

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 565 OF 2018

Vilas G. Athawale And 2 Ors.Petitioner
Vs.

Maharashtra Legislature Secretariat
(through The Principal Secretary)
And 3 Ors.Respondents

Mr. Ravi Gadagkar a/w Mr.Sanjay Jain i/by. Ms. Usha Gadagkar
for Petitioner.

Mr. A.A. Kumbhakoni, Advocate General a/w. Mr. Akshay Prakash
Shinde for Resp. Nos. 1 to 3.

Mr. D.J. Khambata, Sr. Adv. a/w. Mr. Rohan Cama, Mr. V. Rathod,
Mr. Pheroze Mehta, Mr. Shanay Shah and Mr. Pratik Kalantri i/by
Mr. Harshad Palve for Respondent no.4.

**CORAM : SHANTANU KEMKAR &
NITIN W. SAMBRE, JJ.**

DATE : JUNE 11, 2018

P.C.:

Parties through their counsel. With consent heard finally.

2. Challenging the stay order dated 20th February, 2017 passed by the second respondent Chairman, Maharashtra Legislative Council, Mumbai on the stay application in the representation filed by the 4th respondent dated 19/10/2016 Exhibit "D", the petitioner has filed this petition on various grounds including the ground

that the representation of the 4th respondent suffers from inordinate delay and latches and is made quite belatedly not only after the selection process for the year 1999-2000 was complete but was made after the decade and half of the said selection process was over.

3. The case of the petitioner is that the 4th respondent had not only accepted the initial appointment but also accepted the subsequent promotions and now after about 16 years, cannot challenge the same by way of making representation when the benefits of the promotion has already been extended in favour of the petitioner.

4. According to the petitioner, the 4th respondent himself have enjoyed the benefits of the appointment and the promotions and now he cannot turn around challenging the very process in which he had participated. It is also the case of the petitioner that the 4th respondent is trying to unsettle the settled position by raising old issue of seniority by way of stale claim through the representation whilst sleeping over his rights and not remaining diligent and acquiescing for long 16 years. It is therefore, the case of the petitioner that the attempt of the 4th respondent is to stall the promotion on the basis of the belated representation which is ex

facie barred by the delay and laches cannot be made a ground to challenge the appointment and seniority of the petitioner which has attained finality. In support of his contention, the petitioner has placed reliance on the various judgments of the Supreme Court as also of this court.

5. On the other hand, learned senior counsel for the 4th respondent has argued that the petition is wholly misconceived and prayer of the petitioner though is to the extent that the first respondent be directed to decide the representation of the 4th respondent, pending the hearing and final disposal, he is seeking declaration that the selection process of the year 1999-2000 was valid without giving any opportunity to the competent authority i.e.the Board to consider the same at the first instance and take appropriate decision in the matter in accordance with law.

6. We have heard learned counsel for the parties at length. During the course of the hearing, a broad consensus is arrived at between the parties and on the basis of that we dispose of this petition by observing that it is open for the Board to consider the said representation filed by the 4th respondent. However, the Board while deciding the representation shall consider and take appropriate decision on the petitioner's objection about the

maintainability of the said representation on the ground that the same is highly belated and deserves to be dismissed on the ground of delay and laches. Needless to say that if the Board find that it is highly belated and barred by laches, it need not go into the merits of the said representation. The petitioner and the 4th respondent be given due opportunity of hearing. All contentions including the maintainability of the representation as also the judgments on which the parties may place reliance, shall also be taken into consideration in the matter. While deciding the said representation of the 4th respondent, the petitioner's representations Exh. "G" and Exh. "L" shall also be taken into consideration., It is further observed that both the sides are at liberty to file their written submissions on or before 18th June, 2018.

7. The decision as aforesaid be taken within one month from the date of appearance of the parties before the Board.

8. It is also made clear that if the representation is not decided within the aforesaid period, the interim protection granted by respondent no.2 on 20th February, 2017 shall stand vacated.

9. All contentions of the parties are kept open including the power of the Board.

10. Parties to appear before the Board on 18/06/2018 at 3 p.m.

11. With the aforesaid observations, Petition is disposed of.
12. Parties to act on the authenticated copy of this order.

(NITIN W. SAMBRE, J.)

(SHANTANU KEMKAR, J.)