

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO.98 OF 2014
IN
WRIT PETITION NO.5545 OF 2012**

...
BABULAL S/O. SOMA BORSE
VERSUS
STATE OF MAHARASHTRA & OTHERS

...
Advocate for Petitioners : Mr. Pradip R. Patil
AGP for Respondent/State: Mr. A.V.Deshmukh
Advocate for Respondent No.3 : Mrs. C.R.Chaudhari

...
CORAM : S.S. SHINDE & V.K.JADHAV, JJ.
Dated: October 09, 2015

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PER COURT:-

1] Heard the learned counsel appearing for the Review Applicant, the learned counsel appearing for the respondent No.3, and the learned AGP appearing for the respondent Nos.1 and 2.

2] The learned counsel appearing for the Review Applicant invited our attention to the Judgments of the Hon'ble Supreme Court in the case of *Shiv Dass Vs. Union of India & others*¹, and also in the case of *Union of India & others Vs. Tarsem Singh*². The Review Applicant, on instructions, submits that, the applicant is ready to restrict his claim for pension for three years. Therefore, he submits that, in view of the Judgment in the case of *Shiv Dass [cited supra]*, the Review Application deserves to be allowed.

1 2007 [9] SCC 274

2 2008 [8] SCC 648

3] On the other hand, the learned AGP appearing for the Respondent - State vehemently opposed the prayer on the ground that, there was inordinate delay in filing the Petition, and also the Judgments which are relied upon by the learned counsel appearing for the Review Applicant, are in different fact situation. Therefore, he submits that, the Review Application may be rejected.

4] The learned counsel appearing for the respondent No.3 submits that, the Review Applicant did file Writ Petition No.4665/1995 for the same prayer, and the same was rejected on 17.10.1995, and therefore, for same cause of action with same prayer, the Petition cannot be entertained. It is submitted that, there was delay of more than 16 Years in filing the Writ Petition, and therefore, this Court has rightly rejected the Petition on the ground of delay in filing the Petition, therefore, the Review Application may be rejected.

5] We have heard the learned counsel appearing for the Review Applicant, the learned AGP appearing for the Respondent – State, and the learned counsel appearing for the Respondent No.3. Upon careful perusal of the Judgment in the case of *Shiv Dass [cited supra]*, the Hon'ble Supreme Court has observed that, in the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same

or restrict the relief which could be granted to a reasonable period of about three years.

6] Since the learned counsel appearing for the Review Applicant has restricted his prayer for pension for three years, we deem it appropriate to recall the order dated 26th March, 2014, and restore Writ Petition No.5545/2012 to its original file. The Review Application is accordingly disposed of.

7] Registry to place Writ Petition No.5545/2012 for hearing before the appropriate Bench as per the roster.

[V.K.JADHAV, J.]

[S.S. SHINDE, J.]

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