

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 11055 OF 2015**

Varsha Gowardhan Patkar @

Varsha Prakash Mankar

..Petitioner

Vs

State of Maharashtra & Anr.

..Respondents

Mr. C. K. Bhangoji i/b. Mr. R. K. Mendadkar for Petitioner.

Ms R. M. Shinde – AGP for State - Respondent No. 1.

**CORAM : SHANTANU S. KEMKAR &
M. S. SONAK, JJ.****DATE : JUNE 20, 2017****P.C. :**

The petitioner has filed this petition challenging his termination order dated 2nd April 2004. His grievance is also that against the said termination order, he had submitted a representation on 9th February 2015 but the same has not been decided as yet. In the circumstances, the prayer has been made to dispose of this petition by directing the respondents to decide the said representation dated 9th February 2015.

2] Having considered the submissions made by the learned counsel for the petitioner, we are of the view that the petitioner has filed this petition under Article 226 of the Constitution of India belatedly. The order of termination was passed on 2nd April 2004. Thereafter for the first time in the year 2015 i.e. after more than 11 years he had submitted a representation against the said termination order and thereafter filed this petition seeking direction to the respondents to decide the said representation.

3] The Supreme Court in the case of **C. Jacob vs. Director of Geology and Mining & Anr.**¹ in paragraphs 14, 15 and 16 held as under:

“14. 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 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.

15. The present case is a typical example of ‘representation and relief’. The petitioner keeps quiet for 18 years after the termination. A stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 9.4.2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action. As noticed above, the learned Single Judge examined the claim, as if it was a live claim made in time, finds fault with the respondents for not producing material to show that termination was preceded by due enquiry and declares the termination as illegal. But as the petitioner has already reached the age of superannuation, the learned Single Judge grants the relief of pension with effect from 18.7.1982, by deeming that he was retired from service on that day. We fail to understand how the learned Single Judge could declare a termination in 1982 as illegal in a writ petition filed in 2005. We fail to understand how the learned Single Judge could find fault with the department of Mines and Geology, for failing to prove that a termination made in 1982, was preceded by an enquiry in a proceedings initiated after 22 years, when the department in which the petitioner had worked had been wound up as long back as in 1983 itself and the new department had no records of his service.

16. The petitioner neither produced the order of termination, nor disclosed whether the termination was by way of dismissal, removal, compulsory retirement or whether it was a case of voluntary retirement or resignation or abandonment. He significantly and conveniently, produced only the first sheet of a show cause notice dated 8.7.1982 and failed to produce the second or subsequent sheets of

¹ (2008) 10 SCC 115

the said show cause notice in spite of being called upon to produce the same. There was absolutely no material to show that the termination was not preceded by an enquiry. When a person approaches a court after two decades after termination, the burden would be on him to prove what he alleges. The learned Single Judge dealt with the matter as if he the petitioner had approached the court immediately after the termination. All this happened, because of grant of an innocuous prayer to `consider' a representation relating to a stale issue."

4] In the circumstances, it is clear that the Supreme Court has held that the courts should be circumspect in issuing such directions to decide the representation as it ultimately leads to consideration of case on merits at subsequent stage of litigations and as if the cause of action stood revived due to fresh consideration.

5] The petitioner having not challenged the order of his termination which was passed in the year 2004 upto 2015 and having filed this petition after about 11 years cannot be allowed to say that his representation filed in the year 2015 be directed to be decided. In our considered view, the petition suffers from delay and latches. In the guise of seeking directions to decide the representation, the petitioner is intending to seek revival of a stale claim, which in our considered view is impermissible .

6] As a result, we find no ground to entertain the petition. The petition deserves to be dismissed and is hereby dismissed on the ground of delay and latches.

(M. S. SONAK, J.)

(SHANTANU S. KEMKAR, J.)