

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7848 OF 2018

Mr. Kisan S/o Shenphad Magre & Ors. ..PETITIONERS

VERSUS

The State of Maharashtra & Ors. ..RESPONDENTS

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Mr. Avinash S. Deshmukh and Mr. A. N. Walunjkar,
Advocates for the Petitioners.

Mr. S. G. Karlekar, AGP for Respondents-State.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

Closed for Orders on : 08.02.2019.

Order Pronounced on : 15.02.2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The petitioners were the employees in the Dairy Development Department. The petitioners retired from service on attaining the age of superannuation in the year 2010. The petitioner nos.1, 3 and 4 were granted permanency in the year 1978 and petitioner no.2 on 10.02.1977. The petitioners filed Original Application bearing Stamp No.102/2013 alongwith Miscellaneous Application for condonation of delay. The petitioners prayed for grant of permanency on completion of 240 days in service. The application for condonation of delay is rejected by the Maharashtra Administrative Tribunal, Aurangabad. Aggrieved thereby, the present writ petition.

2. Mr. A. S. Deshmukh, learned counsel for petitioners submits that it was obligatory on the part of the respondents to regularize all petitioners in service with effect from the date of completion of 240 days service. The petitioners were regularized belatedly by the department, but not with effect from completion of 240 days of their service. Due to the delayed action of regularization of their services, the petitioners were denied all related service benefits, such as, regular pay scale, yearly increments, provident fund, seniority, gratuity, so also proper fixation of their pay throughout the service career.

3. The learned counsel submits that large number of identically placed persons had approached the Courts of Law assailing actions of the respective competent authorities from the Dairy Development Department of not regularizing them with effect from the completion of 240 days of service, but from the subsequent date causing loss of various service benefits to them. The Courts of Law including the Maharashtra Administrative Tribunal and this Hon'ble High Court accepted the plea of those persons identically placed as like the petitioners and Dairy Development Department was directed to regularize them with effect from the date of completion of 240 days of service and extend them all the consequential benefits.

4. The learned counsel submits that similarly situated petitioners had filed Writ Petition bearing No.4544/1998 and other writ petitions. This Court under order dated 27.08.1998 allowed the writ petitions. The respondent-State filed Civil Appeal before the Apex Court. The Apex Court confirmed this Court's order on 24.07.2001 directing regularization of service with effect from the date of completion of 240 days of service. The Department as such was under obligation to extend the same benefit of regularization of service, even to those petitioners who had not filed writ petitions before this Court or Original Applications before the Maharashtra Administrative Tribunal. The learned counsel submits that petitioners are entitled for parity. They are similarly situated. To those persons who had earlier approached this Court, benefit of regularization is granted to them upon completion of 240 days of service, but these petitioners are regularized after lapse of almost three years upon completion of 240 days of service. The State Government has been issuing Orders/Government Resolutions extending benefits of regularization in service with effect from completion of 240 days of service to identically placed persons on the basis of the orders of the Court.

5. The learned counsel submits that if in a given case the issue involved was pending consideration of the Government then point of delay

or latches could not be raised against the persons approaching the Court of Law. The learned Counsel relies on the judgment of the Apex Court in a case of **Sanjay Place Group Housing Association Vs. Agra Development Authority** reported in **AIR 1992 SC 1598** and in a case of **State of Uttar Pradesh & Others Vs. Arvind Kumar Srivastava and Others** reported in **(2015) 1 SCC 347**. The Tribunal did not consider the judgments of the Apex Court in its correct perspective and thereby arrived at erroneous conclusion. The learned counsel further submits that the Tribunal has taken very hyper technical approach while rejecting the application. The petitioners cannot be said to be fence sitters. On the contrary the respondents have failed to adhere to their obligation of giving equal treatment to petitioners. The petitioners had also given representations. Even this Court in the year 2015-2016 have also passed orders in favour of the similarly situated petitioners.

