

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**MISCELLANEOUS APPLICATION NO.613 OF 2015  
IN  
ORIGINAL APPLICATION NO.1093 OF 2015**

**DISTRICT : MUMBAI**

Shri Amanullah Ismail Shaikhnag, )  
In the office of Manager, Government )  
Milk Scheme, Kanakavali Head Quarters, )  
R.D.D. Office Chiplun, )  
R/O. Al-Aqsa Apartment, Bhendi Naka, )  
A/P/T Chiplun, Dist. Ratnagiri. )**..APPLICANT**

**VERSUS**

1. The Regional Dairy Development )  
Officer, Mumbai Division, )  
Having office at 514, 5<sup>th</sup> floor, )  
Konkan Bhawan, C.B.D. Belapur, )  
Navi Mumbai. )
2. The State of Maharashtra, )  
Through Principal Secretary, )  
(Dairy Development), Agriculture, )  
Animal Husbandry Dairy )  
Development & Fisheries Department, )  
Having office at Mantralaya, )  
Mumbai 400 032. )

**....RESPONDENTS**

Shri B.A. Bandiwadekar, learned Counsel for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : SHRI RAJIV AGARWAL, VICE-CHAIRMAN

DATE : 26.08.2016.

### **J U D G M E N T**

1. Heard Shri B.A. Bandiwadekar, learned Counsel for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. This Miscellaneous Application has been filed seeking condonation of delay of one year in filing the O.A.No.1093 of 2015.

3. Learned Counsel for the Applicant argued that the Applicant is challenging the order dated 07.12.2013 refusing to grant him regular pension for his past services. The Applicant had applied on 21.03.2013 to the Dairy Manager, Kanakavali, District Sindhudurg for grant of pension for the services rendered by him from 03.10.1969 to 29.11.1976 at that Dairy. The Applicant was informed by impugned order dated 07.12.2013 that he was not eligible to get pension as he had admitted that he had resigned from Government service and resignation entails for future of service. Learned Counsel for the Applicant argued that the applicant is suffering from various diseases, and due to old age, he could not file O.A. in time. He is, therefore, seeking condonation of delay of one

year in filing this O.A. He is challenging order dated 07.12.2013 in this O.A. Learned Counsel for the Applicant relied on the judgment of Hon'ble Supreme Court in Union of India & Others. Versus Tarsem Singh : (2008) 2 SCC (L&S).

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents, that the papers regarding alleged service of the Applicant in Kanakavali, Government Milk Scheme are not available with the Respondents. The Applicant, as per his own admission, states that he had resigned from Government service on 29.11.1976, i.e. 40 years back. The delay is not of one year but of 40 years. Learned P.O. argued that Hon'ble Supreme Court has held in case of Union of India Vs. M.K. Sarkar (2010) 2 SCC 59, that a 'stale' or 'dead' issue cannot be revived by making repeated representations and rejection of representation will not furnish a fresh cause of action.

5. In the present case, the Applicant claims that he was working as Milk Collection, Supervisor in Government Milk Scheme, Kanakavali, at Chiplun from 03.10.1969 to 29.11.1976 and he resigned from service with effect from 29.11.1976. By his own admission, he applied to the Manager, Government Milk Scheme, Kanakavali on 21.03.2013, i.e. almost after 36 years seeking pensionary benefits. The impugned order dated 07.12.2013, challenged in O.A.No.1093 of 2015 reads :-

“तसेच आपल्या दिनांक नसलेल्या एका पत्राने आपण सेवापुस्तकातील नोंदी पडताळणी करून मिळणेबाबत या कार्यालयास विनंती केलेली आहे. तथापि आपणास कळविण्यांत येते की, कर्मचा-यांच्या सेवेबाबतच्या नोंदी, कार्यालयाने ठेवलेल्या मुळ सेवापुस्तकात आवश्यक त्या कागदपत्रावरून प्रमाणित केल्या जातात. तसेच मुळ सेवापुस्तकावरून दुय्यम सेवापुस्तकातील

नोंदी प्रमाणित केल्या जातात. आपण पत्रासोबत पाठविलेले सेवापुस्तक हे आपण तयार केलेले असून शासकिय कार्यालयाने तयार केलेले नाही. त्यामुळे त्यातील नोंदी प्रमाणित करणे शक्य होत नाही. याची आपण नोंद घ्यावी.”

