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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 195 OF 2017
IN
REVIEW PETITION STAMP NO. 17534 OF 2017
IN
WRIT PETITION NO. 6968 OF 2008

State of Maharashtra and ors.

.. Applicants/
Org. Petitioners

Versus

Prabhakar Dattatraya Karandikar and anr.

.. Respondents

Mr. N. P. Deshpande, Special Counsel a/w Mr. A.I.I. Patel, Addl. G.P. for
applicants-State.

Mr. A. S. Khandeparkar i/by Shilpa A. Joshi for respondent no.1.

Ms. Nisha Valani for respondent no.2 – Union of India.

CORAM: NARESH H. PATIL &
Z. A. HAQ, JJ.

SEPTEMBER 07, 2017.

P.C.

1. Respondent No.1 – Prabhakar Dattatraya Karandikar, IAS,
joined the State service in the year 1973. Respondent No.1, at the
relevant time, was Divisional Commissioner, Pune Revenue Division,
Pune. In the year 2006, respondent no.1 expressed his desire in a

communication made to the Chief Secretary and Additional Chief Secretary for deputation to M/s. Mahindra & Mahindra Ltd. Certain correspondence took place between the respondent no.1 and the State. At one stage, the respondent no.1 requested that he may be allowed to retire voluntarily with effect from 30/11/2006. Respondent No.1 thereafter requested that along with his request for voluntary retirement, his further request for seeking permission to take post-retirement employment with M/s. Mahindra & Mahindra Ltd. be also considered and granted.

2. By a communication dated 23/12/2006, Respondent No.1 wrote to the Additional Chief Secretary, GAD, with a copy to Chief Secretary, that instead of 31/12/2006, he be permitted to retire on 31/1/2007. He further requested to expedite the process of his application for permission to take post-retirement employment with M/s. Mahindra & Mahindra Ltd. By communication dated 19/1/2007, the Joint Secretary, General Administration Department, informed respondent no.1 that his application is under consideration. By communication dated 23/1/2007, Respondent No.1 requested the Government to allow him to voluntarily retired with effect from 28/2/2007. In the meanwhile, his file was placed for consideration before the Hon'ble the Chief Minister in respect of his

application for voluntary retirement and the State Government allowed the application for voluntary retirement of the petitioner. Some how the formal order could not be communicated to Respondent No.1. A formal notification was issued on 31/1/2007 accepting the request of Respondent No.1 to voluntarily retire on 31/1/2007. By a separate order issued on the same day, Respondent No.1 was permitted to work with M/s. Mahindra & Mahindra Ltd. as post-retirement employment. According to the State, the issue stood closed at that stage as both the requests made by Respondent No.1 were accepted by the State Government. By a communication dated 31/1/2007, the Respondent No.1 requested for amendment to the notification dated 31/1/2007 and permit him to retire with effect from 28/2/2007. Further correspondence was made in this regard.

3. Respondent No.1 approached the Central Administrative Tribunal (for short CAT) challenging the notification issued by the State Government on 31/1/2007 by filing Original Application No. 65 of 2007. By a Judgment and Order dated 30/1/2008, the CAT allowed the Original Application No. 65 of 2007 and passed following operative order :-

“8. In view of the above, we hold that the respondents are precluded from treating a different date of voluntary retirement than what was specified by the applicant in his letter dated 23rd January, 2007. Further, we hold that the applicant's notice of voluntary retirement from service with effect from 28/2/2007 stands withdrawn in terms of his letter dated 10/2/2007. Accordingly, the impugned Notification dated 31/1/2007 and the impugned order dated 31/1/2007 are hereby quashed and set aside.

9. In the result, the OA stands allowed. No order as to costs.”

4. The applicants-State thereafter filed Review Application bearing No. 06 of 2008 in Original Application No. 65 of 2007, which came to be rejected 5/8/2018 by the CAT.

5. The applicants-State filed petition bearing Writ Petition No. 6968 of 2008 challenging the Judgment and Order dated 30/1/2008 in O.A. No. 65 of 2007 as well as order dated 5/8/2008 in Review Application No.06 of 2008 passed by the Tribunal. By an order dated 13/10/2008, Division Bench of this Court (Coram: Bilal Nazki and J. H. Bhatia,JJ.) petition came to be admitted. Order dated 13/10/2008 reads as under:-

“ Rule.

