

IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR
BENCH, NAGPUR.

WRIT PETITION NO.1184 OF 2014

Ramesh Shankarrao Pawar

..VS..

**The State of Maharashtra, thr the Principal Secretary, Department of
Employment & Self Employment, Mantralaya, Mumbai and anr**

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

Court's or Judge's order

The Petitioner in person.

**Mrs. K. Joshi, Assistant Government Pleader for the
respondents.**

**CORAM : B.P. DHARMADHIKARI &
A.S. CHANDURKAR, JJ.**

DATE : FEBRUARY 2, 2015.

1. Heard the petitioner in person and
Mrs. Ketki Joshi, learned Assistant Government
Pleader for the respondents.

2. The challenge, in the present writ
petition, is to order dated 6.1.2012 passed on
Civil Application No.289 of 2008 in Original
Application St. No.1295 of 2008. The petitioner
sought review of this order before The

Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur only and The Maharashtra Administrative Tribunal has rejected that Review Application No.1 of 2012 on 9.3.2012.

3. The petition, under Article 226 of the Constitution of India, challenging these two orders, came to be presented on 11.6.2012. It remained pending for non-removal of office objection and ultimately was registered on 7.2.2014. This Court issued notice on 8.4.2014.

4. At the outset, it should be noted that the controversy is about adverse remarks for the years 1997-98 and 1998-99. The petitioner approached The Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur for quashing of those adverse remarks. In-so-far as 1997-98 adverse remark is concerned, he pointed out, in his application for condonation of delay filed

vide Civil Application No.289 of 2008, that though rejection of representation in relation to said adverse remark was dated 7.1.2000, it was not an order passed by the State Government as required by law and as such, the petitioner could not have appealed against it. In-so-far as adverse remark for the year 1998-99 is concerned, the petitioner stated that he preferred representation on 16.9.1999 and it had not been decided, till then.

5. According to him, in this situation, when the representations were still pending and not decided and the State Government itself came up with argument that the orders passed on representations dated 6.6.2006 of the present petitioner put an end to controversy, the matter needed to be decided on merits. He submits that no cause of action accrued either in the year 2000 or thereafter to enable him to approach

The Maharashtra Administrative Tribunal in the matter.

6. Mrs. Ketki Joshi, learned Assistant Government Pleader for the respondents, submits that the present writ petition is belated because the petition has been filed in the year 2014 challenging 9.3.2012 order. Our attention is also drawn to the stand before The Maharashtra Administrative Tribunal, in alternate, that in any case the cause of action crystalized on 23.8.2007 and as such approach to The Maharashtra Administrative Tribunal was belated.

7. In-so-far as belated filing on writ petition is concerned, we have noted the relevant dates *supra*. The writ petition was filed on 11.6.2012 itself, hence, approach to this Court is about three months after The

Maharashtra Administrative Tribunal passing impugned order.

8. However, perusal of first order, passed by the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur on 6.1.2012 after restoration of Civil Application No.289 of 2008, shows that it has accepted that respondents on 7.1.2000 communicated to the petitioner that his representation against adverse remark of 1997-98 was rejected. The rejection of representation dated 6.6.2006 or communication dated 23.8.2007 about it and its interpretation or its use by the State Government before The Maharashtra Administrative Tribunal appear in paragraph No.6 of the impugned order. The fact that the petitioner made representation against adverse entries of year 1998-99 on 16.9.1999 is not in dispute. The petitioner has claimed that it remained pending

and the decision, if any, on it was never communicated to him. This disputed issue is lost sight of and the stand of respondents that it was rejected on 29.7.2000 has been accepted. However, there is no finding of service of said communication upon the petitioner.

9. We also find that certain other issues like whether representation submitted after accrual of cause of action can be claimed to be pending for indefinite period also arise.

10. It is felt that the prayer for the condonation of delay and merits of the matter have been mixed together and this has resulted in order rejecting the prayer for condonation of delay.

11. The case of the petitioner that communication dated 7.1.2000 was not an order

rejecting his representation against adverse remark of the year 1997-98 and his stand that he never received communication dated 29.7.2000 rejecting his representation on adverse remark for the year 1998-99 need consideration in the background of relevant legal provisions.

12. Only for the said purpose, we set aside orders dated 6.1.2012 on Civil Application No.289 of 2008 and 9.3.2012 on Review Application No.1 of 2012. Civil Application No.289 of 2008 is restored back to the file. The Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur for taking fresh decision after giving the parties necessary opportunity to place their relevant sides on record.

13. The parties are directed to appear before The Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur in Civil Application

No.289 of 2008 on **2.3.2015**.

14. The writ petition is thus partly
allowed. No order as to costs.

JUDGE

JUDGE

!! BRW !!