

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.283 OF 2016
IN
ORIGINAL APPLICATION NO.706 OF 2016**

Shri Jayprakash G. Kulkarni.

)...Applicant

Versus

1. The State of Maharashtra 2 Ors. **)...Respondents**

Mr. B.A. Bandiwadekar, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 31.01.2017

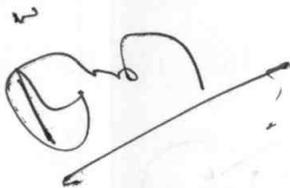
ORDER

1. This Misc. Application (MA) is made by an Ex-Assistant Professor seeking condonation of delay in bringing the OA which in turn questions the refusal on the part of the Respondents to pay to the Applicant the pension and other benefits in accordance with Rule 46(1) of the Maharashtra Civil Services (Pension) Rules, 1982



(Pension Rules).

2. The Applicant was serving as Assistant Professor and he tendered his resignation after having put 13 years, 10 months and 11 days of service. As of now, it is an indisputable position that he was not given the benefit of post retiral benefits. According to the Applicant, he is entitled and eligible therefor. By the communication which is at Exh. 'A' (Page 13 of the MA) dated 18th January, 2006, his former Principal apparently was inclined to the view that the Applicant was eligible for the relief sought but ultimately, the Respondents decided against that and informed him accordingly on 9.2.2009 (Exh. 'F', Page 18 of the PB of the MA) the said fact. The Applicant refers to a Judgment of the Hon'ble Bombay High Court in **Writ Petition No.2668/2002 (Shri Jivan K. Patil Vs. State of Maharashtra and 2 others and another Writ Petition, dated 25th September, 2012)**. There two Ex-Judges were held entitled, by a Division Bench of the Hon'ble Bombay High Court to be eligible and entitled to Gratuity. May be, because of that Judgment also, the Applicant got spurred into action and brought the OA seeking the relief aforestated.

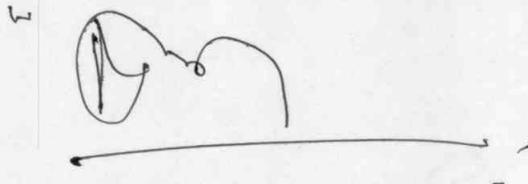


3. The Respondents have contested this MA *inter-alia* by filing the Affidavit-in-reply of Mr. Pramod A. Naik, Joint Director in the Office of the 2nd Respondent – Director of Technical Education. They have highlighted the fact that there was delay and the delay was not excusable.

4. I have perused the record and proceedings and heard Mr. B.A. Bandiwadekar, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

5. There are two aspects of the matter which need to be noted right at the outset. In the first place, the legal principles emanating from a number of binding precedents are that the applications like the present one should be approached more with a view to advance justice rather than technicality. However, at the same time, an indolent and negligent litigant cannot be allowed to carry the day and if prolonged delay results in accrual of 3rd party rights, then that is all the more the reason why the judicial forum will be slow in accepting the request for condonation of delay.

6. Having said that, I must make it clear that it appears that the entire emphasis of the Respondents is on

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the aspect of delay itself. In such applications, the judicial forum has not to helplessly throw its hands-up, if there was delay because the issue to be determined is as to whether a case for condonation of delay is constituted on the anvil of sufficiency of cause.

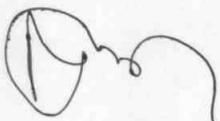
7. In the 2009 communication above referred to, the Respondents made it clear that they were not so disposed as to favourably consider the request of the Applicant but the Applicant was undeterred and he went on making representations. The submission of Ms. Gohad, the learned PO has been that once the Respondents' stand had become clear, then by repeated recourse to the representations artificial infusing of life into a dead cause is impermissible.

8. Mr. Bandiwadekar referred me to **Union of India Vs. Tarsem Singh, (2008) 2 SCC (L & S) 765**. In Para 4 thereof, guidelines are issued as to how to construe the word, "continuing wrong". It has been Mr. Bandiwadekar's contention that it has been held in Para 7 of **Tarsem Singh's** case itself that the dispute like the present one is an instance of continuing wrong, and therefore, time does not begin to run as it were. Their Lordships in Tarsem Singh's case have laid down the guidelines in the matter of



construing the words, "continuing wrong" and recurring cause of action. That was the basis of Ms. Gohad's contention. However, if one were to peruse Para 7 of **Tarsem Singh's** case (supra), it should become clear that at least in the present set of facts, the Applicant carries the day. I can usefully quote the entire Paragraph 7 from **Tarsem Singh** (supra) for guidance.

"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 re-fixation 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. In so far 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.”

9. In view of the foregoing, I hold that applying the principles above referred to, a case for condonation of delay is made out and the delay is, therefore, condoned. The Office and the Applicant are directed to process the OA so as to be brought before the appropriate Bench for hearing and final disposal as per law. The Misc. Application is allowed with no order as to costs.

Sd/-

(R.B. Malik)

Member-J

31.01.2017

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Mumbai

Date : 31.01.2017

Dictation taken by :

S.K. Wamanse.

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