

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7977 OF 2015

Nitin R. Deshmukh,]
Aged 42 years,]
last worked in the office of]
Asstt. Commissioner of Customs,]
(Preventive), Bassein Division,]
Chimaji Appa Road, Killa Bunder,]
Vasai, Dist. Thane 401 001.]
Residing at Remedy Church,]
Choudhari Wadi, Behind Remedy Church,]
Vasai, Dist. Thane 401 201.] Petitioner

Versus

1. Union of India,]
Through the Chief Commissioner of]
Customs, Mumbai Zone-III,]
New Customs House,]
Ballard Estate, Mumbai.]
2. The Commissioner of Customs]
(Preventive),]
New Customs House, Ballard Estate,]
Mumbai.]
3. Asstt. Commissioner of Customs]
(Preventive),]
Killa Bunder, Chimaji Appa Road,]
Vasai (W), Dist. Thane 401 001.] Respondents

Mr. Indrajeet R. Kulkarni for the Petitioner.

Mrs. Neeta V. Masurkar, a/w. Mr. A.K. Roy and Mr. Vijay Kantharia, for the Respondents.

CORAM : SMT. V.K. TAHILRAMANI &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 7TH AUGUST, 2017.

ORAL JUDGMENT : [Per Smt. V.K. Tahiramani, J.]

. Rule. Rule made returnable forthwith. Heard finally, by consent of the parties.

2. Heard Mr. Kulkarni, learned counsel for the Petitioner, and Mr. Kantharia, learned counsel for the Respondents.

3. The Petitioner has preferred this Petition being aggrieved by the order dated 8th October 2012 passed by the Central Administrative Tribunal, Mumbai, in O.A. No.478 of 2007 preferred by the Petitioner.

4. In the said O.A. No.478 of 2007, the Petitioner has prayed that the orders dated 21st September 2006 and 1st December 2006 passed by the Respondents be quashed and set aside and the Respondents be directed to take the Petitioner on duty and grant him all benefits of temporary status and other consequential service benefits. The said O.A. came to be dismissed by the Tribunal; hence, this Petition.

5. The Petitioner was engaged as an 'Unskilled Casual

Labour' on daily-wages in the Marine and Preventive Wing, Customs Preventive Commissionerate, Mumbai on 25th September 1997. His services were terminated by letter dated 11th June 2000. The Petitioner's contention is that he has been working continuously for more than 240 days for several years and he was illegally terminated w.e.f. 11th June 2000, even though there was work available to engage him. After the Petitioner was terminated on 11th June 2000, he preferred O.A. No.266 of 2004. Though the Petitioner was terminated on 11th June 2000, he preferred the O.A. only in the year 2004. The said O.A. was disposed of by the Tribunal by directing the Respondents to consider the representation of the Petitioner by passing a reasoned and speaking order and communicate the same to be Petitioner within three months. The said representation of the Petitioner came to be rejected by the concerned authority vide order dated 21st September 2006 and again review also came to be rejected by order dated 1st December 2006, hence, he preferred the above mentioned O.A.

6. In view of the above, it would be necessary to refer to the appointment order of the Petitioner, which reads as under :-

“OFFICE OF THE ASSISTANT COMMISSIONER OF
CUSTOMS (PREVENTIVE), KILLA BUNDER, BASSEIN.
DIVISION, DIST. THANE.

*The following Casual Worker/Sweeper are hereby
appointed w.e.f. 8.9.1994 on contingent basis for a
period of two months as mentioned below :*

<u>Name & Designation</u>	<u>Rate</u>	<u>Service Period Upto</u>
1. Shri N.R. Deshmukh	13.00	'7.11.94
2. Shri G.S. Gohil	13.00	7.11.94

*The posting of the Casual Labour/Sweeper will be at
Killa Bunder, Custom Office, Vasai.*

*The said candidate is hereby given to understand that
the appointment is purely on casual and temporary
basis and do not confer on them any right for Govt.
service. They are further given to understand that their
services are liable to be terminated after two months
from the date of appointment without giving any notice
or reason thereof.*

Sd/-
ASSISTANT COLLECTOR OF CUSTOMS (P)
BASSEIN DIVISION

F.No.11/3102/94
Bassein, the 8th Sept. 94

Copy to :1. Shri N.R. Deshmukh, Casual Worker.
2. Shri. G.S. Gohil, Sweeper.
3. A.C. (Adm.), M & P Wing, Bombay.
4. Bill Section.”

