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

WRIT PETITION NO. 8470 OF 2019

Shri Maruti R. Wankhede

.. Petitioner

Vs.

Union of India & Anr.

.. Respondents

Mr. Sandeep V. Marne for petitioner.

Ms. Vaisali Choudhari a/w Mr. P. Khosla for respondents.

**CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE : SEPTEMBER 8, 2021

ORDER:[PER DIPANKAR DATTA, CJ.]:

1. The original applicant in Original Application No. 530 of 2016, on the file of the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereinafter "the Tribunal" for short), is the petitioner before us in this petition under Article 226 of the Constitution. Challenge is laid to the order dated December 4, 2018 passed by the Tribunal refusing to condone the delay in presentation of the original application, thereby rejecting the application for condonation of delay being M.A. No. 473 of 2018.

2. The contention of Mr. Marne, learned advocate for the petitioner, is that the Tribunal erroneously did not entertain the original application on the ground that sufficient cause had not

been shown for condonation of delay. He has referred to the facts in details giving rise to the original application as well as decisions of the Supreme Court in support of his contention that the petitioner has been subjected to a continuous wrong by the respondents and, therefore, the provisions of limitation in section 21 of the Administrative Tribunals Act, 1985 either did not have any application *qua* the petitioner or was erroneously applied to ultimately decline relief to which, otherwise, the petitioner was entitled.

3. Narration of the employment career of the petitioner as a prologue to our decision would be necessary for a proper decision on this writ petition; hence, we proceed in that direction now.

4. On June 16, 1967, the petitioner was appointed on the post of Lower Division Clerk in the Directorate of Marketing & Inspection, Ministry of Agriculture, Government of India with Head Office at New Secretariat Building, Nagpur. In due course of time, the petitioner was promoted to the post of Upper Division Clerk. While being so employed, the petitioner had applied through proper channel for appointment on the post of Administrative Officer in National Buildings Construction Corporation Limited (hereinafter "NBCCL" for short), a public sector undertaking of the Government of India. Having been selected, the petitioner came to be appointed on such post on July 2, 1984. By a memorandum dated October 17, 1985 issued by the NBCCL, the petitioner was informed (in the light of grant of permission to retain lien with his parent department, viz.

Agricultural Marketing Adviser, Ministry of Rural Development, Directorate of Marketing & Inspection, for a period of one year) that since the period of lien had expired on July 2, 1985, it had been decided to absorb him in the regular establishment of the NBCCL. The petitioner was, accordingly, advised to send his willingness for absorption in the regular establishment of the NBCCL and also to submit a formal letter of resignation terminating his lien with the parent department for onward transmission to it. As per the said advice, the petitioner tendered his formal resignation and expressed willingness to be absorbed in the regular establishment of the NBCCL vide his letter dated October 30, 1985. Since the petitioner had served in excess of ten years under the Government of India, he claimed pro-rata pension by submitting a representation dated November 16, 1985. A response dated June 15, 1987 conveyed to the petitioner that his representation for grant of pro-rata pension had been forwarded to the competent authority and necessary information would be furnished to him upon sanction being received from such authority. This was followed by a reminder dated October 9, 1987 from the Section Officer, Ministry of Agriculture, Department of Rural Development, Government of India, to the Section Officer, Directorate of Marketing & Inspection requesting that sanction of pro-rata pensionary benefits in favour of the petitioner may be expedited. In the meanwhile, however, the petitioner had applied through proper channel for appointment as Registrar in PWS College, Nagpur. Upon his selection, the petitioner was appointed on February 18, 1987 and he tendered resignation

from the service in the NBCCL. While the petitioner was discharging duty as Registrar in the said college, he received Office Memorandum dated June 13, 1988 on the subject of his permanent absorption as Administrative Officer, NBCCL. It was conveyed to the petitioner that he would be permanently absorbed with effect from July 2, 1985 (forenoon). Three of the relevant clauses of the said memorandum are quoted hereunder for facility of convenience: -

“(ii) Pension/Gratuity

On his permanent absorption in National Buildings Construction Corporation, Shillong, Shri Wankhede shall be eligible for pro-rata pension and death-cum-retirement gratuity based on the length of his qualifying service under the Government of India till the date of his permanent absorption in the National Buildings Construction Corporation Ltd. as admissible under the rules applicable to officers of the Central Civil Service in force on the above-mentioned data.

(xi) Effect of Resignation

If Shri Wankhede resigns from N.B.C.C. his resignation for purpose of these Orders will be treated as resignation from Government Service, entailing forfeiture of earlier service under Government and loss of pensionary benefits including gratuity under these Orders.

