

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

**CIVIL APPLICATION NO. 3906 OF 2015
IN/WITH
REVIEW APPLICATION (ST.) NO. 7869 OF 2015
IN
WRIT PETITION NO. 2687 OF 2001**

Imam s/o Usman Shaikh,
Age: 56 years, Occu: Service as Peon,
R/o. Ambejawalge,
Tq. Dist. Osmanabad

...Applicant

versus

1. The State of Maharashtra
 2. The Executive Engineer,
Minor Irrigation Division (EGS),
Osmanabad, Dist. Osmanabad
- ...Respondents

.....
Mr. V. D. Gunale, Advocate for applicant
Mr. S. P. Deshmukh, A.G.P. for respondents/State
.....

CORAM : N.W. SAMBRE, J.

DATE : 24th FEBRUARY, 2016

ORAL ORDER :

This is an application for condonation of 61 days delay caused in preferring review application before this Court seeking review of oral judgment delivered by this Court on 11/12/2014 in Writ Petition No. 2687 of 2001.

2. Learned A.G.P. opposed the application on the ground

that delay caused in preferring the review application is not explained.

3. Looking to the nature of reasons cited in the application, delay caused in preferring review application is condoned. Civil Application No.3906 of 2015 stands allowed.

4. Review Application is taken out for final hearing. Heard Mr. Gunale, learned Counsel for the applicant at length and learned A.G.P. for respondents.

5. Present applicant preferred the proceedings before 2nd Labour Court, Solapur vide I.D.A. No. 56 of 1994 in the matter of his employment with respondent State.

6. The said proceedings came to be allowed by directing employer to re-instate employee with continuity of service, however without back wages.

7. Feeling aggrieved thereby the State Government i.e. employer preferred Writ Petition No. 2687 of 2001 which was finally heard and allowed by this Court by oral judgment dated 11/12/2014, by which, the order passed by the Presiding Officer, 2nd Labour Court,

Solapur in favour of present applicant-employee came to be quashed and set aside with direction to pay retrenchment compensation of Rs.50,000/- to present applicant.

8. Mr. Gunale, learned Counsel for the applicant-employee, while trying to make out case for entertaining the review application and for setting aside the view taken by this Court in the judgment under review, would urge that the judgment was delivered by this Court in Writ Petition No. 2687 of 2001 in absence of present applicant as the applicant through Counsel remained absent. He would then urge that the order passed by learned Labour Court which was in his favour was already given effect in part since by an order passed in Writ Petition No. 2687 of 2001 on 29/04/2008 on Civil Application No. 10532 of 2016 relying upon the judgment in the matter of **Amit Kumar vs Indian Airlines Ltd.**, reported in **2006 (2) Mh. L.J. 210**, this Court, relying upon the provisions of Section 17(B) of the Industrial Disputes Act, 1947, has declared that the applicant-employee will be entitled for benefit thereunder i.e. last wage drawn by him from the date of application i.e. 08/11/2006. Mr. Gunale, learned Counsel for the applicant would urge that pursuant to the said order, present applicant-employee is getting regular pay scale as Peon and subsequently accommodated/reinstated against clear vacancy, on which he is still working. He would submit that there are

two years remained of his retirement from Government service and this Court having regard to the fact that the applicant is in employment for last more than six years and granted benefit under Section 17(B) of the Industrial Disputes Act, 1947, be continued till his retirement. It is further claimed that if the applicant-employee is continued till date of his retirement as has been already observed by Labour Court, neither he will be entitled any monetary benefit nor any back wages. He would submit that the applicant is ready to file undertaking before this Court that he shall not seek any of the retirement benefits if he is continued till his period of retirement as there are no deductions from his salary. According to him, even if there are deductions, still he submits that public exchequer will not be burdened qua his retirement benefits if he is permitted to continue till date of his retirement. He would then urge that he will not also claimed retrenchment compensation of Rs.50,000/- as is ordered by this Court by judgment under review.

9. Learned A.G.P., while opposing the claim would submit that this Court based upon the Apex Court judgment has already adjudicated the claim of present applicant and has noticed that the award delivered by learned Labour Court is contrary to the Apex Court judgment. According to him, the applicant is not entitled for any equity from this Court, much less any monetary benefits. He would

then rely upon the judgments of the Apex Court as are reproduced in the order under review and seeks dismissal of the review application.

10. From the record, it depicts that since 22/11/1982 the applicant was working as Peon and his services thereafter were continued up to 26/10/1983. It is claimed that he has completed 240 days service. It is not in dispute that there exist vacancy of peon with the respondent. The fact remains that the present applicant is on the verge of his retirement and his reinstatement in service against a clear vacancy, as informed by Mr. Gunale was not brought to the notice of this Court by respondent State Government while arguing the said writ petition.

11. In this background, in my opinion, the equity contemplates that present applicant, who has attained age of 56 years by this time and will be able to serve for period of another two years with the department as retirement age is of 58, the applicant herein be continued till the date of his retirement with following conditions:-

- (a) He shall be accommodated only against an vacancy.
- (b) that the applicant shall file undertaking before this Court within period of one week from today that he shall not claim any retirement benefits from his employer by relying

upon the present proceedings or otherwise in relation to the matter of his reinstatement, so no further benefits out of his present employment,

(c) that after date of retirement, he shall also not come out with plea qua any claim about continuity in service and further monetary benefits.

(d) It is also clarified that he shall the applicant shall also file undertaking that he shall not claim retrenchment compensation of Rs.50,000/-.

12. The order under review stands modified to the above extent. The review application, as such, is partly allowed and disposed of.

[N.W. SAMBRE, J.]