

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

WRIT PETITION NO. 1852 OF 2017

**Shri Laxman A. Magdum and Anr. } Petitioners
Versus
The State of Maharashtra and Ors.} Respondents**

Mr. Rajeshwar G. Panchal for the petitioners.

Mr. B. V. Samant, AGP for respondent nos. 1 to 3
(State).

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

DATE: JUNE 29, 2022

P.C.:

1. This writ petition is directed against the order dated 3rd March 2015 of the Maharashtra Administrative Tribunal, Mumbai (hereafter "Tribunal", for short) dismissing Original Application No. 805 of 2011.

2. The two petitioners, who were the original applicants before the Tribunal, were appointed as Foreman (Leather Technology) on 28th August 1986 and 24th March 1994, respectively. Claiming equal pay for equal work, the petitioners had approached the Tribunal previously by instituting Original Application No. 739 of 2001. It was their claim that they were entitled to the pay received by incumbents on the post of Foreman (Polytechnic). Original Application No. 739 of 2001 was disposed of by the Tribunal on 8th August 2001 with a direction upon the respondents to take a decision within 2 (two) months.

3. It is not in dispute that in deference to the order of the Tribunal, a decision was taken by the respondent no. 1 (State) on 24th July 2003 (page 78 of the W.P.), whereby the claim of the petitioners was spurned on the ground that the duties and responsibilities of Foreman (Leather Technology) are lower than that of Foreman (Polytechnic). It is admitted by the petitioners that the order dated 24th July 2003 was duly communicated to them.

4. Although the order dated 24th July 2003 afforded the petitioners a cause of action for moving the Tribunal afresh, no steps were taken by them in that regard. As late as in April 2011, the petitioners approached the Tribunal once again by instituting the original application, out of which this writ petition arises.

5. Paragraph 5 of the application reveals the petitioners' statement that the original application was instituted within the limitation prescribed in section 21 of the Administrative Tribunals Act, 1985 (hereafter "1985 Act", for short). The prayers in the original application would reveal that the petitioners claimed the following relief: -

- "(a) To declare that the post of Foreman (Leather Technology) and the post of Foreman (Polytechnic) are equivalent so far as qualification, duties and responsibilities are concerned;
- (b) Schedule 10(91) under Rule 3(11) appended to the Maharashtra Civil Services (Revised Pay) Rules 2009 published on 22nd April 2009 be quashed and set aside and the respondents be directed to grant to the petitioners the pay-scale at par with Foreman (Polytechnic);
- (c) The respondents be directed to revise the current recruitment rules titled "the Bombay Civil Services (Classification and Recruitment) Rules" for the post of

Foreman (Leather Technology); and

(d) The decision dated 24th July 2003 issued by the respondent no. 1 be set aside.”

6. An affidavit in reply was filed by the respondents. Unfortunately, we do not find any objection taken to the maintainability of the original application on the ground that the same was time-barred. However, the claim of the petitioners was contested on merits. Based on the plea set forth in such reply affidavit, it was prayed that the original application be dismissed.

7. The Tribunal, while disposing of the original application, proceeded to hear the parties on merits and ultimately, concluded that the claim of the petitioners was without any basis. It also held that on the basis of the qualification and nature of work, it is difficult to accept the contention that the post of Foreman (Leather Technology) is equivalent to the post of Foreman (Polytechnic). The Tribunal referred to the report of the Fourth (4th) Pay Commission and commented that none of the Pay Anomaly Committees had accepted the contention, as raised, by the petitioners. It also referred to the principle of law laid down by the Supreme Court in a catena of judgments that equation of posts and equation of pay are matters primarily for the executive Government and expert bodies like Pay Commission and not for the Courts. The Tribunal also recorded that it did not find any fault in the decision of the expert bodies or the Government.

8. Having read the order of the Tribunal, we had called upon Mr. Panchal, learned advocate for the petitioners to place before us the advertisement pursuant to which they had applied for the post of Foreman (Leather Technology). We

have been shown paragraph 3 of the writ petition, where it is pleaded that the petitioner no. 1 came to be appointed on the basis of the recommendation of the Employment Exchange. Having regard to the nature of activities that are required to be performed in terms of the Employment Exchanges (Compulsory Notification) Act, 1959, an employment exchange is duty bound to sponsor names of eligible candidates registered with it upon a requisition being received from an employer. We, therefore, find the statement in paragraph 3 of the writ petition to be untrustworthy. In any event, in the absence of any material relating to appointment of the petitioners in 1986 and 1994, we are precluded from ascertaining the terms and conditions on which the petitioners were employed. We are further at a loss to comprehend the nature of duties and responsibilities that the petitioners were required to discharge/shoulder. Even, in the absence of the diploma certificates that the petitioners claim to have acquired, whether or not the same conform to the requirements for appointment cannot be discerned. In view thereof, we see no reason to interfere with the finding returned by the Tribunal that the petitioners' claim as regards equal pay for equal work was not substantiated.

9. Over and above that, we are of the opinion that the Tribunal did not have the jurisdiction to receive the original application for consideration on merits. The claim of the petitioners having been spurned by the order dated 24th July 2003, the petitioners ought to have instituted the original application within the time limit prescribed in section 21 read with section 20 of the 1985 Act. Despite the original

application being time-barred and without applying for condonation of delay, a statement was made that the original application is within time. We feel that the Tribunal ought to have looked into the issue of limitation, even in the absence of any objection having raised by the respondents in the light of section 3 of the Limitation Act, 1963. The original application being time-barred, the same did not deserve any consideration on merits.

10. We uphold the order of the Tribunal although for an additional reason assigned above. The writ petition stands dismissed. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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