

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

WRIT PETITION NO. 4342 OF 2016

SHATRUNJAY BHAGWANRAO YEOTIKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Shri Nagarkar Kiran M.
AGP for Respondents/ State : Shri D.R.Kale.
...

**CORAM: S.C. DHARMADHIKARI
AND
MANGESH S. PATIL, JJ.**

DATE :- 06th June, 2017

PC.:

1 This Writ Petition, according to the Petitioner, seeks a very innocuous relief, namely, of direction to the Respondents to decide the Petitioner's representation in accordance with law.

2 Long before and in the judgment reported in AIR 2009 SC 264 (C.Jacob vs. Director of Geology and Mining), the Honourable Supreme Court has held that the manner in which some High Courts have disposed of Writ Petitions under Article 226 of the Constitution of India with a direction to the Respondents to decide the representations, has resulted in tremendous injustice and harm to bonafide and deserving persons. Such orders though apparently innocuous have tremendous potential of

destroying other claims which are still live. In the garb of such directions, old stale and bogus claims are sought to be revived. The Honourable Supreme Court observed as under:-

- "6. *Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking advantage of this position, the ex-employee files an application/ writ petition before the Tribunal/ High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of such applications/ petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee files an application/ writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the*

rejection of representation and for grant of the relief claimed in the representation. The Tribunals/ High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

7. *Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.*
8. *When a direction is issued by a court/ tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of 'acknowledgment of a jural relationship' to give rise to a fresh cause of action.*
9. *When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for purpose of pension. That will be a travesty of justice. Where an*

employee unauthorizedly absents himself and suddenly appears after 20 years and demands that he should be taken back and approaches court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/ removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back-wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employee at fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back-wages.

10. *We are constrained to refer to the several facets of the issue only to emphasize the need for circumspection and care in issuing directions for 'consideration'. If the representation is on the face of it is stale, or does not contain particulars to show that it is regarding a live claim, courts should desist from directing 'consideration' of such claims."*

3 The present case is an example and illustration as to how the orders of the Honourable Supreme Court are not being adhered to and followed. The Petitioner claims to be a citizen of India and residing at the address mentioned in the cause title. He says that he is son of a freedom fighter and registered as a nominee of the said freedom fighter way back in 2001. This is the second round of litigation. The Petitioner filed Writ Petition in this Court being Writ Petition No.2575/2005. That petition was disposed of with a direction to the Respondents to consider the claim of

the Petitioner from freedom fighter category. The order in that behalf is dated 08.07.2005 and passed in Writ Petition No.2575/2005.

4 Now, the Petitioner approaches this Court by filing the present Writ Petition on 02.03.2016 and complaining that till today this claim of the Petitioner has not been considered.

5 We are surprised and indeed shocked that the Petitioner is bold enough to make a statement that his father, who is aged 79 years and suffering from paralysis and his mother aged 73 years, have been looked after by him though he is 43 years of age. According to him, his nomination as a beneficiary of a freedom fighter thereby making him eligible for benefits in terms of the applicable scheme framed to aid and assist the freedom fighter, has not resulted in any relief either to the Petitioner himself or his parents.

6 Despite the hardship as projected in this petition, the Petitioner is looking after his old and infirm parents. In such circumstances, after the earlier petition was disposed of in 2005, for the first time, the Petitioner woke up and made another representation dated 03.11.2015. The Petitioner then rushed to this Court complaining that though he is duly qualified and possesses a Bachelor's degree in Science and having work experience with the Tahasil Office and a four wheeler driving licence, he is not gainfully employed. The Petitioner has then placed before us and for sympathetic consideration, the aspect that being

son of a freedom fighter, who is now aged and infirm, he would require funds to look after his parents. The Petitioner and his parents, who are surviving in the present age without any aid and assistance from the Government, that we do not think that we should issue any direction to consider the belated request and particularly when we find no reasonable explanation for this enormous delay and laches. The Petitioner has lost an opportunity to seek employment as a nominee of the freedom fighter and on the strength of a nomination obtained way back in 2001, it is he who is to be blamed and none else. We do not think that a stale and old claim and contrary to the judgment of the Honourable Supreme Court, can be entertained. The Petitioner has no vested right and as such, no mandamus can be issued. The Writ Petition being devoid of merit is dismissed. No costs.

(MANGESH S. PATIL, J.)

(S.C. DHARMADHIKARI, J.)