

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6672 OF 2015

Shafiq Mahmed Momin,
Age : 52 years, Occu.: Service,
Working as Sectional Engineer,
Ward-C, Municipal Corporation,
Aurangabad, R/o. Aurangabad,
Taluka and District Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32
2. Aurangabad Municipal Corporation,
Through, it's Commissioner
3. Shri Pathan Maheboobkhan,
Age : 57 years, Occu.: Municipal
Secretary Aurangabad Municipal
Corporation, R/o.: Motiwala Nagar,
Near Aman Masjeed, Aurangabad,
Taluka and District Aurangabad
4. Shri S.L. Pawar,
Age Major, Occu.: Service as
Water Engineer, Ward-B,
CIDCO Bhavan, Aurangabad,
Taluka and District Aurangabad
5. Shri R.N. Sandha,
Age years, Occu.: Service as
Deputy Engineer (Water)
R/o Town Hall, Aurangabad,
Taluka and District Aurangabad
6. Sudhakar Onkar Pawar,
Age Major, Occu.: Service as
Sectional Engineer Ward-F,
Garkheda, Aurangabad,
Near Jawaharnagar Police Station,
Aurangabad, Taluka and District Aurangabad

7. Shri B.K. Gaikwad,
Age Major, Occu.: Service as
Administrative Officer,
Aurangabad Municipal Corporation,
Taluka and District Aurangabad

RESPONDENTS

AND

WRIT PETITION NO.11308 OF 2015

Shri Shriram Ramdas Kathar,
Age : 56 years, Occu.: Service,
Working as Sectional Engineer,
Municipal Corporation, Aurangabad
R/o.: N-4, CIDCO, Aurangabad
Taluka and District Aurangabad

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Sectional Engineer Ward-F,
Garkheda, Aurangabad,
Near Jawaharnagar Police Station,
Aurangabad, Taluka and
District Aurangabad
7. Shri B.K. Gaikwad,
Age Major, Occu.: Service as
Administrative Officer,
Aurangabad Municipal Corporation,
Taluka and District Aurangabad
8. Shri Sayed Fahimoddin Siddiqui,
Age 58 years, Occu.: Dy. Engineer,
Town Planning Section, Town Hall,
Aurangabad, R/o.: Priyadarshani
Colony, Padegaon, Aurangabad,
District Aurangabad

RESPONDENTS

*(Resp.Nos.3 and 8 in Writ Petition No.11308 of
2015 are deleted as per Courts Order dated
08.02.2016)*

Mr. V.D. Sapkal, Advocate for the Petitioners
Mrs.A.V. Gondhalekar, A.G.P. for the respondent No.1
Mr. S.S. Tope, Advocate for respondent No.2 in
W.P.No.11308/2015
Mr. Dilip Patil Bankar, Advocate for respondent No.2
in W.P.No.6672/2015
Mr.V.A.Bhadgaonkar, Advocate for Respondent No.6
in both writ petitions
Mr.J.M. Murkute, Advocate for Respondent No.3 in
W.P.No.6672/2015
Mr.S.V.Deshmukh, Advocate for Respondent No.5
in W.P.No. 11308/2015
Mr.R.S. Deshmukh, Advocate for Respondent No.4 in
W.P.No.6672/2015

**CORAM : S.V.GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

**RESERVED ON : 18th APRIL, 2017
PRONOUNCED ON: 6th JUNE, 2017**

COMMON JUDGMENT (PER : SANGITRAO S. PATIL, J.):

Rule, returnable forthwith. With the consent of the learned counsel for the contesting parties, heard finally.

2. The common question of law and fact are involved in these petitions. Hence, they are being decided by this common judgment.

3. The petitioners have claimed the following reliefs :-

[B] To direct respondent No.2 to give benefit of deemed date of Junior Engineer w.e.f. December, 1985 or 29.10.1988 by issuing appropriate Writ or direction or order in the nature of Writ as the case may be;

[C] To direct respondent No.2 to give benefit of post of Deputy Engineer after completing 13 years service as Junior Engineer by considering the deemed date of Junior Engineer as December 1985 or 29.10.1988 by issuing appropriate Writ or direction or order

in the nature of Writ as the case may be;

[D] To direct respondent No.2 to pay arrears from 19.09.1980 till 05.10.1988 considering pay-scale of Rs.365-66-760 by issuing appropriate writ or direction or order in the nature of writ as the case may be;

[E] To quash set aside promotion issued in favour of Shri R.N. Sandha Deputy Engineer dated 25.10.2012 (Exhibit W) holding that his promotions as Junior Engineer and Deputy Engineer are illegal by issuing appropriate writ or direction in the nature of writ as the case may be;

[F] To direct respondent No.2 not to promote any person as Deputy Engineer till the claim of the petitioner is considered by the Corporation pending hearing and final disposal of this writ petition.

4. The learned counsel for the petitioners Shri V.D. Sapkal submits that the petitioner Shri Shafiq Mahmed Momin (hereinafter referred to as "P/1") joined the services with respondent No.2-Aurangabad Municipal Corporation, initially as a Surveyor on 11.08.1981 and thereafter as Building Inspector on 06.05.1983, while the petitioner in Writ Petition No.11308 of 2015,

(hereinafter referred to as "P/2") joined as a Building Inspector on 19.09.1980. The posts of Building Inspector, Water Surveyor and Technical Assistant are treated as equivalent and would form a feeder cadre for the promotional post of Junior Engineer. The incumbents holding these posts were permitted to appear for the professional examinations after serving for five years from the date of appointment as per the prevailing Rules. P/1 and P/2 passed the professional examinations in the years 1987 and 1985 respectively and became eligible for being promoted.

5. One Maheboobkhan Pathan, who joined the service with respondent No.2 as a Surveyor on 06.09.1984, though had not completed the service for a period of five years, was allowed by respondent No.2 to appear for the professional examination in the year 1985 itself. He passed that examination and then he was promoted as Planning Assistant on 29.02.1988.

6. The petitioners were given pay-scale of Rs.290-495, while one K.M. Kathar, who was also serving as Surveyor was given pay-scale of Rs.365-66-760. It was only after the petitioners made representations,

their pay-scale was increased to Rs.365-66-760 with effect from 29.10.1988. The learned counsel submits that the petitioners are entitled to get arrears of salary from the date of their initial appointment till 05.10.1988 as per increased pay-scale.

7. The learned counsel further submits that one Shri S.L. Pawar was initially appointed as Tracer and then Sub-Overseer on 07.07.1983 and 06.08.1993. Shri R.N. Sandha was initially appointed as Tracer and then as Sub-Overseer on 22.01.1986 and 15.12.1992 respectively. Shri S.O. Pawar was appointed as Surveyor on 13.01.1982. Shri B.K. Gaikwad was initially appointed as Tracer and then as Sub-Overseer on 07.07.1983 and 06.01.1986 respectively. One Shri Sayed Fahimoddin Siddiqui was appointed as Building Inspector on 19.09.1980. He submits that Shri R.N. Sandha, B.K. Gaikwad and Maheboobkhan Pathan were allowed to appear for the professional examinations prior to their completing five years of service as Sub-Overseer/Surveyor. The learned counsel submits that S.L. Pawar and B.K. Gaikwad were shown as juniors to the petitioners in the seniority list dated 01.01.1989.

However, both of them were promoted as Junior Engineers on 18.01.1989, while the petitioners were promoted as Junior Engineers on 01.04.1989. Due to that the petitioners become juniors to S.L. Pawar and B.K. Gaikwad in the cadre of Junior Engineers, which was reflected in the seniority list dated 01.01.1994.