6. The learned A.G.P. supports the order and submits that petitioners are fence sitters. The benefit cannot be given to such petitioners who from outside were viewing the fate of other similarly situated petitioners and after the judgment is delivered in their favour and after having retired from service have approached the Court. It is a case of an inordinate delay of 37 years in approaching the Court of Law. The Tribunal has not committed any error in rejecting

the application for condonation of delay.

7. We have considered the submissions canvassed by the learned counsel for the respective parties.

8. It is a matter of fact that petitioners herein were appointed on daily wages. The petitioner nos.1, 3 and 4 were appointed in the year 1975 and petitioner no.2 was appointed in the year 1976 and the permanency has been granted to petitioner nos.1, 3 and 4 in the year 1978 and to petitioner no.2 in the year 1977. All these petitioners retired from service between the years 2009 to 2012 on attaining the age of superannuation and the Original Application claiming regularization on completion of 240 days of service is filed in the year 2013.

9. The chart giving the details of the date of appointment of each petitioners, date of completion of 240 days of service and the date of grant of permanency is detailed below:

Sr. Nos.	Names	Date of initial appointment on daily wages	Date of completion of 240 days' service	Date of grant of permanency
1.	K.S. Magre	14/06/75	14/02/76	01/12/78
2.	S.P. Pathak	14/02/76	14/10/76	10/02/77
3.	K.T. Badmore	19/02/75	16/10/75	01/07/78
4.	S.S. Wasane	26/05/75	10/01/76	28/09/78

Going by the aforesaid details, it is clear as far as petitioner no.2 is concerned, he is confirmed after about three and half months upon

completion of 240 days of service. The petitioner nos.1, 3 and 4 are granted permanency after about 2 years upon completion of 240 days service. After the permanency has been granted to petitioners in the years 1977 and 1978, the petitioners worked on the establishment of respondents as a permanent/regular employee and eventually on attaining the age of superannuation retired in between the years 2009 to 2012. The cause of action for petitioners to agitate in respect of their rights arose in the year 1976. However, the original application is filed after long slumber of 37 years.

10. The *prima donna* contention of petitioners is that the similarly situated employees had approached this Court or the Tribunal and benefit is given by the Courts to the similarly situated employees granting regularization / permanency upon completion of 240 days of service and the same benefit ought to have been extended to petitioners. The original application was filed in the year 1998. The judgment delivered by the Tribunal was carried up to this Court and thereafter to the Apex Court. The Apex Court confirmed the judgment of this Court directing benefit of permanency to the employees upon completion of 240 days of service. The same was way back in the year 1998. The petitioners did not take any steps. The judgments delivered by the Courts in the batch of writ petitions were not judgments in rem, but the said

was in personam. The petitioners were in service for all these years. They were watching the proceedings. The petitioners do not have any ground to explain the delay and latches. The petitioners acquiesced in the permanency granted to them belatedly and not upon completion of 240 days of service. After grant of permanency the petitioners were in service for more than 30 years. Such employees cannot claim the benefit of judgment rendered in a case of similarly situated persons. The Apex Court in a case of **State of Uttar Pradesh & Others Vs. Arvind Kumar Srivastava and Others** (supra) has observed that such petitioners would be treated as fence sitters and latches and delay and/or the acquiescence would be valid ground to dismiss their claim.

11. The Tribunal considered the aforesaid aspects of the matter and judgment of the Apex Court in a case of **State of Uttar Pradesh & Others Vs. Arvind Kumar Srivastava and Others**. It reproduced the following quotes from the judgment of the Apex Court:

"22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to

be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and

language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either latches and delays or acquiescence."

12. The delay caused by the applicant in filing the original application of 37 years is abnormal and inordinate delay. No plausible explanation is coming forth, except that the similarly situated persons have been granted relief in the petitions filed by them. The similarly situated persons had approached the Court in the year 1998. After 37 years, it will not be appropriate to set the clock back and grant permanency to the petitioners upon completion of 240 days. As observed above, petitioner no.2 is granted permanency about three and half months after completion of 240 days and other petitioners about two years after completion of 240 days of their services on daily wages.

13. Considering the above, the Tribunal has not committed any error in rejecting the application for condonation of delay. Writ Petition as such is dismissed. No costs.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE