

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

MISC. APPLICATION NO.474 OF 2016
IN
ORIGINAL APPLICATION NO.542 OF 2015
WITH
MISC. APPLICATION NO.586 OF 2015
IN
ORIGINAL APPLICATION NO.1072 OF 2013

MISC. APPLICATION NO.474 OF 2016
IN
ORIGINAL APPLICATION NO.542 OF 2015

Mr. Rajkumar H. Jadhav.

)...Applicant

Versus

1. The State of Maharashtra & 3 Ors.)...Respondents

WITH

MISC. APPLICATION NO.586 OF 2015
IN
ORIGINAL APPLICATION NO.1072 OF 2013

The State of Mah & Ors.

)...Applicants
(Ori. Respondents)



Versus

Shri Rajkumar H. Jadhav.

)...Respondent
(Ori. Applicant)

Smt. Punam Mahajan, Advocate for Applicant in MA 474/2016 and for Respondent in MA 586/2015.

Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents in MA 474/2016 and for the Applicants in MA 586/2015.

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)
R.B. MALIK (MEMBER-JUDICIAL)**

DATE : 10.01.2017

PER : R.B. MALIK (MEMBER-JUDICIAL)

ORDER

1. Both these Misc. Applications are being disposed of by this common order.
2. We have perused record and proceedings and heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Mr. N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.
3. The MA for amendment of the Original Application (OA) has been fiercely opposed by the



Respondent led by Shri N.K. Rajpurohit, the learned Chief Presenting Officer (CPO) for the Respondents.

4. The Applicant in the unamended OA challenges an order dated 2.7.2014 issued by the 4th Respondent - Divisional Joint Registrar, Cooperative Society continuing the departmental enquiry initiated as far back as on 2nd February, 1995 even after a period of 20 years. The Applicant in fact retired from service on 28.2.2002 while working as Cooperative Officer (Grade I - Non-Gazetted) Group 'C' post at Pune. In the OA apart from quashing and setting aside of the order just mentioned, the relief of treating the period of his suspension as period spent on duty was also sought. In the meanwhile, it would appear from our order of 3rd March, 2016 that Mrs. Mahajan, the learned Advocate for the Applicant tendered before us a copy of the order dated 29.2.2016 whereby the Departmental Enquiry (DE) was finally disposed of with a punishment withholding of an amount of Rs.100/- from the payable pension and of the period of suspension during 2.1.1995 and 9.4.2001 as period spent on duty. The said order would show that initially the learned Advocate wanted to withdraw the OA with liberty to file a fresh one, but she decided to move an application for amendment to incorporate therein the events subsequent to the filing of



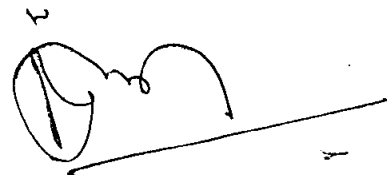
the OA. We had made it clear to the Respondents thereby that the mere fact of pendency of this OA should not come into the way of their settling pensionary and other dues of the Applicant and considering the grant of benefits of 5th and 6th Pay Commissions to him. We had made it specifically clear that in as much as the OA is remaining pending, the issue of whether the Respondents kept the time limit with regard to the completion of the enquiry in accordance with the directions in the disposed of OA No.1072/2013 was kept open. The MA 586/2015 which was presented by the Respondents for extension of time would also remain pending.

5. In the above set of facts, the present application for amendment to the OA was brought by the Applicant. Now, the Applicant wants to challenge the order of punishment above discussed on several grounds including the fact that he having complained against the appellate authority – 3rd Respondent by the letter of 3rd October, 2016, the said appellate order was made out of pique and irritation. A period of three months had already expired which was given in the earlier OA and the Respondents had no occasion to go ahead and pass the orders. This Tribunal never granted the extension of time of four weeks.