8. The learned counsel further submits that after serving as Junior Engineers for five years, the petitioners were designated as Sectional Engineers as per the orders dated 19.07.1995 and 05.10.1995 respectively with effect from 01.01.1994. However, Maheboobkhan Pathan who was junior to the petitioners was designated as Sectional Engineer as per order dated 10.11.1995 with effect from 01.03.1993. The seniority list of Sectional Engineers were prepared in the year 1996, wherein the said Maheboobkhan Pathan, S.L. Pawar and B.K. Gaikwad were shown as seniors to petitioners.

9. He, further, submits that R.N. Sandha was shown to have been promoted from the category of Scheduled Tribe as Junior Engineer though one B.G. Boingwar was already holding the post of Junior Engineer from that category. Shri S.L. Pawar,

Fahimoddin Siddiqui and R.N. Sandha were promoted to the post of Deputy Engineer on 21.12.2005, 22.02.2010 and 25.10.2012 respectively, though initially they were juniors to the petitioners.

10. The learned counsel submits that the petitioners have been subjected to injustice by respondent no.2 by promoting their juniors prior to them and by showing their juniors as seniors to them in the above referred seniority lists. The petitioners made representations to respondent No.2 against the seniority lists as well as the promotions given to their juniors, but no decision was taken by respondent No.2. He submits that as per the recruitment Rules the petitioners were entitled to be promoted to the post of Deputy Engineer after completing 13 years of service as Junior Engineers.

11. The learned Counsel submits that the petitioners are entitled to get deemed promotion as Junior Engineers from the date on which their junior namely Maheboobkhan Pathan got promoted to the post of Junior Engineer i.e. 29.02.1988. He further submits

that the petitioners are entitled to get promoted to the post of Deputy Engineer, after completing service as Junior Engineer for a period of 13 years from the deemed date of promotion i.e. 29.02.1988. He submits that the promotion of R.N. Sandha is totally illegal and therefore, is liable to be set aside. He claims that the petitions may be ordered to be given arrears of salary and other monetary benefits.

12. The learned counsel for respondent No.2 relying on the replies and additional replies filed on behalf of respondent No.2 strongly objects to the maintainability of the petitions on the ground of delay and laches. He submits that the claims made by the petitioners are liable to be rejected solely on the ground of delay. In support of this contention, he relied on the judgment in the case of **State of Maharashtra Vs. Digambar, AIR 1991 SC 1991**. The learned counsel for respondent No.2 submits that the promotion of Maheboobkhan Pathan, S.L. Pawar, B.K. Gaikwad and Faimoddin Siddiqui to the post of Junior Engineer after a period of more than 25 years and that of S.O. Pawar and R.N. Sandha after a period of 17 years and 13 years

respectively, cannot be questioned by filing writ petitions after such inordinate unexplained delay. The seniority lists published in the years 1989, 1994, 1996, 2002 and 2009 also cannot be allowed to be challenged in the year 2015. He submits that if the petitioners wanted to challenge the promotions of the above-named incumbents as well as the seniority lists, then they should have filed writ petitions for that purpose immediately after accrual of the cause of action. The learned counsel for respondent No.2 justified the promotions of the above-named incumbents, who were initially juniors to the petitioners but subsequently due to promotions, became seniors to them. The learned counsel further submits that there are no posts of Deputy Engineers available on the establishment of respondent No.2 in view of Government Resolution dated 04.05.2006. However, P/1 and P/2 are actually serving as in-charge Deputy Engineers since 2006 and 2013 respectively. They are getting the pay-scale of Rs.15600-39100 with Grade Pay of Rs.5400/-, which is applicable to the post of Deputy Engineer. P/2 has retired on attaining the age of superannuation on 28.02.2017. P/2 would be getting the retiral benefits,

which are applicable to the post of Deputy Engineer only. As such no prejudice would be caused to the petitioners. On these grounds, he prays that petitions may be dismissed.

13. The learned counsel for respondent No.2 referred to the observations made in para Nos.12, 21, 22 and 23 of the judgment in the case of **State of Maharashtra Vs. Digambar**, (supra) which read thus :-

"12. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State by invoking writ jurisdiction of the High Court under Article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decisions of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame-worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is

also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy

the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State."

21. Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement for such relief due to his blame-worthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily.

22. Since we have held earlier that the person seeking grant of relief under Article 226 of the Constitution, even if it be against the State, is required to satisfy the High Court that he was

not guilty of laches or undue delay in approaching it for relief, need arises for us to consider whether respondent in the present appeal (writ petitioner in the High Court) who had sought for relief of compensation on the alleged infringement of his legal right, had satisfied the High Court that he was not guilty of undue delay or laches in approaching it for relief. The allegation of the petitioner in the writ petition, as becomes clear from the judgment under appeal, was that although certain extent of his land was taken away in the year 1971-72 by the agency of the State for the scarcity relief road works undertaken by the State Government in the year 1971-72, to find work for small agriculturists and agricultural labourers in the then prevailing severe drought conditions, without his consent, he was not compensated therefor, despite requests made to the State Government and various agencies in that regard ever since till the date of filing of the writ petition by him.

23. In our view, the above allegation is in no way sufficient to hold that the writ petitioner (respondent here) has explained properly and satisfactorily the undue delay of 20 years which had occurred between the alleged taking of possession of his land and the date of filing of writ petition in the High Court. We cannot

overlook the fact that it is easy to make such kind of allegations against anybody that too against the State. When such general allegation is made against a State in relation to an event said to have occurred 20 years earlier, and the State's non-compliance with petitioners' demands, State may not at all be in a position to dispute such allegation, having regard to the manner in which it is required to carry on its governmental functions. Undue delay of 20 years on the part of the writ petitioner, in invoking the High Court's extraordinary jurisdiction under Article 226 of the Constitution for grant of compensation to his land alleged to have been taken by the Governmental agencies, would suggest that his land was not taken at all, or if it had been taken it could not have been taken without his consent or if it was taken against his consent he had acquiesced in such taking and waived his right to take compensation for it."

14. If the facts of the present cases are tested on the touchstone of the principles referred to above laid down by the Hon'ble Apex Court, we are of the considered view that these writ petitions suffer from inordinate delay and laches on the part of petitioners. The challenges to the above referred seniority list as well as promotional postings of the respondents namely

Maheboobkhan Pathan, S.L. Pawar, R.N. Sandha, S.O. Pawar, B.K. Gaikwad and Faimoddin Siddiqui to the post of Junior Engineer effected between the period from 1987 to 2002, cannot be considered at this belated stage in exercise of powers of this Court under Article 226 of the Constitution of India. When the representations made by the petitioners were not considered by respondent No.2, the petitioners ought have approached this Court under its writ jurisdiction within a reasonable period after accrual of the cause of action from time to time. The petitioners slept over their rights for considerably long a period and made the things irreversible. No explanation, much less plausible and satisfactory, has been given by the petitioners for such a long delay. In such circumstances, in view of the principles referred to above laid down by the Hon'ble Supreme Court, the writ petitions, which suffer from inordinate delay and laches, cannot entertained and claims made by the petitioners cannot be considered.

15. Respondent No.2 has come with a specific case that P/1 and P/2 are actually working as in-charge

Deputy Engineers, since the years 2006 and 2015 respectively. Respondent No.2 further has specifically mentioned that P/2, who got retired on 29.02.2017 on attaining the age of superannuation, would be getting the retiral benefits on the basis of the pay-scale meant for the post of Deputy Engineer. As such, no prejudice is going to be caused to the petitioners since they would be getting monetary benefits, which are available to the post of Deputy Engineer. In the above circumstances, we are not inclined to grant any relief in favour of the petitioners. Hence the following order:

- (i) The petitions are dismissed.
- (ii) Rule is discharged accordingly.
- (iii) No costs.

Sd/-
[**SANGITRAO S. PATIL**]
JUDGE

Sd/-
[**S.V. GANGAPURWALA**]
JUDGE