

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

MISC. APPLICATION NO. \_\_\_\_\_ OF 2024  
IN  
ORIGINAL APPLICATION NO. \_\_\_\_\_ OF 2024. (S.J)

**DIST.: NASHIK**

Kashinath Sampat Bharte

..APPLICANT

**VERSUS**

The State of Maharashtra and others.


..RESPONDENTS

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PLACE:- Chh. Sambhajinagar  
DATE :-20/09/2024

  
**KAKASAHEB B. JADHAV**  
Advocate for the Applicant

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

MISC. APPLICATION NO. \_\_\_\_\_ OF 2024  
IN  
ORIGINAL APPLICATION NO. \_\_\_\_\_ OF 2024. (S.J)  
(DELAY CONDONATION)

**DIST.: NASHIK**

Kashinath Sampat Bharte,  
Age- 69 years, Occu. Retired  
as Police Inspector,  
R/o. At Post Khanapur, Tq. Raver,  
Dist. Jalgaon.  
Mob. No.9923313799.  
Email:

**..APPLICANT**

**VERSUS**

- 1) The State of Maharashtra,  
Through: The Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
- 2) The Director General of Police,  
Maharashtra State, Shahid Bhagatsing Marg,  
Culaba, Mumbai.
- 3) The Police Commissioner,  
Nashik City, Nashik.
- 4) The Accountant General-I,  
(Accounts & Entitlement),  
Karve Marg, Mumbai-400020

**..RESPONDENTS**

**MISC. APPLICATION FOR DELAY CONDONATION.**

I, Kashinath Sampat Bharte, Age- 69 years, Occu. Retired as  
Police Inspector, R/o. At Post Khanapur, Tq. Raver, Jalgaon, do  
hereby state on oath as under:-

**BEFORE ME**

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

*[Signature]*

1) The applicant submits that, the applicant has filed the original application before this Hon'ble Tribunal seeking directions to the respondents to pay the Regular Pension, amount of Gratuity, amount of Commutation, G.P.F., amount of Leave Encashment and other retirement benefits forthwith. The applicant is also seeking directions to the respondents to pay the interest on the delayed payments of all the retirement benefits from the date of his retirement to till its actual payments. The applicant is also seeking directions to the respondents to consider and decide the application submitted by the applicant for payment of retirement benefits. Till today the pension case of the applicant is not finalized by the respondents and he is getting only provisional pension. The entire retirement benefits are not paid to him. The regular pension is also not sanctioned and therefore, there is continues cause of action in each month. In-fact, there is no delay in filing the original application, as a abundant precaution the applicant is filing present misc. application for delay condonation.

2) The applicant submits that, the applicant was initially appointed through M.P.S.C. on the post of Police Sub-Inspector in the year, 1981. Thereafter, the applicant was promoted on the post of Police Inspector and retired on attaining the age of superannuation on 31.3.2013. The respondent no. 5 had sanctioned the pension case of the applicant by P.P.O. dtd. 20.5.2013, but on the ground of pendency of criminal case the retirement benefits were not paid to the applicant.

3) The applicant submits that, the applicant had filed the original application no. 60/2016 before the Hon'ble Tribunal, Aurangabad bench seeking provisional pension and during the pendency of the

BEFORE ME

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

*[Handwritten Signature]*

original application the provisional pension was paid. Therefore, said original application was disposed off by this Hon'ble Tribunal. The records of the said original application may kindly be called if required.

4) The applicant submits that, while working on the post of Police Inspector, the respondent no. 2 had issued the charge sheet of departmental enquiry against the applicant and others on 22.2.2013 alleging that, the applicant and others who were working in the Ulhasnagar police station, there was Civil Suit was pending between two brothers Plaintiff namely Bhusan Khatri and defendant Deepak Khatri and there were no court order about the granting possession, but on 2.2.2010 the applicant and others were went there and broken the locks and given the possession of the property situated at Padam Market, Ulhasnagar to Deepak Khatri. The enquiry was conducted against them and on 4.6.2013 the respondent no. 2 issued the punishment order and imposed the punishment of deduction of 1000/- per month for two years.

5) The applicant submits that, the crime registered against the applicant bearing CR No. 268/2010 under section 448, 166, 427, 34 of the I.P.C. in the Ulhasnagar Police Station, Thane City is still pending in the court. The Dy. Police Commissioner, Nashik had issued the letter to the respondent no. 4 that, the crime no. 268/2010 is pending in the Ulhasnagar police station and therefore, the provisional pension may be sanctioned to the applicant as per the Rule 130 of the M.C.S. (Pension) Rules. Thereafter on 9.12.2019 the applicant had sought information from the Senior Police Inspector,

**BEFORE ME**

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

*Bharate*

Ulhasnagar Police station about the filing of the charge sheet in the court.

6) The applicant submits that, on 26.6.2024 the applicant had submitted the application to the respondent no. 3 and requested to pay the retirement benefits to him. It is submitted that, the punishment imposed in the departmental enquiry is completed long back and there is no progress in the criminal case. The copy of application dtd. 26.6.2024 is annexed as ANNEXURE-A-1.

7) The applicant submits that, the criminal case is pending since 2010 and based on the said case/crime, the D.E. was initiated against the applicant and the punishment was also imposed on him. His regular pension, gratuity, amount of Leave Encashment, G.P.F. and amount of Commutation are not paid to the applicant. The respondents have not finalized the pension case of the applicant. The respondents are not serious to pay the retirement benefits to the retired employee. Therefore, the respondents be directed to pay the regular pension and other all retirement benefits to the applicant forthwith. The respondents further be directed to pay the interest per the Rule 129-A & 129-B of the M.C.S. (Pension) Rules on the delayed payments of retirement benefits.

8) The applicant submits that, the applicant retired on attaining the age of superannuation on 31/03/2013 and near about 10 years after his retirement is completing, but till today no case is finalized nor the admissible retirement benefits paid to him. The retire employee has legal right to receive the pension as per the provision of Constitution

BEFORE ME

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

*Bhonde*

of India. The respondents cannot withheld entire retirement benefits of the applicant on the ground of the pendency of the criminal case. There is hopes to succeed in the criminal case. The respondents cannot withheld the amount of the Leave Encashment, G.P.F., G.I.S. benefits of the applicant.

9) The applicant submits that, there is 10 years delay seeking the retirement benefits. The delay is not intentional and deliberate and same may kindly be condoned. So also the pensionary benefits can be claimed at any time and seeking pension, there is continuous recurring cause of action as per the judgment of the Hon'ble Apex Court in case of MR Gupta Vs Union of India, Union of India and others Vs Tarsem Sing and Shri M.L. Patil Vs The Sate of Goa and another passed in Civil Appeal No. 4100/2022. The copies of the judgment and orders passed by the Hon'ble Apex Court are annexed as ANNEXURE-A-2-colly..

10) The applicant submits that, the applicant has filed the original application no. 716/2024 alongwith Misc. Application no. 387/2024 for delay condonation before this Hon'ble Tribunal, Aurangabad bench seeking retirement benefits. The registry has raised the objection about the territorial jurisdiction and therefore, said original application and misc. application is withdrawn by the applicant on 18.9.2024 with liberty to approach appropriate bench having territorial jurisdiction. As such, the applicant is approaching to this Hon'ble Tribunal seeking retirement benefits. The copy of order dtd. 18.9.2024 passed in M.A. No. 387/2024 in O.A. No. 716/2024 is annexed as ANNEXURE-A-3.

BEFORE ME

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

Bhonde

11) The applicant submits that, there is merits in the original application and therefore, same requires to be condoned. The applicant is claiming pensionary benefits and therefore, there is continues recurring cause of action to the applicant to file original application. The delay is not intentional and deliberate. The applicant is retired employee and getting only provisional pension and having financial problems and due to financial problems also, the applicant could not be approached to this Hon'ble Tribunal.


In view of the facts of the case, the delay of 10 years caused for filing original application may kindly be condoned in the interest of justice.

12) The applicant respectfully submits that the applicant craves leave of this Hon'ble Tribunal to add, amend, alter, delete or converts any averment if necessary.

**13. RELIEF(S) SOUGHTS:-**

- A) This misc. application may kindly be condoned.
- B) The delay of 10 years caused in filing original application may kindly be condoned and the original application may kindly be registered and decided.
- C) Any other relief as the Tribunal deems fit, may kindly be granted, in the interest of justice.