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6. The above discussion must have made it quite clear that when the OA was brought, the order in effect continuing the DE was passed which was challenged along with several other reliefs sought. These events have got a tendency of having a nexus with the facts such as they existed when the OA was brought initially. It is not as if, the facts sought to be impleaded by way of amendment are totally independent and quite distinct from the original plea. In fact, one leads to the other and that being the state of affairs, even as, as per the general rule though every lis has to be decided in the context of the date on which it was instituted, but the Courts are always empowered to take a cautious cognizance of the events subsequent to the lis meaning thereby that the events pending the parent matter are not entirely out of bounds and they also can be allowed to be impleaded provided there is a nexus as we mentioned above.

7. Shri Fayaj Bashir Mulani, the 4th Respondent filed an Affidavit-in-reply calling it as a short Affidavit. The plea raised therein which was vociferously pursued by the learned CPO is that the initial claim was for quashing and setting aside of the order dated 2.7.2014 continuing with the DE, the DE was since over and the punishment has been imposed which was confirmed in appeal. According

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to the Respondents, this is an entirely separate cause of action, and therefore, the present amendment application does not survive the test of law of amendments.

8. The learned CPO in that connection relied upon Superintending Engineer, Gosserkhurd Project Vs. Member, Industrial Court, Nagpur, Writ Petition No.3395/2001 decided on 21st February, 2003 (CORAM : His Lordship the Hon'ble Shri Justice R.G. Deshpande). Whatever may have been the factual state of affairs, His Lordship was pleased to observe inter-alia in dealing with a matter arising out of a complaint under the Maharashtra Recognition of Trade Union and Prevention of Unlawful Practices Act that if there was a direct nexus between the amendments sought and the main lis, then the said amendment can be allowed. The learned CPO then relied upon a Judgment of the Hon'ble Allahabad High Court in Ram Dayal and 2 others Vs. District Judge Sultanpur and 3 others, Misc. Single No.6167 of 2011 which was a matter arising out of a suit and there was a delay and most importantly the facts tried to be incorporated by way of amendment had already taken place before the institution of the suit at the inception. That being the state of affairs in our view, application of principles laid down therein to the present facts, must lead

us to allow this application for amendment. This is in so far as MA 542/2015 is concerned.

9. In so far as MA 586/2015 is concerned, the same has been moved by the Respondents seeking extension of time. In OA 1072/2013 as already mentioned above, a time bound schedule was set down and according to the Respondents, the same could not be kept for the various reasons mentioned therein, and therefore, a further time of three months was sought for doing so. They ultimately, did it and as already mentioned above, the issue of whether the Respondents should face the consequences for over shooting the time limit, is one of the grounds taken by way of amendment which application is going to be allowed hereby. We are, therefore, quite clearly of the view that even as we dispose of MA 586/2015, we may make it quite clear that we have not finally approved of the delay and the Tribunal will at the time of final hearing of this OA, consider the whole aspect in its totality. At that time, it will be open to the Tribunal to consider the effect of the delay. We may only add that the issue of delay cannot be studied in isolation. The events leading up to the DE were more than two decades old, and therefore, in light humour, the redeeming steps cannot be allowed to be taken by the Respondents.

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10. For the foregoing, the application for amendment moved by the Applicant is allowed. The amendment as therein sought be incorporated within a period of two weeks from today. A consolidated copy of the OA after amendment be filed and a copy thereof be furnished to the learned CPO for additional Affidavit-in-reply, if any.

11. As far as MA 586/2015 is concerned, the facts and facts at issue therein involved are kept open and the effect of the delay in doing the needful as per the directions in OA 1072/2013 shall be considered at the time of final hearing of the OA, because that ground is also urged by the Applicant by way of amendment and the Applicant cannot be deprived of his right to urge even that ground. MA 586/2015 is hereby disposed of in these terms, leaving open the determination of the facts and facts at issue in that ground. No order as to costs of both the MAs.

sdf 10.01.17
(R.B. Malik)
Member-J
10.01.2017

Ra sdf and
(Rajiv Agarwal)
Vice-Chairman
10.01.2017

Mumbai

Date : 10.01.2017

Dictation taken by :

S.K. Wamanse.

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Maad 12/1/2017
 Asstt. Registrar/Research Officer
 Maharashtra Administrative Tribunal
 Mumbai.