

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3353 OF 2017

Kalidas S/o Adinath Bhairat,
Age : 60 years, Occu : Nil,
(Pensioner), R/o : Flat No. 2,
Madhura Bldg., Sarda Nagari,
Beed, Dist. Beed

... Petitioner
(Original Applicant)

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Irrigation /Water Resources
Dept., M.S., Mantralaya,
Mumbai-32.
- 2) The Chief Engineer,
Local Sector, Minor Irrigation,
Bungalow No. 12, Jail Road,
Yerwada, Pune – 6.
- 3) The Superintending Engineer,
Minor Irrigation Division
(Local Sector), Circle at
Aurangabad.
- 4) The Executive Engineer,
Minor Irrigation (Local Sector),
Beed Circle, Beed.

... Respondents
(Original Resp. No. 1 to 4)

...
Mr. Avinash S. Deshmuh, Advocate for petitioner
Mr. P. S. Patil, AGP for respondents – State
...

**CORAM : DIPANKAR DATTA, CJ
AND
RAVINDRA V. GHUGE, J.**

DATE : JUNE 14, 2021

JUDGMENT (PER – DIPANKAR DATTA, CJ) :

1. The unsuccessful original applicant in Original Application No. 833 of 2012 on the file of the Maharashtra Administrative Tribunal (hereafter 'the Tribunal', for short) has approached this Court with this writ petition seeking quashing of the judgment and order dated 15th December, 2016, whereby such original application stood dismissed on merits.

2. The plea of the petitioner before the Tribunal was that having been appointed as Junior Engineer on 29th November, 1980 and having acquired Class-II status by reason of Government Resolution dated 16th April, 1984, he ought to have been designated as Sectional Engineer from 1st April, 1986; however, the respondent no. 1 issued an order on 30th April, 2020 giving the status of Sectional Engineer to the petitioner from 1st April, 1990. Aggrieved thereby, a representation was submitted by the petitioner on 20th January, 2005 but no reply having been received, a further representation was submitted on 6th June, 2008. In pursuance thereof, the respondent no. 1 by his letter dated 22nd January, 2010 informed the respondent no.2 that the petitioner's Annual Confidential Reports (hereafter the ACRs, for short) from 1983-84 to 1986-87 were not up to the mark for which the designation of Sectional Engineer was not given to him. It also appears that the designation of Sectional Engineer was

given to the petitioner from 1st April, 1990 as his ACRs from 1987-88 were found to be satisfactory.

3. It was contended on behalf of the petitioner that he was not aware of the letter dated 2nd January, 2010 prior to 15th December, 2011, and that it was communicated to him later. That apart, the petitioner had not been communicated any adverse remarks in his ACRs and, as such, adverse remarks, if any, were required to be ignored and the status of Sectional Engineer ought to be granted to be from 1st April, 1986.

4. The respondents contested the original application by contending as follows:

(i) The original application was presented after inordinate delay and no application for condonation of delay in its presentation having been filed, the original application ought to be dismissed as time barred;

(ii) The petitioner was rightly given the status of Sectional Engineer with effect from 1st April, 1990 upon his ACRs for the years preceding the grant being found to be satisfactory and, hence, there was no illegality in the action of the respondents;

(iii) That copy of the representation said to have been submitted by the petitioner on 20th January, 2005 has not

been placed on record and, therefore, such a plea has been advanced to cover up the laches in ventilating his grievance, if any, at the appropriate time; and

(iv) The prayer of the petitioner was duly considered and rejected by the order dated 22nd February, 2010 in accordance with law.

5. The Tribunal in its impugned judgment has noted that prior to 2008, the petitioner had not objected to the status of Sectional Engineer being given to him with effect from 1st April, 1990 by the order dated 30th April, 2002. The contention of the respondents that the petitioner's representation dated 20th January, 2005 was not on record was accepted by the Tribunal. The circumstance of not having objected for 6 (six) long years after the designation of Sectional Engineer was given to the petitioner, was held to be a factor that was fatal for believing the claim of the petitioner. The Tribunal was of the view that it is difficult to conclude whether adverse remarks, if any, in the petitioner's ACRs for the period from 1983-84 to 1986-87 were communicated to him or not. Finally, the Tribunal held that for want of sufficient particulars, the claim of the petitioner that adverse remarks were not communicated to him could not be supported by evidence and that having regard to the distance of time since those ACRs

were generated, it would be impossible to verify the veracity of his claim. Thus, the claim was rejected as not substantiated.

6. Mr. Deshmukh, learned advocate appearing for the petitioner has sought to contend that the Tribunal erred in dismissing the original application. The petitioner, it is contended, having assailed the order dated 22nd February, 2010 in the original application, the same was definitely not time barred. On merits, he has reiterated the contentions that were advanced before the Tribunal in the proceedings before it.

7. We have not considered it necessary to call upon Mr. P.S. Patil, learned AGP for the State to respond.

8. Before us too, Mr. Deshmukh could not prove that the representation said to have been submitted by the petitioner on 20th January, 2005 was received by the respondents. In the absence thereof, it can safely be held for the purpose of a decision on this writ petition that no such representation had been made. For the first time after the order dated 30th April, 2002 was passed, whereby the petitioner was given the status of Sectional Engineer, he woke up from his slumber by submitting a representation dated 6th June, 2008. Such representation has been rejected by order dated 22nd

February, 2010, which was ultimately impugned before the Tribunal.

9. Cause of action for moving the Tribunal accrued to the petitioner in 2002 when he was denied the status of Sectional Engineer with effect from 1st April, 1986. By lapse of time, his claim for being granted such status became stale. The representation dated 6th June, 2008, whereby he sought to question the decision of the respondents not to give him the status with effect from 1st April, 1986, is not a representation that is provided by a statute. The question that arises for an answer in the circumstances is, whether rejection of such a non-statutory representation submitted with an attempt to revive a stale claim could extend the period of limitation to move the Tribunal in its original jurisdiction. We are of the view that the issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date of the order, which is passed on such non-statutory representation.

10. We are, therefore, of the considered opinion that rejection of the petitioner's representation dated 6th June, 2008 by the order dated 22nd February, 2010 did not afford him the cause of action to approach the Tribunal long six years after the order dated 30th April, 2002 was passed which,

allegedly, infringed his so-called right of being given the status of Sectional Engineer with effect from 1st April, 1986.

11. The other contention of Mr. Deshmukh that adverse remarks, if any, in the ACRs for the period 1983-84 to 1986-87 were not communicated to the petitioner has to be considered in the light of the delayed approach made by him. Had he approached the Tribunal within a reasonable period after the order dated 30th April, 2002 was passed, without letting the claim to become stale, scrutiny of the Tribunal could have been intrusive for ascertaining whether the plea of the petitioner ought to be given credence. If only the petitioner had approached the Tribunal within the period of limitation prescribed in section 21 of the Administrative Tribunals Act, 1985 (hereafter the Act, for short), the respondents would have been bound to establish that there were adverse remarks in the ACRs of the petitioner, which were duly communicated. Once the petitioner allowed his claim to become stale, the respondents could not have legitimately been called upon to trace the old records for dispelling his contention. The remedy provided by the Act in relation to service matters has to be availed of without unreasonable delay and we are inclined to the view that relief thereunder cannot be made available to a litigant who is tardy and lethargic in his approach.

12. We do not see reason to hold that the Tribunal erred in declining relief to the petitioner for the reasons assigned by it. The writ petition being devoid of merits stands dismissed. There shall be no order as to costs.

[RAVINDRA V. GHUGE, J.]

[CHIEF JUSTICE]

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