PLACE:- Chh. Sambhajnagar  
DATE :- 20/09/2024

  
**KAKASAHEB B. JADHAV**  
Advocate for the Applicant

**BEFORE ME**

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





## VERIFICATION

I, Kashinath Sampat Bharte, Age- 69 years, Occu. Retired as Police Inspector, R/o. At Post Khanapur, Tq. Raver, Jalgaon, do hereby state on oath and solemn affirmation that, the contents of this Misc. Application from paragraph Nos.1 to are true and correct to the best of my knowledge and information.

Hence verified on this 20<sup>th</sup> day of September, 2024, at Chh. Sambhajinagar.

Identified and explained by :-

  
K.B.JADHAV  
Advocate

Deponent

  
Kashinath Sampat Bharte

## AFFIDAVIT

Solemnly Affirmed Before Me By Shri / Smt.  
Kashinath Sampat Bharte  
Age 69 Years Retired  
R/o Khanapur  
Tq. Raver Dist. Jalgaon  
Who identified by Adv. K.B. Jadhav  
Whom He/ She is Personally Known.       

**NOTED & REGISTERED**

AT Sr. No. 16173/ 2024

THIS DOCUMENT CONTAINS

7 PAGES

**BEFORE ME**

20-09-2024

  
Bhaskar Shriram Dhonde Patil  
B.A.L.L.B., D.L.L. & L.W.  
Advocate & Notary Govt. of India  
AREA-AURANGABAD DIST.  
(Mob.) : 9822242637 Reg. No. 3763

20 SEP 2024







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

MISC. APPLICATION NO. \_\_\_\_\_ OF 2024  
IN  
ORIGINAL APPLICATION NO. \_\_\_\_\_ OF 2024. (S.J)

**DIST.: NASHIK**

Kashinath Sampat Bharte

..APPLICANT

**VERSUS**

The State of Maharashtra and others.

..RESPONDENTS

**LIST OF DOCUMENTS**

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PLACE:- Chh. Sambhajinagar  
DATE :-20/09/2024

  
**KAKASAHEB B. JADHAV**  
Advocate for the Applicant

# Annex A-1

9

प्रति,  
मा.पोलीस आयुक्त सो.  
जिल्हादफ्ता  
नासिक शहर नाशिक

दि.२४/०६/२०२४  
खानापूर ता.रावेर

विषय : उपदान/ अंशराशीकरण रक्कम व रजारोखीकरण अद्याप न मिळाल्या बाबत  
अर्जदार : काशिनाथ संपत भारते सेवानिवृत्त पोलीस निरीक्षक, नाशिक शहर हल्ली मुक्काम  
रा.खानापूर ता.रावेर जि.जळगाव

महोदय,

मी काशिनाथ संपत भारते, सेवानिवृत्त पोलीस निरीक्षक, नाशिक शहर विनंतीपूर्वक सादर करतो की, माझी जनम तारीख 17/03/1955 असून माझी पोलीस दलात पोलीस उपनिरीक्षक पदावर दि.12/01/1981 रोजी नेमणुक ई सेवेतून आपला आस्थापनेवरून सेवानिवृत्त झालो आहे. सोबत मा.पोलीस उपआयुक्त सो.(मुख्यालय) नाशिक शहर यांचे प्रमाणपत्र छायांकित प्रत जोडली आहे. 1) Retirement Certificate अ 32 वर्षे सेवेतून निवृत्त झाल्या नंतर मा.महानलेखाकार, महाराष्ट्र राज्य, मुंबई यांचेकडील दि.20/05/2013 रोजी च्या आदेशान्वये CPO क्रमांक 131301224757 अन्वये अंशराशीकरण रक्कम रुपये 5,70,367 /- मंजूर केल्याबाबतचे आदेश प्राप्त झाले आहेत. सोबत छायांकित प्रत जोडल्या आहेत. परंतु अद्याप पावेतो मला सेवानिवृत्ती उपदान व अंशराशीकरण व रजारोखीकरण रकमा वितरीत केलेल्या नाहीत.

