायला
 काशीला इंदापूर येथे कामावर हजर होवू शकते का कृपया
 कळवे ती पुन्हा लढवा नम्र विनंती
 सोबत: रुजू अहवाल आणि तहसिलदार मस्यून यांना दिलेल्या फाचिती
 माहितीसाठी

अजिंदार
 (श्रीमती शशिनी एस. हाबाण)

TC
 2

ANNEX-A-5

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दिनांक ११/०६/२०२२

प्रति,

मा. जिल्हाधिकारी पुणे
(महसूल शाखा)


विषय :- पुनःस्थापित करणे बाबत.

संदर्भ :- मा. जिल्हाधिकारी कार्यालय, पुणे यांचेकडील आदेश
क्रमांक-पमम/५१०/एक, पुणे-१, दिनांक ३०/०५/२०१८

महोदय,

वरील संदर्भित आदेशानुसार मला सेवेतून निर्लंबित करण्यांत आले आहे. महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम १९७९ मधील नियमानुसार ३ महिन्यांत सेवा पुनःस्थापित करणे बाबत नमूद कलेले आहे आणि मला निर्लंबित होवून ६ वर्ष झालेले आहेत. कृपया मला पुणे शहर येथे माझी सेवा पुनःस्थापित करून मिळावी ही माझी नम्र विनंती आहे.

आपली नम्र


(श्रीमती शर्मिला एस. घोलाईत)
महसूल सहाय्यक



11/06/2024



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Annex A-2

M.A.NO. 348/2024 IN O.A.NO. 809/2024
(Sharmila S. Gholait Vs. State of Maharashtra & Ors.)

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 09.08.2024

ORAL ORDER :

Heard Shri K.B. Jadhav, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities.

2. Learned counsel for the applicant submits that the applicant is still under service and by way of filing the Original Application along with Misc. Application seeking condonation of delay, she is challenging the suspension order passed against her way back in the year 2018. Learned counsel for the applicant submits that at the time of passing the suspension order, the applicant was serving at Pune district and at present she is also serving Pune district.

3. The office has raised an objection that the present Misc. Application and Original Application do not come within territorial jurisdiction of this Tribunal.

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//2// M.A. 348/2024 IN
O.A.No. 809/2024

4. Learned counsel for the applicant accepting the same, seeks leave to withdraw the Misc. Application so also Original Application with liberty to file the same before the appropriate bench. Leave granted with liberty as prayed.

5. The Misc. Application so also Original Application stand disposed of as withdrawn with liberty as aforesaid. No order as to costs.

MEMBER (J)

SAS ORAL ORDER 09.08.2024

T.C.
by
K.B. Jadhav
Aan