

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
MISCELLANEOUS APPLICATION NO.279 OF 2024
IN
ORIGINAL APPLICATION NO.584 OF 2024**

DISTRICT : RAIGAD

Shri Dinkar D. Ingole)
Age 68 years, Retired Senior Drilling Engineer,)
R/o Nilkanth Vishw, Phase-I, Usarli (Khurd),)
Post ONGC New Panvel, District Raigad 410221)..Applicant

Versus

1. The State of Maharashtra,)
Through The Secretary,)
Water Supply and Sanitation Department,)
G.T. Hospital Building, 7th Floor, L.T. Marg,)
Mumbai)
2. The Director,)
Ground Water and Development Agency,)
M.S., Shivaji Nagar, Pune 411 001)..Respondents

Shri C.T. Chandratre – Advocate for the Applicant
Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Shri Atulchandra M. Kulkarni, Member (A)
RESERVED ON : 30th January, 2025
PRONOUNCED ON: 4th February, 2025

J U D G M E N T

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. As submitted by the learned Advocate for the applicant, the applicant was working as Senior Drilling Engineer in Groundwater Survey Development Agency and he retired on 31.5.2014. He refers to the order dated 13.1.2009 issued in favour of the applicant of granting the benefit of Assured Career Progression Scheme (ACPS) on which the applicant was aggrieved because higher pay scale was not granted as is ruled in several judgments of this Tribunal. He also refers to GR dated 20.7.2021 issued by the Finance Department regarding ACPS. He admits that he should have approached this Tribunal on or before 12.1.2010. However, he has filed the present OA on 25.4.2024. Thus, there is a delay of more than 14 years. Therefore, he has filed the present MA for condoning the delay in filing the OA.

3. Ld. Advocate for the applicant states that the applicant came to know about order dated 13.1.2009 as late as in September, 2020 through his colleagues and thereafter he made representation dated 3.11.2022 to the department with subsequent reminders. He further states that the whole delay was caused because the applicant was not in touch with his colleagues. He submits that the applicant is getting less pension and there is continuous cause of action and therefore the delay may be condoned. He states that he has good case on merits and no irreparable loss will be caused to the respondents. He relied on the judgments of the Hon'ble Supreme Court in the case of **Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. AIR 1987 SC 1353** and **Shiv Dass Vs. Union of India & Ors. (2007) 2 SCC (L&S) 395**.

4. Ld. PO states that there is delay of more than 14 years and that admittedly the applicant has made first representation to the department authorities on 3.11.2022. The representations have been made belatedly which cannot justify the delay and no acceptable reasons have been advanced by the Ld. Advocate for the applicant for condoning the delay. Ld. PO states that applicant is not vigilant about his rights. Ld. PO has relied on the following judgments:

- (a) H. Guruswamy & Ors. Vs. A. Krishnaiah since deceased by LRs., Civil Appeal No.317 of 2025 decided by the Hon'ble Supreme Court on 8.1.2025.
- (b) U.P. Jal Nigam & Anr. Vs. Jaswant Singh & Anr, (2006) 11 SCC 464.
- (c) Naresh Kumar Vs. Department of Atomic Energy & Ors. (2010) 7 SCC 525.
- (d) Chennai Metropolitan Water Supply & Sewerage Board & Ors. Vs. T.T. Murali Babu, (2014) 4 SCC 108.
- (e) S.R. VEDIAPPAN & Ors. Vs. S.P. RAMALINGAM & Ors. CMP No.7738 of 2017 decided by the Hon'ble Madras High Court on 11.2.2020.

5. Ld. Advocate for the applicant while relying on the case of *Collector, Land Acquisition, Anantnag* (supra) makes his submissions based on ratio laid down in para 3 of the judgment which reads as follows:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

6. In the case of *Shiv Dass* (supra) relied by the Ld. Advocate for the applicant it was held that, cause of action in case of pension continues from month to month and further that if applicant's case was found to be sustainable, granting the relief for a period not exceeding 3 years (which is the period of delay). Paras 4, 6, 9 and 10 of this judgment read as under:

“4. In support of the appeal, learned counsel for the appellant submitted that the High Court should have noted that the claim for pension provides

for continuing cause of action. As the appellant had not received any intimation regarding the result of the appeal, he ultimately filed the writ petition.