(xiii) Benefits after permanent absorption

For the period of service rendered by Shri Wankhede in N.B.C.C. from the date of permanent absorption, he will be entitled to all the benefits admissible to the corresponding employees of the said organization and continue to be governed by its rules in all respects.”

Close on the heels of the aforesaid memorandum, the Section Officer, Department of Rural Development, Government of India, informed the petitioner by his communication dated

December 14, 1988 that since he had resigned from NBCCL, such resignation was treated as resignation from Government service entailing forfeiture of earlier service under the Government and loss of pensionary benefits, including gratuity as per para (xi) of the aforesaid Office Memorandum dated June 13, 1988. Despite being informed that his past service under the Government of India stood forfeited, the petitioner chose not to question such decision either contemporaneously or thereafter. On June 2, 1989, he was again informed of dis-entitlement to pension in terms of para (xi) of the said Office Memorandum dated June 13, 1988. Without being unduly concerned of having forfeited his past service under the Government of India, the petitioner again applied for appointment on the post of Assistant Manager (Admn.) in NBCCL and was appointed as such on June 4, 1990. More than a year later, the petitioner addressed a letter dated July 29, 1991 to the Secretary to the Government of India, Ministry of Pension, Pensioners' Welfare and Public Grievances, Department of Pension and Pensioners, New Delhi, seeking sympathetic consideration of his claim and for issuance of necessary directives to the Ministry of Agriculture, Department of Rural Development for release of pension on the grounds mentioned therein. Upon receipt of such representation, the Deputy Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners' Welfare, forwarded the representation of the petitioner to the Joint Secretary (Admn.), Department of Rural Development for taking necessary action as considered

appropriate to redress the petitioner's grievance. The petitioner, in view of the aforesaid forwarding of his representation perceived that his claim was under active consideration, notwithstanding the Office Memorandum dated June 13, 1988 and the reply dated June 2, 1989, and went in deep slumber till May 6, 2013 when a further representation was made by him to the Secretary, Government of India, Ministry of Rural Development for release of pension. In between, the petitioner had resigned from NBCCL in 1997 and joined a private company, whereafter in 2006, he was appointed as Assistant General Manager (P & A) in National Rayon Corporation Ltd. According to the petitioner, on account of frequent change in job profile, he could not pursue his case for pension with the respondent no.1. Be that as it may, the Under Secretary to the Government of India, Ministry of Agriculture, Department of Agriculture and Co-operation sent a reply dated June 12, 2013 to the Under Secretary, Ministry of Rural Development regarding grant of pensionary benefits to the petitioner. After noting the employment history of the petitioner, a request was made to deal with the petitioner's grievance in terms of the decision conveyed by letter dated October 28, 1988. The said letter of October 28, 1988 is a letter of the Ministry of Agriculture observing that Condition No. (xi) of the Office Memorandum dated June 13, 1988 would be applicable in the case of the petitioner and that Condition No. (iv) thereof would not be applicable as he had resigned before he could be deemed to have become eligible for voluntary retirement after putting in 20 years of qualifying service. The

letter dated June 12, 2013 was understood by the petitioner as giving him a cause of action to move the Tribunal which he did by presenting Original Application No. 358 of 2014. On June 14, 2016, Original Application No. 358 of 2014 was withdrawn by the petitioner with liberty to file a fresh original application. Original Application No. 530 of 2016 was thereafter presented on July 1, 2016. It was only after the respondents filed reply-affidavit opposing the original application on merits as well as on the ground of limitation that the petitioner, on April 13, 2017, applied for condonation of delay by asserting that his cause of action arose on June 12, 2013. It is on consideration of such application for condonation of delay that the Tribunal held that the delay had not been properly explained. Having regard to lapsing of three decades since the petitioner was served with Office Memorandum dated June 13, 1988, the Tribunal also held that the original application was hopelessly time barred. This resulted in rejection of the application for condonation of delay and, resultantly, the original application by the order dated December 4, 2018.

