

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

REVIEW APPLICATION NO. 08 OF 2016
IN
ORIGINAL APPLICATION NO. 248 OF 2015

DIST. : AHMEDNAGAR

Padmabai wd/o Dattatraya Marathe,
Aged 59 years, Occu. Nil,
R/o Gundvasti, Kul Dharan Road,
At & Post Tq. Karjat, Dist. Ahmednagar. --

APPLICANT

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Dairy Development Department,
M.S., Mantralaya, Mumbai 32.
2. The Commissioner of Dairy
Development, Administrative
Building, Worli, Mumbai . 18.
3. The Regional Dairy Development
Officer, Trimbak Road, Nashik.
4. The General Manager,
Govt. Milk Scheme, MIDC,
A-10, B-2, Ahmednagar.
5. The General Manager,
Govt. Milk Scheme,
Chakkar Bardi Road, Dhule. --

RESPONDENTS

APPEARANCE : Shri Avinash Deshmukh, learned Advocate 1
for the applicant.

: Shri M.S. Mahajan, learned Chief Presenting
Officer for respondents.

CORAM : HON'BLE SHRI J. D. KULKARNI,
MEMBER (J)

J U D G M E N T**{Delivered on this 22nd day of November, 2016}**

1. The applicant Smt. Padmabai sd/o Dattatraya Marathe is claiming review of the judgment and order passed by this Tribunal in O.A. no. 248/2015 on 22.6.2016. In the said O.A., the applicant claimed difference of pay for the period from completion of 240 days service on daily wages by her late husband till he was brought on regular establishment. The said claim has been dismissed by this Tribunal on merits.
2. According to the applicant, the O.A. no. 248/2015 was dismissed on limitation, but the Tribunal, but did not consider the fact that the point of limitation was already decided by the Tribunal vide order dated 29.4.2015. It is further stated that in another matter i. e. O.A. no. 206/2011, the similarly situated applicants like the present applicant were granted the relief and that the injustice has been caused on the present applicant.
3. The learned C.P.O. submits that the scope of review is very limited. The order passed by this Tribunal in O.A. no. 248/2015 on 22.6.2016 was passed on merits and, therefore, remedy open for the applicant is to file appeal against the said order before the higher forum.
4. Heard Shri Shri Avinash Deshmukh, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for

respondents. I have perused the application, affidavit and various documents placed on record and also the judgment delivered by this Tribunal in O.A. nos. 248/2015 and 206/2011.

5. The only point arises for my determination is whether there is need to review the judgment and order delivered by this Tribunal in O.A. no. 248/2015 on 22.6.2016 ?

6. The learned Advocate for the applicant submits that while dismissing the O.A. no. 248/2015, this Tribunal has observed that the application was barred by limitation. However, the said point of limitation was already decided by the Tribunal vide order dated 29.4.2015.

Perusal of this order dated 29.4.2015 shows that the said order has been passed by the Tribunal while issuing notices to the respondents. In para 3 of the said order it is observed, ~~in~~ view of the contents of para 5 of the present O.A., apparently there is no bar of limitation.+ However, in para 4 it was stated that ~~the~~ O.A. will be taken up for admission hearing and if necessary for final disposal at the stage of admission hearing itself on the next date.+

7. The aforesaid order itself shows that the point of limitation was not considered on merits, but the observations were made therein on the basis of averments in the O.A.

8. After appearance of the respondents in the O.A., strong objection was taken on the point of limitation. This fact has been observed by the Tribunal in para nos. 5, 9 & 12 of the judgment dated 22.6.2016 delivered in O.A. no. 248/2015. This Tribunal has observed that the applicant's husband got retired long back and did not claim the arrears in his entire service period and the applicant was claiming the relief after a gap of 40 years after the death of her husband and, therefore, she cannot claim the said relief. Thus, the point of limitation has been decided on merits.

9. The another objection raised by the learned Advocate for the applicant is that in similarly situated matters i. e. in O.A. no. 206/2011 similar relief has been granted by the Tribunal to the L.Rs. of the applicants therein. However, such a plea is not available to the applicant as the O.A. was not dismissed on the ground of parity. If some relief is granted in another O.A. ignoring the point of limitation for whatever reasons, that itself cannot be a ground for the applicant to claim similar relief by filing independent application for different cause of action. In any case, if the applicant is aggrieved by the judgment and order in the O.A., she should have file appeal before the appellate forum.

10. In this regard Hon'ble Apex Court in the case of **AJIT KUMAR RATH VS. STATE OF ORISSA {AIR 2000 SC 85}** has observed as under :-

The provisions of Section 22(3) (f) indicate that the power of review available to the Tribunal is the same as has been mentioned under Section 114 r/w Order XLVII of CPC. The power can be exercised on the application of a person on the discovery of new and important matter; which after exercise of diligence was not within his knowledge or could not be produced by him at the time when the order was made. The power can be exercised on account of some mistake or apparent on the face of record.+

11. The O.A. no. 248/2015 has been dismissed on merits and no new ground has been made out by the applicant in the present Review Application to review the earlier order passed by this Tribunal in the O.A.

12. In view of the discussion in foregoing paragraphs, I am satisfied that this is not a fit case to review the judgment and order delivered by this Tribunal on 22.6.2016 in O.A. no. 248 of 2015. The applicant is at liberty to exhaust the remedy of filing of appeal before the competent forum against the said order, if he is so aggrieved thereby. Hence, I pass following order :-

ORDER

The Review Application no. 08/2016 stands dismissed. There shall be no order as to costs.

MEMBER (J)