It is quite clear that original Service Book of the Applicant is not traceable and the Applicant's claim that he rendered Government service is based on duplicate Service Book prepared by himself. Hon'ble Supreme Court in Sarkar's case (supra) has considered a similar claim. In that case, the employee or ex-employee had applied for switching over the pension scheme from the Contributory Provident Fund Scheme. The cut off date for switch over to pension scheme expired on 31.12.1978 and the employee representation on 08.10.1998 seeking option to shift to pension scheme with effect from 1976. Hon'ble Supreme Court has held that in such circumstances, "The respondent's representation dated 08.10.1998 seeking an option to shift to pension scheme with effect from 1976 ought to have been straight away rejected as barred by limitation / delay and laches."

Hon'ble Supreme Court has further observed that :-

“..... The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which on order is passed in compliance with courts direction.” (emphasis supplied).

6. In case of C. Jacob Vs. Director of Geology & mining : AIR 2009 SC 264, Hon'ble Supreme Court has held that :-

“Every representation to the Government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim..... The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.” (emphasis supplied).

In Jacob’s case (supra), Hon’ble Supreme Court has observed that :-

“6. THE present case is a typical example of representation and relief. The petitioner keeps quiet for 18 years after the termination. The stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 9.4.2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action. As noticed above, the learned Single Judge examined the claim, as if it was a live claim made in time, finds fault with the respondents for not producing material to show that termination was preceded by due enquiry and declares that termination as illegal. But as the appellant has already reached the age of superannuation, the learned Single Judge grants the relief of pension with effect from 18.7.1982, by deeming that he was retired from service on that day. We fail to understand how the learned Single Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005. We fail to understand how the learned Single Judge could find fault with the department of Mines and geology, for failing to prove that a termination made in 1982, was preceded by an enquiry

in a proceedings initiated after 22 years, when the department in which appellant had worked had been wound up as long back as 1983 itself and the new department had no records of his service. The appellant neither produced the order of termination, nor disclosed whether the termination was by way of dismissal, removal, compulsory retirement or whether it was a case of voluntary retirement or resignation or abandonment. He significantly and conveniently, produced only the first sheet of a show cause notice dated 8.7.1982 and failed to produce the second or subsequent sheets of the said show cause notice in spite being called upon to produce the same. There was absolutely no material to show that the termination was not preceded by an enquiry. When a person approaches a court after two decades after termination, the burden would be on him to prove what he alleges. The learned Single Judge dealt with the matter as if he the appellant had approached the court immediately after the termination. All this happened, because of grant of an innocuous prayer to 'consider' a representation relating to a stale issue. Pension for service of less than 20 years."

7. The facts in the present case are remarkably similar. From the impugned order it is clear that the records of the service of the Applicant are not available with the Respondents. The cause of action has arisen in 1976, as per own admission of the Applicant. There is no attempt to explain the delay of almost 40 years. The claim of the Applicant is 'dead' and cannot be revived by representations made after 37 years. The ratio of the Hon'ble Supreme Court judgment in Tarsem Singh's case is not applicable in the present case as the records of his alleged service are no longer

available with the Respondents after 40 years. The M.A. for condonation of delay of one year cannot be considered as the actual delay is of 40 years and the claim of the Applicant is a 'dead' one.

8. The M.A. is accordingly dismissed. As the M.A. for condonation of delay is rejected, the O.A. is also dismissed with no order as to costs.

**(RAJIV AGARWAL)**  
**VICE-CHAIRMAN**

**Place : Mumbai**  
**Date : 26.08.2016**  
**Typed by : PRK**