

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3056 of 2022

1. State of Maharashtra through its
Principal Secretary to the Governor,
Raj Bhavan, Mumbai-400 035.
2. Comptroller of the Household of the Governor,
Raj Bhavan, Government of Maharashtra,
Mumbai- 400 035.

..... **PETITIONERS**

...V E R S U S...

1. Ramesh Krishna Rao Yewale,
Aged 50 years, Occ. Govt. Service,
R/o Superintendent Quarters, Raj Bhavan,
Nagpur-440 001.
2. Mokshavir Baburao Patil,
Occ. Govt. Service.
Additional Comptroller to the Governor's
Household, Raj Bhawan,
Mumbai-400 035.
R/o. Weer Nartan, Rajbhawan,
Walkeshwar Road, Mumbai.

..... **RESPONDENTS**

Shri R.R.Shetty, Special Counsel alongwith Ms N. P. Mehta, Assistant
Government Pleader for State petitioners.

Shri Shyam Dewani, Advocate for respondent no.1.
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WITH

WRIT PETITION NO. 2898 OF 2022

Mokshavir B. Patil,
Aged about 54 years,
Occ. Additional Comptroller to Governor Household,
Raj Bhavan, Mumbai-35.

..PETITIONER

VERSUS

1. State of Maharashtra,
through its Principal Secretary of Governor,
Raj Bhavan, Mumbai-35.
2. The Comptroller of Household to the
Government of Maharashtra,
Raj Bhavan, Mumbai-35.
3. Ramesh Krushnarao Yewale,
Aged about 52 years. Occ. Government Servant.
R/o. Superintendent Quarter,
Raj Bhawan, Sadar, Nagpur-01.

....RESPONDENTS

Shri R.M.Sharma, Advocate for petitioner.
Ms N. P. Mehta, Assistant Government Pleader for respondent nos. 1 & 2.
Shri Shyam Dewani, Advocate for respondent no.3.

CORAM :- A.S.CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

ARGUMENTS WERE HEARD ON : 21/07/2022

JUDGMENT IS PRONOUNCED ON : 05/08/2022

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

The order dated 09.02.2022 in Civil Application No.338 of 2021 in Original Application No.245 of 2021 condoning the delay in preferring the Original Application for challenging the order dated 08.03.2004 is under challenge in both these writ petitions. Similarly, in Writ Petition No.3056 of 2022, the order dated 13.04.2022 passed on the review petition seeking review of order dated 09.02.2022 that was filed in Original Application No.245 of 2021 is also under challenge. Hence, the writ petitions were heard together and are being decided by this common judgment.

2. **Rule.** Rule made returnable forthwith and heard the learned counsel for the parties.

3. For the sake of convenience the facts as referred to in Writ Petition No.3056 of 2022 are being referred to. The respondent No.1 (hereinafter referred to as 'RY', for short) was appointed on the post of Assistant Garden Supervisor on 22.05.1996 while the respondent no.2 (hereinafter referred to as 'MP', for short) was appointed on the post of Assistant Garden Supervisor on 15.02.1998. According to RY, he having been appointed prior in time, he was senior to MP on the post of Assistant Garden Supervisor which was a Group-B post. Both the Assistant Garden Supervisors were invited to participate in the process for promotion on the post of Garden Superintendent. RY by his letter dated 24.11.2003 indicated his unwillingness at that stage to be promoted on the post of 'Garden Superintendent' at Mumbai for the reason that his wife was serving at Nagpur, his father was a heart patient and his younger brothers were yet to be employed. The Selection Committee on 01.03.2004 selected MP on the post of Garden Superintendent. Thereafter gradation lists were published in the year 2005 and 2010 showing the appointment of MP on the post of Garden Superintendent. Subsequently the post of Additional Comptroller in the Governor's Household which was a Group-A post was sought to be filled in, as it was vacant, in accordance with the Notification dated 24.11.2010 issued by the General Administration Department. This post became vacant in the year 2012. RY made a representation

seeking grant of promotion on the post of Additional Comptroller in the Governor's Household. Since the Rules for the departmental examination had not been framed, RY was given charge of the said post on 12.03.2013. Thereafter MP was granted time bound promotion from 01.01.2016 while RY was granted the same from 16.07.2016. In the year 2017 Recruitment Rules were framed and the departmental examination was held for promotion on the post of Additional Comptroller. RY stood first in the said departmental examination while MP stood below him in the list of merit. RY then made another representation on 01.02.2019 praying that he be promoted on the post of Additional Comptroller. On 18.05.2020 the Divisional Promotion Committee in its meeting selected MP for promotion on the post of Additional Comptroller. Accordingly on 20.05.2020 an Office Order promoting MP on the post of Additional Comptroller came to be issued. RY being aggrieved by the aforesaid order of promotion challenged the same by filing Original Application No.245 of 2021 before the Maharashtra Administrative Tribunal, Nagpur (for short, the Tribunal). In the said Original Application filed on 16.03.2021 a declaration was sought that the order dated 08.03.2004 promoting MP on the post of Garden Superintendent by discarding the claim of RY was illegal and arbitrary, thus seeking grant of deemed date of promotion from 01.03.2004.

