

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9796 OF 2019

Kailas Pandurang Waval,
Age : 45 years, Occu. Service,
R/o : Aniket Nagar, Bhavsar Chowk,
Nanded, Dist. Nanded

.. Petitioner

Versus

- 1] The State of Maharashtra
Through its Principal Secretary,
Marathi Language Department,
Madam Kama Road, Mantralaya,
Mumbai - 400 032
- 2] The Director of Prosecution,
Khetan Bhavan, Sadanika No.8,
5th Floor, J. Tata Road, Churchgate,
Mumbai - 400 020
- 3] The Assistant Director & Public Prosecutor,
Near Dr. Kabra Hospital, Opp. S.P. Office,
Vazirabad, Nanded, Dist. Nanded

.. Respondents

...
Mr. Shrinivas S. Wagh, Advocate for petitioner
Mr. G.O. Wattamwar, AGP for respondent - State
...

CORAM : SUNIL P. DESHMUKH &
S.M. GAVHANE, JJ.
DATE : 21-09-2019

ORAL JUDGMENT (PER - SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally, by consent.

2. Petitioner is applicant in original application no. 589 of 2017 filed by him against order dated 10-08-2017 whereunder, certain recoveries have been directed against him. During the course of its pendency, it had been realized that government resolution dated 24-03-2017 and circular dated 07-06-2017 are likely to hinder, impede and preclude the applicant from the relief sought. Petitioner had moved miscellaneous application no. 313 of 2019 seeking amendment to original application thereby posing challenge to validity of the government resolution and the circular. It is in the circumstances, aforesaid application had been moved.

3. It appears that the miscellaneous application had been opposed, referring to section 21 of the Administrative Tribunals Act, 1985 (for short "the Act of 1985"), as the tribunal under impugned order dated 15-07-2019, had considered that since the government resolution and the circular are of 2017, amendment application filed in 2019 would be barred by period of limitation under the provisions of the Act of 1985.

4. Learned counsel for petitioner submits that as it would emerge, challenge to the government resolution and the circular under amendment would neither be covered by sections 20 or 21 nor by any other provisions of the Act of 1985. He further refers to that the limitation prescribed under section 21 is in respect of orders referable to and covered under section 20 the Act of 1985

and not otherwise. He submits that challenge to validity of rules and circular can be posed at any time and there is no limitation prescribed for such challenge under the Act of 1985. He, therefore, entreats this court to indulge into the request made under writ petition to set aside impugned order and to allow miscellaneous application no. 313 of 2019.

5. Countering aforesaid submissions, learned Assistant Government Pleader Mr. Wattamwar submits that obviously, challenge is sought to be posed after a period of one year or for that matter even after efflux of reasonable time, if latitude is to be given under section 21(3) of the Act of 1985. Thus, the order of tribunal can hardly be faulted with. He further submits that having regard to proviso to order VI rule 17 of code of civil procedure, while pleadings admittedly are completed, there is no due diligence being shown for amendments to original application. On that count as well, the decision of tribunal is proper.

6. Sections 20 and 21 of the Act of 1985, read, thus,

“ 20. Applications not to be admitted unless other remedies exhausted.—

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,—

(a) if a final order has been made by the Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.

21. Limitation.—

(1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the

Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period. ”

7. In the circumstances, it may have to be considered that miscellaneous application no. 313 of 2019 has been preferred to amend the original application purporting to pose challenge to validity of the government resolution and circular, those do not *per se* qualify to be orders circumscribed by section 20 of the Act of 1985 neither the government resolution nor the circular for that matter, has been referred to in order dated 10-08-2017 impugned before the tribunal.

8. So far as amendments are concerned, when in application for amendment, reliefs being claimed in respect of actions, if would be time barred, for said purpose, amendments sought would not be hindered and/or precluded and it would be open for the opposing party to combat and resist the reliefs

claimed on the ground of limitation. However, for said purpose, while the limitation would be a question of fact and law, amendments sought would not be declined on that ground. We consider that in respect of miscellaneous application no. 313 of 2019, liberal and accommodative approach will have to be adopted looking at the legal position and cause under which the same has been preferred.

9. We, therefore, deem it appropriate to allow the writ petition. Writ petition is granted in terms of prayer clause (B) and is disposed of. Rule is made absolute accordingly.

10. Needless to refer to that this would not take away the right of respondents in original application to defend the amended original application on the grounds as would be available in fact and law, including that of limitation.

[S.M. GAVHANE]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

arp/