

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.676 OF 2016

Suresh Dhondu Jadhav
Age yrs., Occ: Retired,
Ramwadi Panchvati, Nashik, 3,
Opp: Vitthal Mandir, Nashik,

... Petitioner

Vs

1 The State of Maharashtra
Through the Secretary,
Animal Husbandry and Dairy
Development Department,
Mantralaya, Mumbai 400 032

2 The Commissioner,
Dairy Development Department,
Administrative Building,
Worli, Mumbai 400018

3 The Regional Dairy Development
Officer, Nashik Dairy Compound,
Nashik

4 The General Manager,
Govt. Milk Scheme, Nashik

... Respondents

...

Mr. Neel G. Helekar for the Petitioner.

Mr. Y.S.Khochare, AGP for the Respondent Nos.1 to 4.

CORAM : A.S.OKA &

SANDEEP K. SHINDE JJ.

DATE : 5 DECEMBER, 2018

ORAL JUDGMENT : [Per A.S.OKA, J.]

By the order dated 21st November, 2018, the parties were put to notice that this Petition will be disposed of finally at the stage of admission.

2 **Rule.** The learned AGP waives notice for the Respondents. The Petition is taken up for final disposal. This Petition under Article 226 of the Constitution of India shows shocking state of affairs. Under the judgment and order dated 3rd August, 2005 passed by a Division Bench of this Court, it was held that the Petitioner who was employed by the Dairy Department of the Government of Maharashtra is entitled to status of permanency from the date on which he completed 240 days of service in the establishment of the Dairy Department. A direction was issued under the said order to confer permanency on the Petitioner and to place the Petitioner in the proper pay-scale and to confer all the benefits which are being provided to the regular employees. A proposal was

moved on 11th September, 2006 to the Regional Dairy Development Officer, Nashik Division, Nashik seeking permission to challenge the order dated 3rd August, 2005 by filing Special Leave Petition. Permission was granted belatedly on 18th April, 2011. Accordingly, a Special Leave Petition was preferred in the year 2011 which was dismissed by the Apex Court on 10th October, 2011 both on the ground of delay and merits. Two years thereafter, on 29th October, 2013 a Government Resolution was issued authorising the implementation of the order dated 3rd August, 2005 of this Court and the payment of requisite amounts to the Petitioner and other co-petitioners in the earlier Writ Petition. A letter dated 6th January, 2014 which is on record addressed by the Commissioner of the Dairy Department of the State Government to the Deputy Secretary of the State Government records that the order of this Court dated 3rd August, 2005 was not implemented as sufficient funds were not available with the concerned department. Ultimately on 11th April, 2014, a sum of Rs.1,97,582/- was paid to the Petitioner and on 13th February, 2015, an amount of Rs.82,456/- was paid to the

Petitioner. We may note here that all along there was no stay to the operation of the order dated 3rd August, 2005 and it is only because of the default of the Respondents that the Petitioner was deprived of fruits of the order dated 3rd August, 2005 for a period of almost 9 years.

3 If prayer clause (a) is read with Clause 14 of the Petition, the prayer appears to be for grant of interest on the amount already paid.

4 The learned counsel appearing for the Petitioner has taken us through the Petition and annexures thereto and pointed out that for no reason, there was a delay of 9 years in releasing the amounts to the Petitioner. The learned AGP pointed out that there were genuine difficulties in implementing the order of this Court as the proposal for challenging the said order remained pending for a long time. Moreover, there was a delay as sufficient funds were not available. He would, therefore, submit that interest may not be

ordered to be paid.

5 We have considered the submissions. The prayer made by the Petitioner in the Petition decided on 3rd August, 2005 was in substance for enforcing his right to earn livelihood after completing requisite days of continuous service. He was denied the benefit of permanency. Therefore, he had to knock the doors of this Court by filing a Petition under Article 226 of the Constitution of India. We have already noted the directions issued in the order dated 3rd August, 2005. We may note that the said order is based on a detailed judgment dated 20th June, 2005 of the same Division Bench in the case of similarly placed employees. A copy of the said judgment recording the detailed reasons has been annexed. The judgment records a finding that the Petitioners were working right from the year 1974 onwards.