5. It is the legality and/or correctness of the said order of the Tribunal that now falls for our consideration.

6. Mr. Marne, in his usual fairness, at the outset invited our attention to the decision of the Supreme Court in **Union of India & Ors. Vs. M. K. Sarkar**, reported in (2010) 2 SCC 59, and submitted that the ultimate conclusion arrived at by the Tribunal could be justified having regard to the law laid down therein. However, Mr. Marne sought to distinguish the decision

in **M. K. Sarkar** (supra) by contending that the earlier larger Bench decision of the Supreme Court in **Sualal Yadav vs. The State of Rajasthan & Ors.**, reported in (1976) 4 SCC 853, had not been noticed, wherein it was held that the appellant having invoked the writ jurisdiction of the relevant High Court challenging the order of the Governor dismissing a review application on merits, it was not open to the High Court to resurrect the ground of delay in applying for review at a remote stage and make it a ground for dismissing the writ petition. We also record the fair stand of Mr. Marne in bringing to our notice decisions of the Supreme Court in **C. Jacob vs. Director of Geology and Mining & Anr.**, reported in (2008) 10 SCC 115, and in **Government of India & Anr. Vs. P. Venkatesh**, reported in (2019) 15 SCC 613. However, these decisions were also sought to be distinguished by submitting that since the petitioner has been denied pension, a fresh cause of action arose every month when he was denied such pension and, therefore, the Tribunal was in error in not considering the assertion of the petitioner of a continuing wrong against him which gave rise to a recurring cause of action each month he was not paid pension. In support of such contention, Mr. Marne relied on the following decisions: -

- (a) **M. R. Gupta vs. Union of India & Ors.**, reported in (1995) 5 SCC 628;
- (b) **Union of India & Ors. Vs. Tarsem Singh**, reported in (2008) 8 SCC 648; and,
- (c) **State of Madhya Pradesh & Ors. Vs. Yogendra Shrivastava**, reported in (2010) 12 SCC 538.

7. Mr. Marne, accordingly, submitted that the order of the Tribunal under challenge is indefensible and this Court may consider the petitioner's grievance regarding payment of pension on its own merits or remit the matter to the Tribunal for fresh consideration on merits.

8. Having heard Mr. Marne, we did not consider it necessary to call upon Ms. Choudhari, learned advocate for the respondents, to answer.

9. The concept of continuous wrong is traceable to section 22 of the Limitation Act, 1963, reading as under: -

"22. Continuing breaches and torts. – In the case of continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues."

10. While considering a *pari materia* provision, i.e., section 23 of the Limitation Act, 1908, the Supreme Court in **Balakrishna Savalram Pujari Waghmare Vs. Shree Dnyaneshwar Maharaj Sansthan**, reported in AIR 1959 SC 798, laid down the law that the very essence of a continuing wrong is that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury; however, if wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue.

11. In the decisions in **M. R. Gupta** (supra) and **Yogendra Shrivastava** (supra) cited by Mr. Marne, belated challenges were laid before the Tribunal/Court. The Supreme Court entertained the appeals on the ground that in each of such case, there was an assertion of a continuing wrong which gave rise to a recurring cause of action. The aggrieved employees were receiving salary every month less than what they were entitled to in accordance with the relevant rules. It is in such circumstance that the Supreme Court held that payment of less salary each month results in a fresh cause of action arising every month when the employee is paid monthly salary on the basis of a wrong computation made contrary to the rules.

12. It would be proper for us, at this stage, to summarize the propositions of law deducible from the authorities cited at the bar and those considered therein for the purpose of consideration of its application to the present case. They are:

(i) When an order is passed by a Court/Tribunal to consider or deal with a representation of an individual raising a stale or a dead claim and such claim is rejected even on merits on an impression that failure to do so may amount to disobedience of the order of the Court/Tribunal, such an order does not revive the stale or dead claim, nor amount to some kind of "acknowledgment of a jural relationship" to give rise to a fresh cause of action. [**C. Jacob** (supra)];

(ii) Disposal of proceedings by seemingly innocuous orders directing consideration of representation though result in quick

or easy disposal of cases in overburdened adjudicatory institutions but such orders do more disservice than service to the cause of justice. [**P. Venkatesh** (supra)];

(iii) Denial of pay fixation of an employee, while he is in service, not in accordance with the rules resulting in payment of a quantum of salary not computed in accordance with the rules can give rise to assertion of a continuing wrong against such act giving rise to the cause of action each time he is paid less than his entitlement and so long as such employee is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of such wrong computation. [**M.R. Gupta** (supra)];

(iv) Even if a delayed claim relating to disability pension is found to be of substance on merits and succeeds, the arrears should be restricted to three years prior to filing of the writ petition. [**Tarsem Singh** (supra)];

(v) When the issue relates to fixation of salary or payment of any allowances, the challenge is not barred by limitation or doctrine of laches, as the denial of benefit occurs every month when the salary/allowances are paid thereby giving rise to a fresh cause of action based on continuing wrong. [**Yogendra Shrivastava** (supra)]; and

(vi) If a petition is filed beyond a reasonable period, say three years, normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about

three years. [**Shiv Dass Vs. Union of India**, reported in (2007) 9 SCC 274].

