

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

WRIT PETITION NO. 1311 of 2008

Riyazuddin Akhtyar Shaikh,
through his General Power of Attorney Holder
Sujauddin Riyazuddin Shaikh,
age 53 years occupation service
R/o Mission Galli, Rahuri Dist. Ahmednagar. **..PETITIONER**

VERSUS

1. The State of Maharashtra
Through Government Pleader,
High Court, Aurangabad.
2. Under Secretary,
State of Maharashtra,
Co-operation, Mantralaya,
Mumbai – 400 020.
3. The Commissioner,
Co-operation and Registrar Co-op. Societies,
Central Building, near Sasoon Hospital,
Pune – 1 **...RESPONDENTS**

Mr V.S. Bedre, Advocate for petitioner.
Mr V.S. Choudhari, Asstt. Govt. Pleader for respondents.

CORAM : P.B. VARALE, AND
SUNIL K. KOTWAL, JJ.

DATE : 7th December 2017

ORAL ORDER :

Heard Mr Bedre, learned Counsel for the petitioner.

2. Petitioner is before this Court challenging order passed by the learned Maharashtra Administration Tribunal dated 13th March 2007, thereby dismissing the transfer application.

3. Submission of Mr Bedre, learned Counsel for the petitioner is that the Tribunal on two grounds dismissed the application, firstly, by holding that the petitioner was not entitled for claiming benefits of Government resolution and, secondly, the application suffered for delay and latches. Learned Counsel Shri Bedre submitted that the Tribunal failed to consider the Government resolution in proper perspective. The Tribunal lost sight of the fact that the petitioner initially approached this Court by filing the Writ Petition and, in view of transfer of the Writ Petition, the petition was before the Tribunal by way of transfer application. Thus, the submission of the petition was not at fault and the delay could not have been attributed to the petitioner, who had approached the Forum seeking redressal of his grievance. Mr Bedre, learned Counsel, in support of his submission that the Tribunal failed to consider the Government resolutions in proper perspective, submitted that the petitioner entered the service of erstwhile government as Rural Assistant on 1st May 1941. He was then promoted as Assistant District Co-operative Officer. From the year

1955 to 1958, the petitioner worked as Supervisor in different districts and in the year 1958 petitioner was appointed as Sub-Auditor. The petitioner though was entitled for promotion, he was not granted the promotion, and ultimately, stood retired from the services in the year 1976 as Auditor of the Co-operative societies. Mr Bedre then submitted that for effecting promotions, requisite condition was of passing Government Diploma in Co-operation and Accountancy (hereinafter referred to as "the G.D.C. & A." for the sake of brevity) examination. The State Government by way of Government Resolution dated 19th February 1991 thought it fit to grant certain benefits to those employees, who were working in erstwhile Bombay State and State of Madhya Pradesh. Such an exemption was granted to the employees of erstwhile Hyderabad State and the Government by Resolution dated 19th February 1991 thought it fit to bring the employees, who were working in erstwhile Bombay State and Madhya Pradesh State at par with the employees working in Hyderabad State and to grant the benefit to these employees. The benefit was extended to those persons, who stood retired on 1st November 1977.

4. Mr Bedre submitted that by way of subsequent resolution issued by the Government, the Government thought it fit to extend these benefits to the employees, who stood retired after 7th May

1970. The corrigendum was also issued and the same is placed on record. Corrigendum is of 11th March 1991. Learned Counsel Mr Bedre then submitted that the petitioner in view of the extension of benefits and the corrigendum issued to that effect, submitted his representation to the Authorities for consideration of his claim and fixing his pension by giving benefits of revised policy. Mr Bedre then invited our attention to such representations placed on record on 15th August 1991 and 20th March 1992. It was submitted by Mr Bedre that even after 20th March 1992, petitioner submitted two representations, and as no heed was paid to these representations, petitioner was left with non choice but to approach appropriate Forums for redressal of his grievance.

5. Learned Assistant Government Pleader in support of the order passed by the Tribunal, vehemently submitted that the claim of the petitioner is only on fallacious reading of the Government resolutions. Learned Asstt. Govt. Pleader submitted that the petitioner was not at all qualified to avail the benefits of the revised Government policy or the corrigendum issued. Learned Asstt. Govt. Pleader invited our attention to the Government Resolution dated 19th February 1991 and submitted that the benefit of exemption from passing the G.D.C. & A. examination was granted to those employees of erstwhile Mumbai State, Madhya Pradesh State and

old Hyderabad State, who were in the cadre of Class III employees at the relevant time. The learned Asstt. Govt. Pleader also invited our attention to the unified Rules prepared for passing the G.D.C. & A. examination by the offices of the Co-operative department. These Rules are placed on record. Learned Asstt. Govt. Pleader invited our attention to Rule 10 of these rules. Rule 10 reads thus:

“Permission to appear for the G.D.C. & A. Examination will normal be granted to direct recruits to posts in the grade of Rs. 150-8-190-10-220-EB-10-270 or above and these from lower sub-ordinate services, who are matriculate or who have passed equivalent examination and who have put in at least continuous services of two years.”

6. Learned Asstt. Govt. Pleader submitted that it was for the petitioner to show that petitioner was in the bracket of the posts in the grade pay of Rs. 150-8-190-10-220-EB-10-270 or the petitioner was possessing the minimum qualification of passing Matriculate. Learned Asstt. Govt. Pleader submitted that in absence of any such basic requisite compliance, the petitioner cannot put-forth his claim for the extended benefits of the corrigendum dated 11th March 1991. On perusal of the petition, we find that the petitioner is blissfully silent on this very aspect. It is only stated in the petition that petitioner was appointed as Sub-Auditor by respondents in the year 1958. There is

no material in the petition or in any annexure to show that petitioner was complying with these requisite criterion, namely, petitioner was posted in Class III cadre or was having requisite qualification of passing Matriculation so as to avail the benefits. Considering these very aspects, we find merit in the submission of the learned Asstt. Govt. Pleader. The petitioner also failed to explain the delay occurred in approaching this Court, even assuming that he was approaching the Tribunal in view of transfer application. The last representation, which is placed on record is of 1992. Petition was filed in this Court in the year 1998. Considering all these aspects, in our opinion, the petition is devoid of merit and the same deserves to be dismissed. Accordingly the writ petition is dismissed .

7. Rule is discharged.

8. There shall be no order as to costs.

(SUNIL K. KOTWAL)
JUDGE.

(P.B. VARALE)
JUDGE.

pjm