

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4045/2014

(KOMALSINGH KONDUSINGH PARIHAR **VERSUS** THE M.D., M.S.E.D.C.L., MUMBAI &
 ANOTHER)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri B.M. Kharkate, counsel for the petitioner.
 Shri A.D. Mohgaonkar, counsel for the respondents.

CORAM : SMT. VASANTI A. NAIK AND
A.M. BADAR, JJ.

DATE : APRIL 21, 2015.

By this petition, the petitioner seeks a direction to the respondents to grant the second higher grade benefit to the petitioner with effect from 1994 in view of G.O. No.111(P), dated 13.05.1982.

The petitioner was appointed as a Sub-Engineer by the respondents and he was chargesheeted on 08.11.1992. A minor punishment was imposed upon the petitioner on 30.09.1998 after the charges levelled against the petitioner were proved. On 12.02.1993, a second charge-sheet was served on the petitioner and the petitioner was punished on 02.03.2002 in pursuance of the charge-sheet dated 12.02.1993. On 23.11.2001, the petitioner was trapped by the Anti Corruption Bureau and was placed under suspension. His suspension was revoked in the year 2004 and the petitioner attained the age of superannuation on 30.09.2004. The Special Court acquitted the petitioner of the charges of corruption in the year 2010. The petitioner has filed the instant petition on 03.02.2014 seeking the second higher grade benefit with effect from 1994.

According to the petitioner, the petitioner had made a representation in the year 1994 to the respondent seeking the second higher grade benefit but, the representation is not decided

by the respondent till date. It is stated that it was necessary for the respondent to complete the enquiries initiated against the petitioner in pursuance of the charge-sheets issued in the year 1992 and 1993 within a reasonable time, but, the enquiries continued for long. It is stated that the case of the petitioner was not placed before the competent selection committee. It is stated that the petitioner was entitled to the second higher grade benefit with effect from 1994 but, the respondents have illegally denied the same to the petitioner.

Shri Mohgaonkar, the learned counsel for the respondents, has denied the claim of the petitioner and has sought the dismissal of the writ petition on the ground of laches. It is stated that the petitioner is seeking the second higher grade benefit with effect from 1994 in a writ petition filed twenty years later. It is stated that the record of the petitioner was consistently bad and minor penalties were inflicted against the petitioner after the charges levelled against the petitioner were proved. It is submitted that the de-stagnation benefit is given only to the employees with good service record and it is necessary that a competent selection committee should assess the performance of the employee and satisfy itself about the service/performance of the employee. It is stated that the record of the petitioner was consistently bad after 1992 and the de-stagnation benefit could not have been granted to the petitioner. The learned counsel for the respondents sought for the dismissal of the writ petition.

On hearing the learned counsel for the parties, it appears that the writ petition is liable to be dismissed on the ground of laches. The petitioner claims to have made a representation in the year 1994 seeking the second higher grade benefit from the said year. If the representation of the petitioner was not decided within a reasonable time, it was necessary for the petitioner to file appropriate judicial proceedings. The petitioner, however, did not do anything in the matter till the petitioner retired

in the year 2004 and waited for nearly ten years even after his retirement to seek the second higher grade benefit with effect from 1994. It is well settled that an employee should approach a Court within a reasonable time if his representation is not decided. Making of a representation and waiting for long or making successive representations is consequential while substantiating sufficient cause. It would be worthwhile to refer to the judgments reported in **1995 Supp. (4) SCC 593** (*Administrator of Union Territory of Daman and Diu & others Versus R.D. Valand*), **(2009)3 SCC 281** (*Yunus (Baboobhai) A. Hamid Padvekar Versus State of Maharashtra, through its Secretary & Others*) and **(2006)4 SCC 322** (*Karnataka Power Corpn. Ltd. Through its Chairman & Managing Director & another Versus K.Thangappan & another*), in this regard. Nothing can be done in the matter seeking the second higher grade benefit with effect from 1994 in the petition filed in the year 2014 as, in view of the relevant rules, before an employee is given the higher scale as per the de-stagnation scheme a competent selection committee should endorse about the satisfactory performance of the employee.

Apart from the fact that the petition suffers from laches, we find that the performance of the petitioner was not satisfactory. On two occasions, minor penalties were inflicted on the petitioner and the Special Court has acquitted the petitioner of the charge of corruption only after giving the benefit of doubt. In any case, since the performance of the petitioner cannot be now assessed by a competent selection committee ten years after his retirement, the relief sought by the petitioner cannot be granted.

For the reasons aforesaid, we dismiss the writ petition with no order as to costs.

JUDGE

JUDGE