6 It appears from the letter dated 5th September, 2007 addressed to the Petitioner by the Manager of the Dairy, the

Government Milk Scheme, Nashik that the Petitioner approached him with a request to implement the order dated 3rd August, 2005. It records that an opinion of the Government Pleader on the issue of filing appeal has been received on 14th July, 2007 and views of the Law and Judiciary Department were called for. Thereafter, the Petitioner made regular correspondence including a legal notice. In response to one of the letters, the General Manager of the Government Dairy at Dhule by his letter dated 4th November, 2010 informed the Petitioner to take steps on the basis of the order of this Court after contacting the scheme at Nashik. On 14th December, 2010, the Regional Dairy Development Officer, Nashik Division, Nashik addressed a letter to the Deputy Commissioner of Dairy Development Department recording that the Government Pleader has submitted his opinion on 14th July, 2006 and, therefore, Deputy Commissioner was requested to seek opinion of the Law and Judiciary Department. Similar letter was addressed by the Manager of the Dairy at Nashik to the Deputy Commissioner in January, 2011. The letter dated 18th May, 2011 at Exhibit 'K' records that on the

basis of letter dated 11th September, 2006 submitted by the Regional Dairy Development Officer for grant of permission to file an appeal, the permission was granted as late as on 18th April, 2011. As stated earlier, eventually a Special Leave Petition was filed in the year 2011 which was dismissed on 10th October, 2011 on merits as well as on the ground of delay. The State Government took two years thereafter to issue a Government Resolution authorising the implementation of the order dated 3rd August, 2005. The said Government Resolution was issued on 29th October, 2013. The letter dated 6th January, 2014 addressed by the Commissioner of Dairy Development Department to the Deputy Secretary records that sufficient funds were not placed at the disposal of the Dairy Development for the implementation of the order of this Court. Thereafter at-least three representations were made by the Petitioner to the concerned authorities in the year 2014. After lapse of long time that the aforesaid payments were made on 11th April, 2014 and 13th February, 2015. There is no explanation offered by the State by filing a reply. This Petition is pending from the year 2016. If

documents annexed to the Petition are seen, it is obvious that there cannot be any explanation for such a gross delay. A proposal for preferring an appeal against the order dated 3rd August, 2005 was submitted after lapse of period of one year and one month (on 11th September, 2006). The permission to prefer appeal was granted on 18th April, 2011. Thus, permission to file SLP was granted after 5 and half years from the date of Judgment. SLP was dismissed on 10th October, 2011. Two years thereafter, a G.R. was issued by the State Government for authorising implementation of the order dated 3rd August, 2005. Thus, the only conclusion which can be arrived at is that there was a gross negligence on the part of the State and its officers which led to the non-compliance of the order dated 3rd August, 2005 for a period of 9 years and more notwithstanding several representations made by the Petitioner.

7 It is well settled that if a citizen is deprived of rights conferred on him by the Constitution of India, by invoking Article 226 of the Constitution of India, such a person can seek

compensation and interest from the State and agencies of the State. This is one of the fittest case to order payment of interest. In fact, this Court would have been justified in directing payment of interest from expiry of a reasonable period from 3rd August, 2005. However, we propose to direct payment of interest from 10th October, 2011 when the Special Leave Petition filed by the Petitioner was dismissed. Rate of interest will have to be quantified at 8% p.a. Moreover, the Respondent-State Government will have to be saddled with costs quantified at Rs.25,000/- with liberty to the State Government to recover the said amount from the officers who are responsible for negligence.

8 If there is a short-fall in the amount already paid to the Petitioner, he can make appropriate representation to the concerned authorities.

9 Accordingly, we dispose of the Petition by passing the following order:

(i) We direct the first Respondents to pay simple interest on the amount of Rs.1,97,582/- at the rate of 8% p.a. from 10th October, 2011 till 11th April, 2014. We also direct the first Respondent-State to pay simple interest @ 8% p.a. on sum of Rs.82,456/- from 10th October, 2011 till 13th February, 2015;

(ii) In addition, the first Respondent shall pay costs quantified at Rs.25,000/- to the Petitioner. Amount of interest and costs shall be paid to the Petitioner within a period of 2 months from the date on which this judgment/order is uploaded;

(iii) In the event, the Petitioner finds that the principal amount paid is not in terms of his entitlement, it will be open for him to make representation to the concerned authorities which shall be decided within 3 months from the date of representation.

(iv) Rule is made partly absolute in the above terms.

Parties to act upon an authenticated copy of
this order.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)