

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**MISC APPLICATION NO.308 OF 2024 IN
ORIGINAL APPLICATION NO.647 OF 2024**

DISTRICT : MUMBAI

Shri Girish Dinakar Kurane, Aged 61 Years,)
R/at F-1401, Mahalaxmi Tower, New D. N.Nagar)
Andheri (W), Mumbai 400 051.) ... **Applicant**

Versus

1. The State of Maharashtra, through)
Additional Chief Secretary, General Admn.)
Department, Madam Cama Road,)
Mantralaya, Mumbai 400 032.)
2. Additional Chief Secretary, Finance Dept.)
Madam Cama Road, Mantralaya,)
Mumbai 400 032.)
3. The State of Maharashtra through)
Principal Secretary & RLA, Law and)
Judiciary Department, Madam Cama Road)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri D. B. Khaire, learned Advocate for the Applicant.

Shri A.D. Gugale, learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Hon'ble Member (J)

Reserved on : 08.01.2025

Pronounced on : 13.01.2025

JUDGEMENT

Heard Shri D. B. Khaire, learned Advocate for the Applicant and
Shri A. D. Gugale, learned Presenting Officer for the Respondents.

2. Opening Para of the judgment in Original Application NO.605/2021 filed by the Applicant reads thus :-

“ 1. The Applicant, Deputy Registrar of Firms in the office of Registrar of Firms, Respondent aspiring to become Registrar has filed this Original application for directions to be given by the Tribunal to the Respondents to promote him to the post of Registrar and no order of his reversion to the post of Assistant Registrar of Firms be issued to promote him to the post of Registrar.”

The operative part of the judgment of this Tribunal in the said O.A. reads as under :-

“ A) The Respondents should not pass any order of reversion of the Applicant to the post of Assistant Registrar to consider his case for promotion to the post of Registrar of Firms.

(B) The Respondents may consider Applicant's case for promotion to the post of Registrar of Firms before his retirement i.e. 30.09.2021.”

On 05.04.2022, the Applicant made a representation to grant him pay scale of 'Registrar' under "Assured Progress Scheme w.e.f. 27.06.2006. It was rejected by order dated 06.06.2023 by observing thus-

“२. याबाबत आपणांस कळविण्यात येते की, वित्त विभागाकडून प्राप्त अभिप्राय पुढीलप्रमाणे -

वित्त विभागाच्या दिनांक २० जुलै, २००९ च्या शासन निर्णयान्वये राज्य शासकी कर्मचा-यांना सेवांतर्गत आश्वासित प्रगती योजना लागू करण्यात आली असून सदर शासन निर्णयातील परि.२ (४) मध्ये “या योजनेंतर्गत पदोन्नतीच्या पदाची वेतनश्रेणी देय होईल” अशी तरतूद आहे. सन २००६ मध्ये सहायक निबंधक व निबंधक या दोन पदांच्यामध्ये उपनिबंधक हे पदोन्नतीचे पद अस्तित्वात होते. तसेच विधि व न्याय विभागाच्या दिनांक १५.१२.२००६ रोजीच्या शासन निर्णयान्वये आकृतिबंध निश्चित केलेला आहे. सदर आकृतिबंधात उपनिबंधक या पदाचा समावेश केलेला आहे. सन १९९२ मध्ये उपनिबंधक पदाची निर्मिती झाल्यानंतर सेवाप्रवेश नियमांमध्ये त्यानुसार सुधारणा करणे आवश्यक होते. परंतु केवळ पदोन्नतीच्या पदाचे सेवा प्रवेश नियम अंतिम होण्यास विलंब झाला म्हणून उप निबंधक हे पद डावलून निबंधक पदावरील वेतनश्रेणी देय करणे योग्य होणार नाही.”

3. In Original Application, the Applicant has pleaded that order dated 06.06.2023 is the subject matter of challenge. It may, however, be mentioned that there is no prayer in the Original Application for quashing and setting aside the order dated 06.06.2023. The principal prayer in the Original Application reads thus –

“ This Hon'ble Tribunal be pleased to direct the Respondents to grant benefits of the higher pay scale of post of Registrar of Firms to the Applicant under Assured Progress Scheme (सेवांतर्गत आश्वासित प्रगती योजना) considering the notified Recruitment Rules of 1989 and fix the pay of the Applicant as per the pay scale [(5th Pay

12000-16500) (6th Pay 15600-39000+ Grade Pay 7600)] of Registrar of Firms with effect from 27.06.2006.”

4. Pleading of the Applicant in Para No.4 of the Misc. Application reads as under :-

“The aforesaid order dated 09/01/2007 was issued on the basis of draft rules instead of notified rules of 1989. The said order dated 09/01/2007 was required to be challenged within one year from the date of issue. However, there is a delay of 14 years, 4 months and 9 days excluding the period of limitation of 1 year and period of Covid-19 of 1 year, 11 months, 13 days (15/3/2020 to 28/2/2022).”

5. In the Misc. Application, there is reference to various applications made by the Applicant for redressal of his grievance, as well as his retirement on superannuation on 30.09.2021.

6. The Applicant has relied on the case of the Hon’ble Supreme Court reported in **(2008) 8 SCC 648 (Union of India & Ors. V/s Tarsem Singh)**. In this case, it is held :-

“5. To summarize, 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 re-opening 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, the principles relating to recurring/successive wrongs will apply. As a consequence, 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.”

7. The stand of the Respondent No.3 is that condonation of delay of more than 14 years will unsettle the position settled long back.

8. The Respondent No.3 has further pleaded –

“ The post of the Deputy Registrar came to be created in the year 1992. However, the Recruitment Rules, for the post of Deputy Registrar, took longer period for finalization due to administrative and procedural reasons. Moreover, the post of Deputy Registrar was included in the 5th Pay Commission and 6th Pay Commission in the staffing pattern of the Registrar of Firms. Hence, to overcome the technical flaw, with the approval of the General Administration Department,

promotion to the post of the Deputy Registrar was granted to the Applicant on the basis of draft rules. Further the same Rules have been finalized and are in force w.e.f. 23.09.2021. The action to grant promotion to the Applicant on the basis of the draft rules was with only intention to find a way out in the background that the post of Deputy Registrar was created but promotion to the said post could not be granted as the Recruitment Rules were not finalized. Hence, the contention of the Applicant that illegal practice was followed is devoid of merits.

I say and submit that the Applicant accepted the ACPS of the post of Deputy Registrar and he was aware of the fact that he was granted promotion on the basis of the draft Rules. In case the Applicant was aggrieved with the action of the government granting him promotion on the basis of draft Rules, he would have availed the remedy in law at the relevant time. Now, the Applicant is already retired on 30.09.2021 and his pension case is finalized.”

9. The circumstances discussed hereinabove, establish that the Applicant seeks redressal of a continuing ‘wrong’ and if this ‘wrong’ is righted, no one else would be impacted. Thus, the case of the Applicant falls within the exception carved out in **Tarsem Singh’s case** (cited supra).

10. The Respondent department has relied on the case of **(Basawaraj and Anr. v/s the Special Land Acquisition Officer) AIR 2014 SC 746**. In this case, it is held that delay cannot be condoned unless satisfactorily explained by showing “sufficient cause”. Since the ‘wrong’ complained of by the Applicant is demonstrated to be a continuing ‘wrong’, the delay is condoned.

11. In view of the above, the Misc. Application is allowed.

12. No order as to costs.

Sd/-
(M. A. Lovekar)
Member (J)

Place: Mumbai

Date: 13.01.2025

Dictation taken by: V. S. Mane

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