4. The State of Maharashtra as well as the Comptroller of the Governor's Household who were arrayed as respondents in the Original Application as well as MP who was respondent no.3 therein filed their reply opposing the Original Application. The State took the stand that on 08.03.2004, MP had not been

promoted on the post of Garden Superintendent but had been appointed on the same. As result of this stand, RY moved an application for amendment and sought to add further pleadings as well as a prayer for setting aside the order dated 08.03.2004 appointing MP on the post of Garden Superintendent. Another application for condonation of delay in filing the Original Application was also filed. It was stated therein that RY got knowledge of the order of appointment dated 08.03.2004 issued to MP only when the reply was filed by the State of Maharashtra in the Original Application.

The application for condonation of delay was opposed by the State as well as MP on the ground that the challenge sought to be raised to the order dated 08.03.2004 was belated and the explanation furnished for the delay was not sufficient. The learned Members of the Tribunal heard the application for condonation of delay and by the order dated 09.02.2022 held that since RY was claiming deemed date of promotion, there was no limitation to seek the same. Further as RY was challenging the appointment/promotion of MP and he was also claiming a deemed date of promotion, the Original Application as filed was within limitation. It observed that the delay if any was being condoned. Being aggrieved the State of Maharashtra has challenged the aforesaid order by filing Writ Petition No.3056 of 2022 while MP has challenged the very same order by filing Writ Petition No.2898 of 2022. The review application preferred by the State of Maharashtra seeking review of the order dated 09.02.2022 having been dismissed, that order is also challenged in Writ Petition No.3056 of 2022.

5. Shri R.R.Shetty, learned Special Counsel for the petitioners in Writ Petition No.3056 of 2022 submitted that the Tribunal committed an error in condoning the delay in filing the Original Application. The ground furnished by RY in the application for condonation of delay that knowledge of the fact that the order dated 08.03.2004 was an order of appointment and not an order of promotion was not liable to be accepted for the reason that the applicant was always aware that by the said order MP had been appointed on the post of Garden Superintendent. RY had made various representations dated 29.12.2003, 25.03.2004, 27.12.2005, 03.01.2007, 07.07.2012 and 01.02.2019 raising a grievance as regards the promotion of MP on the post of Garden Superintendent and he not being promoted on that post. Having made such representations, it was necessary for RY to have pursued the same. Merely by making repeated representations the limitation for challenging the order dated 08.03.2004 would not be extended. Referring to the decision of the Constitution Bench in *S.S.Rathore vs. State of Madhya Pradesh [(1989) 4 SCC 582]* it was submitted that in view of provisions of Section 20(2) of the Administrative Tribunal Act, 1985 (for short, the Act of 1985), it was clear that the prayer seeking to challenge the order dated 08.03.2004 was barred by limitation and in absence of any sufficient and satisfactory explanation, the delay was not liable to be condoned. The Tribunal committed an error in observing that since RY was seeking a deemed date of promotion, there was no period of limitation applicable. Assuming absence of any period of limitation being prescribed, it was expected that the applicant would approach the Tribunal within a reasonable time.

It was then submitted that the stand taken by RY that the order dated 08.03.2004 was void and vitiated by fraud was without any substance. Such plea was being raised only to get over the ground of limitation. There was sufficient material on record to indicate that RY was always aware of the fact that MP had been appointed on the post of Garden Superintendent on 08.03.2004. It was then submitted that since RY had been invited to participate in the selection process for the post of Garden Superintendent and he himself having declined to participate in the same, it could not be said that he was aggrieved by the selection of MP. The Tribunal failed to consider these relevant aspects while entertaining the application for condonation of delay. He submitted that there was no specific finding recorded by the Tribunal on the aspect of delay and in cursory manner it was observed that the Original Application alongwith amendment was filed within limitation. The decisions relied upon by the learned counsel for RY before the Tribunal did not arise from the proceedings under the Act of 1985 and hence the ratio of those decisions could not be made applicable to the case in hand. It was thus submitted that the order dated 09.02.2022 condoning the delay was liable to be set aside and the prayer seeking to challenge the appointment of MP on 08.03.2004 was barred by limitation.