[Emphasis Supplied]

7. Thus, from the above appointment order, it is clear that the Petitioner's appointment was on casual and temporary basis for a period of two months, which was continued with breaks. It is not denied that similar appointment orders were issued from time to time.

8. It is also seen that the Petitioner was appointed as 'Casual Labour' on contract basis as per order dated 08.09.1994 and it was clearly mentioned in the said order that, *“the appointment was purely on casual and temporary basis and does not confer on him any right for Government service”*. The Petitioner was further given to understand that, *“his services were liable to be terminated after two months from the date of appointment without giving any notice or reasons thereof.”*

9. The Petitioner was terminated vide order dated 11th June 2000. The cause of action, therefore, arose on 11th June 2000. As stated earlier, the Petitioner preferred O.A. only in the year 2004 along with 9 other applicants and the Respondents were directed to consider their representations and pass appropriate orders. After termination of services on 11th June 2000, the Petitioner has not been re-appointed.

10. The learned counsel for the Petitioner submitted that there were other similarly situated employees and the Central Administrative Tribunal has granted them the relief similar to that which was prayed by the Petitioner. This High Court has confirmed the said order, which has again been confirmed by the Supreme Court. The learned counsel for the Petitioner submitted that, in such case, the Petitioner should also be granted reliefs prayed for by him. As far as this contention is concerned, it is seen that, as regards the other employees are concerned, they were in continuous service when they preferred O.A. in 2004; whereas, the Petitioner was terminated in the year 2000 and thereafter he was not in service. This is the distinguishing factor as far as the other employees are concerned. As far as Petitioner is concerned, admittedly, after the year 2000, the Petitioner was not in service. Hence, he cannot plead that the facts in the case of those employees and in his case are the same and he cannot get any benefit of the orders passed in relation to the other employees.

11. The learned counsel for the Petitioner has placed reliance on the decision of the Supreme Court in the case of *Union of*

India and Ors. Vs. M.K. Sarkar, reported in (2010) 2 SCC 59, wherein, in paragraph No.26, it was observed as under :-

“26. A claim on the basis of guarantee of equality, by reference to some one similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to some one else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that some one else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that some one who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief.”

12. From the facts stated above, it cannot be said that the Petitioner was similarly placed as the other employees, whose OA was allowed and the said order was confirmed by the High Court and the Supreme Court. Hence, this decision would not help the Petitioner in any manner.

13. In the very same Judgment, on which reliance was placed by learned counsel for the Petitioner, the Supreme Court has further held as under :-

"The order of the Tribunal allowing the first application of the respondent without examining the merits, and directing the appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches. Moreover, a court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

[Emphasis Supplied]

14. As stated earlier, the Petitioner was terminated on 11th June 2000. He approached the Tribunal first time in the year 2004. By then itself, there was an inordinate delay and laches on the part of the Petitioner in approaching the Tribunal. Hence, it will be said that it was a “*dead*” issue or “*time-barred*” issue, as observed by the Supreme Court in the case of *M.K. Sarkar (Supra)*. The Petitioner was terminated in the year 2000 and he is seeking re-appointment in the year 2017.

15. In view of his appointment order and other facts and circumstances of this case, this prayer of the Petitioner cannot be allowed. Hence, the order dated 8th October 2012 passed by the Tribunal in O.A. No.478 of 2007 does not call for any interference. The Petition is dismissed.

16. Rule is discharged.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [SMT. V.K. TAHILRAMANI, J.]