6. *Normally, in the case of belated approach writ petition has to be dismissed. Delay or laches is one of the factors to be borne in mind by the High Courts when they exercise their discretionary powers under Article 226 of the Constitution of India, 1950 (in short the 'Constitution'). In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Chief Controller of Imports and Exports and Ors. (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably.*

9. *It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in K.V. Raja Lakshmiah v. State of Mysore (AIR 1967 SC 993). There is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In State of Orissa v. Sri Pyarimohan Samantaray, (AIR 1976 SC 2617) making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See State of Orissa v. Arun Kumar (AIR 1976 SC 1639 also).*

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. It would depend upon the fact of each case. 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. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

7. I feel that para 6 of the judgment in *Shiv Dass* (supra) which is reproduced above does not actually support the case of the applicant especially given the fact that he has chosen to remain silent between the date of impugned order i.e. 13.1.2009 and the date of retirement i.e. 13.1.2014, which is a period of good six years. It is to be noted that the applicant is an educated individual and was a senior functionary of the Government who would have been exposed to legal matters during the course of his service. The contention that the applicant had continuous cause of action because he was drawing less pension is difficult to sustain because he had ample opportunity to represent against the impugned order during the course of his service prior to retirement.

8. Ld. Advocate for the applicant also relied on the common judgment and order dated 4.7.2018 passed by the Nagpur Bench of this Tribunal in OA No.52/2015 (Suresh S. Punde Vs. State of Maharashtra & Ors.) & 55/2015 (Laxman M. Kottewar Vs. State of Maharashtra & Ors.) in which there is a reference to earlier judgments of this Tribunal in OA No.96/2011 (Ramesh B. Badar. Vs. State of Maharashtra), OA No.1216/2002 Shri K.S.M. Bhat Vs. State of Maharashtra), OA No.499/2014 Shri Arun V. Joshi Vs. State of Maharashtra). However, the order passed in OAs. No.52 & 55/2015 is subject to final order in W.P. No.1294/2020 filed by the State of Maharashtra against Suresh S. Punde in the Hon'ble High Court Bench at Nagpur, which is pending.

9. Ld. Advocate for the applicant further relied on the GR dated 28.2.2017 issued by the Law & Judiciary Department in respect of

“Directions for adherence to General Judicial Principle in service matters” and also GR dated 20.7.2001 issued by the Finance Department regarding implementation of ACPS to State Government employees.

10. All these above documents do not relate to delay condonation for which the applicant has filed the MA.

11. Ld. PO has relied on the judgment in *H. Guruswamy & Ors.* (supra). Paras 13, 16 & 17 of the judgment reads as under:

“13. We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as “liberal approach”, “Justice oriented approach”, “substantial justice” should not be employed to frustrate or jettison the substantial law of limitation.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

17. *We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time."*

12. Ld. PO has further relied on the judgment in *U.P. Jal Nigam & Anr.* (supra). Para 6 of the judgment reads as under:

"6. The question of delay and laches has been examined by this Court in a series of decisions and laches and delay has been considered to be an important factor in exercise of the discretionary relief under Article 226 of the Constitution. When a person who is not vigilant of his rights and acquiesces with the situation, can his writ petition be heard after a couple of years on the ground that same relief should be granted to him as was granted to person similarly situated who was vigilant about his rights and challenged his retirement which was said to be made on attaining the age of 58 years. A chart has been supplied to us in which it has been pointed out that about 9 writ petitions were filed by the employees of the Nigam before their retirement wherein their retirement was somewhere between 30.6.2005 and 31.7.2005. Two writ petitions were filed wherein no relief of interim order was passed. They were granted interim order. Thereafter a spate of writ petitions followed in which employees who retired in the years 2001, 2002, 2003, 2004 and 2005, woke up to file writ petitions in 2005 & 2006 much after their retirement. Whether such persons should be granted the same relief or not?"

13. Ld. PO then relied on *Naresh Kumar* (supra). Para 15 of the judgment reads as under:

"15. Merely because the case of the appellant was forwarded by the Department vide its letter dated 27th January, 2007 for favourable

consideration, would not vest any right in the petitioner and can hardly be of any material consequence. If an employee keeps making representation after representation which are consistently rejected then the appellant cannot claim any relief on that ground. We are unable to find any merit in the contention raised before us and we are also of the view that the High Court was not in error while dismissing the Writ Petition even on the ground of unexplained delay and laches. The representation of the appellant was rejected as back in the year 1999 and for reasons best known to the appellant he did not challenge the same before the Court of competent jurisdiction.”

14. Ld. PO also relied on *Chennai Metropolitan Water Supply & Sewerage Board & Ors. (supra)*. Para 16 of the said judgment reads as under:

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.”

15. After considering the submissions and various judgments relied upon by both the sides and other documents, I am of the view that there is inordinate delay in filing the Original Application in this Tribunal, which cannot be condoned. Hence, I pass the following order.

ORDER

The Miscellaneous Application is dismissed. Consequently, the Original Application also stands dismissed.

Sd/-
(A.M. Kulkarni)
Member (A)
4.2.2025

Dictation taken by: S.G. Jawalkar.

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