2. Notice to the respondents.

3. The operation of the decree of the Central Administrative Tribunal is stayed.”

6. The respondent no.1 herein filed an application bearing Civil Application No. 1178 of 2012 for expediting the hearing of the petition, which came to be disposed of on 26/6/2012.

7. By an order dated 16/6/2014, the Writ Petition pending before this Court came to be dismissed by the Division Bench (Coram: Naresh H. Patil & Ravindra V. Ghuge,JJ.). Said order reads as under :-

“1. Learned counsel appearing for the original petitioner submits that the respondent has got superannuated and has received the pension and other benefits.

2. The Writ Petition, therefore, has become infructuous and dismissed as such.”

8. The State has filed Review Petition Stamp No. 17534 of 2017

for recalling the order dated 16/6/2014. As there was delay in filing the said Review Petition, present application for condonation of delay was filed bearing Civil Application No. 195 of 2017. The delay is of around three years.

9. The learned counsel appearing for the State submits that there is no record to show as to who instructed the learned AGP appearing at the relevant time to make such statement. The State was not aware of the dismissal of the writ petition. The State came to know of the dismissal of the writ petition on receipt of an application filed by the respondent no.1 on 16/2/2017 (Exhibit "F" to the Civil Application for Condonation of Delay) wherein respondent no.1 himself stated that he too came to know recently that Writ Petition No. 6968 of 2008 was dismissed by Bombay High Court by an order dated 16/6/2014. In addition to the same, learned counsel submits that due to major fire which broke in the Mantralaya premises, relevant documents /files were not available / traceable for taking necessary steps at the earliest. The counsel submits that the State is facing Contempt proceeding before the Tribunal which was initiated at the behest of respondent no.1. In these peculiar facts and circumstances, the counsel prays for condonation of delay and for allowing the Review Petition.

10. The learned counsel appearing for the respondent no.1 submits that the delay is abnormal in nature. It is not satisfactorily explained. On merits there is no case for condonation of delay and for admission of review petition. The State has failed to comply with the order passed by the Tribunal and, therefore, contempt proceeding is filed which is pending before the Tribunal. The submissions and the reasons put forward by the State, including the reason that due to major fire in Mantralaya premises relevant documents /files were not available / traceable for taking necessary steps at the earliest, cannot be countenanced and have to be rejected at the threshold.

11. We have perused the original record pertaining to the Writ Petition No. 6968 of 2008, the farad orders/notes, the order passed by this court dismissing the petition and other relevant documents.

12. It's a matter of concern that the admitted writ petition came to be dismissed on the statement made by the counsel appearing for the State. Nothing is placed before this court to show that the learned counsel for the State was instructed to make such a statement. Even after passing of the

order dated 16/6/2014, we do not find that any record was placed before the court that the order was communicated to the State promptly as per the prevalent practice of the office of the Government Pleader.

13. We direct the State to take note of such instances and issue appropriate instructions to the Government Pleader's office and the counsel appearing for the State to take abundant precaution while prosecuting the matter on behalf of the State in this court.

14. In the facts, we find that the issue raised on merit in the petition could not be addressed. One of the core issue to be considered is as to whether respondent no.1 could be held to have voluntarily retired on 31/1/2007 or on 31/12/2009. It is equally true that the respondent no.1 is a senior citizen at the age of 68 years now and he would reasonably expect litigation to come to an end, but due to such development, the proceedings were again sought to be reopened in this court. We are informed that certain proceedings are still pending before the Tribunal. In normal circumstances, we would be slow in considering application for condonation of delay of such a abnormal period. We find it appropriate in this case to consider the application of the State for condonation of delay.

15. We pass following order :

ORDER

(a) The delay in filing Review Petition Stamp No. 17534 of 2017 in Writ Petition No. 6968 of 2008 stands condoned. The application is allowed to that extent.

16. Copy of this order be forwarded to the Chief Secretary and Secretary, Law and Judiciary Department, Mantralaya, Mumbai.

(Z. A. HAQ,J.)

(NARESH H. PATIL,J.)