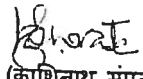
पुढे तदनंतर कोषागार अधिकारी, (निवृत्तीवेतन), नाशिक यांनी त्यांचेकडील पत्र क्रमांक कोष./नि.चे/सिपी-1/कावि/400/2023/6000, दिनांक 10/06/2013 अन्वये निवृत्ती वेतन प्रदान आदेश, अंशराशीकरण आदेश उपदान आदेश मा.महानलेखाकार यांना नरादेय प्रमाणपत्रासह माण्या विरुद्ध विभागीय चौकशी सुरु असल्यामुळे पुढील योग्य त्या कार्यवाहिस्तव परत केलेले आहेत. सोबत छायांकित प्रत जोडली आहे.

तथापी, मा.पोलीस महासंचालक सो.महाराष्ट्र राज्य मुंबई यांच्याकडील आदेश क्रमांक पोमस/11/22/6/1392011 दिनांक. 04/06/2013 अन्वये माझ्या विरुद्धच्या विभागीय चौकशीची कार्यवाही पूर्ण झाली असून माझ्या सेवानिवृत्ती वेतनातून दरमहा रु.1000 /- (रु.एक हजार) 2 (दोन) वर्षा करिता कपात करणे हि शिक्षा मला देण्यात आली आहे, सोबत छायांकित प्रत जोडली आहे.

म्हणजेच माझ्या विरुद्धची विभागीय चौकशी कार्यवाही पूर्ण होऊन जवळपास 10 वर्षे होत असूनही मला अद्याप उपदान आणि अंशराशीकरण रकमा रजारोखीकरण वितरीत करण्यात आलेल्या नाहीत.

मी, आपणास नम्रता पूर्वक विनंती करतो की माझ्या विरुद्धची विभागीय चौकशी कार्यवाही पूर्ण झाली असून मला निवृत्ती वेतन उपदान व रजारोखीकरण आणि अंशराशीकरण रकमा वितरीत होण्यास विनंती आहे.

आपला विश्वासू

  
(काशिनाथ संपत भारते)

सेवानिवृत्त पोलीस निरीक्षक

10  
ANNEX A-2

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

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.

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 Page 1 Sunday, July 23, 2023  
 Printed For: Mr. Lex Only  
 SCC Online Web Edition: <https://www.scconline.com/>  
 TruePrint™ source: Supreme Court Cases, © 2023 Eastern Book Company. The text of this version of  
 this judgment is protected by the law declared by the Supreme Court in Eastern Book Company v. D.B.  
 Modak. (2008) 1 SCC 1 paras 61, 62 & 63

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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

Versus

Appellants:

TARSEM SINGH

Respondent.

Civil Appeals Nos. 5151-52 of 2008<sup>†</sup>, 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.

<sup>†</sup> 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



UNION OF INDIA v. TARSEM SINGH (*Raveendran, J.*)

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*Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshtwar 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. Datta, Additional Solicitor General (Ashok K. Srivastava and B. Krishna Prasad, Advocates) for the Appellants;

Neeraj Kr. 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>                       | on page(s) |
| 2. (1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186. <i>M.R. Gupta v. Union of India</i>     | 651a       |
| 3. AIR 1959 SC 798, <i>Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshtwar Maharaj Sansthan</i> | 650c-d     |

The Order of the Court was delivered by

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**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/

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(2008) 8 SCC

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*<sup>1</sup> 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) a

"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." b c

5. In *M.R. Gupta v. Union of India*<sup>2</sup> 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) d

"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 e f g

<sup>1</sup> AIR 1959 SC 798

<sup>2</sup> (1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186 h

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

a 6. In *Shiv Duss v. Union of India*<sup>3</sup> this Court held: (SCC p. 277, paras 8 & 10)

"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.

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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."

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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.

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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

<sup>3</sup> (2007) 9 SCC 274 : (2007) 2 SCC (L&S) 395

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; c

*Versus*

GOVERNMENT OF UTTAR PRADESH  
AND OTHERS

Respondents. d

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 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

**REPORTABLE**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 4100 OF 2022

Shri M.L. Patil (Dead) Through LRs

...Appellant(s)

Versus

The State of Goa and Anr.

...Respondent(s)

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

**M.R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned final judgment and order dated 11.02.2020 passed by the High Court of Bombay at Goa in Writ Petition No. 961/2015, by which, though the High Court has allowed the said writ petition by holding that the respective writ petitioners ought to have been superannuated/retired at the age of 60 years instead of 58 years, the High Court has refused arrears of pension and has observed that the pension at

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the revised rates will become payable only from 1<sup>st</sup> January, 2020, the original writ petitioner has preferred the present appeal.

2. That the appellant – original writ petitioner of writ petition No. 961/2015 and others filed the writ petitions before the High Court challenging the action of the respondents in superannuating/retiring them at the age of 58 years. According to them, the retirement age was 60 years. By the impugned judgment and order, the High Court has held that the retirement age of the respective original writ petitioners was 60 years and they were wrongly superannuated/retired at the age of 58 years. However, as the respective writ petitioners approached the High Court belatedly, the High Court has held that none of the writ petitioners shall be entitled to any salary/back wages for the period of two extra years they would have got in service. The High Court has also observed that though the writ petitioners would be entitled to the pension on the basis that they continued in service until they attain the age of 60 years, they would not be entitled to any arrears of



pension and the pension at the revised rates will become payable only from 1<sup>st</sup> January, 2020.

- 2.1 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court to the extent denying the back wages for the period of two extra years and observing and directing that original writ petitioner will not be entitled to any arrears of pension and the pension at the revised rates will become payable only from 1<sup>st</sup> January, 2020, the original writ petitioner of Writ Petition No. 961/2015 has preferred the present appeal.

3. Having heard Shri Rahul Gupta, learned counsel appearing on behalf of the appellant and Shri Ravindra Lokhande, learned counsel appearing on behalf of the respondent – State of Goa and considering the fact that even by the impugned judgment and order, the High Court has held that action of the State Government in requiring the original petitioners to retire at the age of 58 years or not permitting them to continue in their service upto the age of 60 years is illegal and null and void, we are of the view that the High Court has erred in observing that the appellant will not be entitled to any arrears of pension and the

pension at the revised rates will become payable only from 1<sup>st</sup> January, 2020. As such, the High Court may be right and/or justified in denying any salary for the period of two extra years to the writ petitioners if they would have continued in service, on the ground of delay. However, as far as the pension is concerned, it is a continuous cause of action. There is no justification at all for denying the arrears of pension as if they would have been retired/superannuated at the age of 60 years. There is no justification at all by the High Court to deny the pension at the revised rates and payable only from 1<sup>st</sup> January, 2020. Under the circumstances, the impugned judgment and order passed by the High Court is required to be modified to the aforesaid extent.

4. In view of the above and for the reasons stated above, the present Appeal Succeeds in Part. The impugned judgment and order passed by the High Court to the extent of denying any arrears of pension and holding that the appellant shall be entitled to the pension at the revised rates only from 1<sup>st</sup> January, 2020 is hereby quashed and set aside. It is held and ordered that the appellant –

original writ petitioner shall be entitled to pension at the revised rates from the date he attains the age of 60 years. Now the arrears accordingly shall be paid to the appellant within a period of four weeks from today. Present Appeal is Partly Allowed to the aforesaid extent. In the facts of the case, there shall be no order as to costs.

.....J.  
[M.R. SHAH]

NEW DELHI;  
May 20, 2022

.....J.  
[B.V. NAGARATHNA]

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ANNEXA-3

**M.A.NO. 387 OF 2024 IN O.A.NO. 716 OF 2024**  
**(Kashinath S. Bharte Vs. State of Maharashtra & Ors.)**

**CORAM :** Justice Shri V.K. Jadhav, Member (J)

**DATE :** 18.09.2024

**ORAL ORDER :**

Heard Shri K.B. Jadhav, learned counsel for the applicant and Shri A.P. Basarkar, learned Presenting Officer for the respondent authorities.

2. Learned counsel for the applicant on instructions submits that in view of objection about the territorial jurisdiction, the applicant seeks leave to withdraw the O.A. with liberty to file appropriate application before the bench having the territorial jurisdiction.

3. Leave granted. The Original Application so also the Misc. Application are disposed of as withdrawn with liberty to applicant to file appropriate application before the bench having the territorial jurisdiction. No costs.