13. Although the petitioner has asserted a continuing wrong against him, the principle is not attracted in his case. As far back as on December 14, 1988, the petitioner was duly informed that he had forfeited his past service under the Government of India with his resignation from service in NBCCL. Once such decision was taken and given effect, the petitioner never received a farthing on account of pension. The present case is not one where, by reason of misinterpretation of any rule or erroneous computation, the petitioner was paid a lesser quantum of pension than what he was entitled. If indeed that were so, the petitioner could have asserted that he has been subjected to a continuous wrong. A case where pension is not granted or, for that matter, there is no payment of monthly salary but fixed remuneration is paid according to the contract of service, has to be distinguished from cases where lesser quantum of pension or salary is paid to the retired employee or the employee, as the case may be, every month. In case of the former, there is an accrued wrong meaning thereby that the wrong is complete which is quite distinct and different from a continuing wrong as explained above.

14. The approach to be adopted in the case of a continuing wrong has been explained by the Supreme Court in **Tarsem Singh** (supra) in the following words: -

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches

(where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

15. However, it is clear from the decision in **Shiv Dass** (supra) that a belated claim for pension, could be rejected by the Court by not overlooking the delay caused by the employee in approaching the Court. Although Courts are generally indulgent if a claim is made by a retired employee claiming pension, such indulgence ought not to be extended to someone like the petitioner who, despite being aware of his dis-entitlement to pension, continued to be in deep slumber, while at the same time changing employer after employer. The conduct of the

petitioner, we are minded to observe, is such that he was all along interested in looking for greener pastures elsewhere, despite obtaining employment opportunities under different employers, and the circumstance that his claim for pension had been spurned did not at all bother him while he was in active service. The idea to claim pension gained ground only after he had retired from service once and for all. The Tribunal, in our view, rightly applied the ratio of the decisions in **Jai Dev Gupta Vs. State of Himachal Pradesh & Anr.**, reported in (1997) 11 SCC 13, **Naresh Kumar vs. Department of Atomic Energy & Ors.**, reported in (2010) 7 SCC 525, and **Udai Shankar Awasthi Vs. State of U.P. & Anr.**, reported in (2013) 2 SCC 435, to the effect that submission of representations is not a valid ground for approaching the forum late and favourable recommendation, if any, pursuant to such representation did not vest any right in the petitioner.

16. Before parting, we wish to hold that the decision in **Sualal Yadav** (supra) has no application on facts and in the circumstances. There, the appellant (a Sub-Inspector of Police) was dismissed from service on July 13, 1964, following a departmental inquiry. His appeal before the appellate authority was dismissed on June 25, 1966. Thereafter, the appellant applied for review under Rule 34 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 on June 1, 1968. Though the review application was time barred, the Governor of Rajasthan entertained the same and held that the matter was not fit for review. The Supreme Court held that the decision of the Governor that the matter was not fit for review

amounted to an order dismissing the review application on merits and it was, therefore, not open to the High Court to dismiss the writ petition challenging the order of the Governor on the ground that the review application was time barred. Pertinently, in **Sualal Yadav** (supra), the review was made available by a statute and the appellant had pursued such statutory remedy. Also, the review application provided by the statute having been dismissed by the Governor on merits, the Supreme Court held the High Court to be in error. This is not quite the case here, where the petitioner having filed a non-statutory representation dated May 6, 2013, the letter dated June 12, 2013 was issued which was more as a mark of courtesy rather than a letter issued under compulsion of a statutory duty.

17. We have read the decision in **M. K. Sarkar** (supra) and in particular, paragraph 15 thereof. Although it deals with a situation where a "stale" or "dead" issue/dispute is considered and decided in compliance with a direction of the Tribunal/Court to do so, there is no reason as to why the law laid down therein should not be applied in a case where a belated representation digging up a "stale" or "dead" issue/dispute is considered and disposed of by an officer as a mark of courtesy, without being under any compulsion to so consider under an order of the Tribunal/Court directing such consideration.

18. For the purpose of the present case, we hold that the issue of limitation should be considered with reference to the original cause of action, i.e., the letter dated December 14, 1988 and

not with reference to the date on which the petitioner received the letter dated June 12, 2013, holding that the issue/dispute had been considered long back and decided against the petitioner. Such communication did not extend the limitation to approach the Tribunal.

19. For the reasons aforesaid, we find no merit in the writ petition. Accordingly, the same stands dismissed. Since the petitioner is a septuagenarian, we refrain from imposing costs on him.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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