

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4447 of 2015**

Prashant Kishor Garge .. Petitioner
vs
State of Maharashtra & ors .. Respondents

Mr.V.K.Badhave for Petitioner
Mr.P.G.Sawant Assistant Government Pleader for State.

**CORAM: NARESH H.PATIL AND
G.S.KULKARNI, JJ
DATE: 22ND JANUARY, 2016**

1. The Petitioner's Appeal filed before the Appellate Authority/Divisional Social Welfare Officer was rejected as barred by limitation by an order dated 22nd April, 2009.

2. The Petitioner filed a writ petition bearing No.1334 of 2010. By an order dated 7th July 2011 the learned single Judge allowed the petition in following terms :-

“ 6. In the light of this, the impugned order is set aside. The delay in filing the appeal before the appellate authority is condoned. The appeal shall now be heard on merits in accordance with law as expeditiously as possible by the appellate authority after giving an opportunity to both sides to argue the same. All contentions on merits of the controversy are kept open. Writ Petition is allowed in these terms. No costs.

3. The said Appeal according to the learned counsel has not been

heard inspite of the order passed by the learned Single Judge. The learned counsel has referred to a communication made by the Regional Deputy Commissioner addressed to the Deputy Commissioner (Administration) Social Welfare Commissionerate, Maharashtra State, Pune on 21st March 2014 wherein it was informed that as the Appeal was heard by the then Deputy Commissioner (Administration), it would be appropriate that the same Deputy Commissioner to take a final decision or decide the Appeal on its own merits. The learned counsel appearing for the Petitioner submits that the Department has adopted such a stand probably based on observations made by the Division Bench of this Court in Writ Petition No.2273 of 2001 wherein in paragraph 3 the Division Bench has observed as under:

3. “We are therefore, constrained to issue directions to the effect that in the event a member who has heard the matter is transferred to any other Committee in the State of Maharashtra, the order of the scrutiny committee should be sent to him for signature so that there is no delay in the matter of deciding caste claim of the applicants and the same would also result in avoiding unnecessary litigation. Let copy of this order be sent to the Principal Secretary, Tribal Development, Government of Maharashtra so that necessary instructions can be issued to all the Caste Scrutiny Committees in that behalf.”

4. It is necessary to clarify that in the facts of the present matter, it would be appropriate that the matter is re-heard by the Authority appointed

in the place of the out-going Authority. Such matters need not be sent to the Appellate Authority, who has been transferred, for passing final orders.

We have perused the judgments annexed to the Petition and the communication Exhibit G.

4. In the facts the judgment delivered by the Division Bench in Writ Petition No.2273 of 2001 dated 23rd June 2010 cannot be made applicable to the facts of the present case.

5. In this view of the matter, we issue following direction :

ORDER

(i) We direct the Respondent no.2 existing Appellate Authority who shall hear the Appeal afresh on merits and pass final order within a period of three months.

Petition is disposed of accordingly.

(G.S.Kulkarni, J)

(Naresh H.Patil, J)