6. Shri Shyam Dewani, learned counsel for RY supported the order passed by the Tribunal. He submitted that in matters pertaining to condonation of delay, the Court ought to adopt liberal approach and permit adjudication on merits. A technical approach by refusing to condone the delay ought not to be taken. The Tribunal having exercised discretion and having condoned the delay, this Court

ought not to interfere with the discretion as exercised. It was then submitted that under the Recruitment Rules that were applicable, appointment on the post of Garden Superintendent was required to be made by nomination and not by promotion. The order dated 08.03.2004 was not in accordance with the Recruitment Rules and hence no right accrued in favour of MP. Inviting attention to the averments made in paras 3 and 4 of the application for condonation of delay, it was submitted that it was only when the reply was filed by the present petitioners that it was revealed that MP had been appointed on the post of Garden Superintendent on 08.03.2004. It was thus submitted that there was no reason whatsoever in law to interfere with that order. The rights of the parties would be adjudicated on merits and the Original Application was liable to be decided on merits by the Tribunal. In support of his submissions, the learned counsel placed reliance on the decisions in *Ramlal, Motilal and Chhotelal vs. Rewa Coalfields Ltd. [(1962) 2 SCR 762]*, *Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others [(1987) 2 SCC 107]*, *Hemlata Verma vs. M/s. ICICI Prudential Life Insurance Co. Ltd. and anr. [2019 (5) RCR (Civil) 504]* *B.S.Sheshagiri Setty and others vs. State of Karnataka and others [(2016) 2 SCC 123]*, *Bhivchandra Shankar More vs. Balu Gangaram More and others [(2019) 6 SCC 387]* and *N. Mohan vs. R. Madhu [2019 SCC Online SC 1497]*. It was thus submitted that the writ petitions were liable to be dismissed.

7. Shri R.M.Sharma, learned counsel for the petitioner in Writ Petition No.2898 of 2022 preferred by MP supported the arguments made on behalf of the

State by its Special Counsel. He submitted that the Tribunal having failed to consider all relevant aspects, the impugned order condoning the delay was liable to be set aside. In support of his contentions, the learned counsel placed reliance on the decision in *Basawaraj and another vs. Special Land Acquisition Officer [(2013) 14 SCC 81]*.

8. We have heard the learned counsel for the parties at length and with their assistance we have perused the material placed on record. Considering the challenge raised to the order dated 09.02.2022 passed by the Tribunal condoning the delay in raising a challenge to the order dated 08.03.2004 by which MP was appointed on the post of Garden Superintendent, it would be necessary to first refer to the pleadings of RY in the Original Application.

In para 4.3 of the Original Application it has been pleaded that though MP was junior to RY, MP was given promotion on the post of Garden Superintendent without there being any meeting of the Departmental Promotion Committee. The order of promotion was dated 08.03.2004. On getting knowledge of such illegal promotion, RY on 25.03.2004 made a representation and raised an objection to the order of promotion. Thereafter in para 4.4 reference is made to another representation dated 27.12.2005 made by RY in the same manner. Thereafter another representation dated 03.01.2007 has been referred to. RY was then promoted as a special case on the post of Garden Superintendent by the order dated 16.07.2009. He had joined on the said post under protest claiming deemed date of 01.03.2004. Thereafter when a vacancy arose on the post of Additional

Comptroller to the Governor's Household, RY was given additional charge on 07.06.2012. Thereafter on 18.05.2020 MP was selected for promotion on the post of Additional Comptroller. RY then made representations on 29.05.2020 and 16.02.2021 in that regard. Ultimately the Original Application was filed on 16.03.2021. Perusal of the representations dated 25.03.2004, 27.12.2005 and 03.01.2007 indicates that in these representations RY had raised a grievance as regards the promotion of MP on the post of Garden Superintendent. In the representation dated 07.07.2012 there is a reference made to all earlier representations dated 29.12.2003, 25.03.2004, 27.12.2005, 03.01.2007 and 17.07.2009.

9. Coming to the application for condonation of delay that was filed vide Civil Application No.338 of 2021, it has been pleaded that when the State filed its reply to the Original Application it was only on that occasion that RY got knowledge of the fact that MP was actually appointed on the post of Garden Superintendent on 08.03.2004 and not that he was promoted. This according to RY amounted to a fraud and therefore the appointment of MP on the post of Garden Superintendent was being challenged as being *void ab initio*.

The Tribunal while considering the aforesaid application has observed that there was no limitation to claim deemed date of promotion and secondly, the letter issued by RY dated 29.12.2003 showing willingness to join at Mumbai was not kept before the Selection Committee in its meeting dated 27.01.2004 and hence the Selection Committee wrongly observed that RY was not willing to join at Mumbai.

It observed that since RY was challenging the appointment/promotion of MP on the post of Garden Superintendent made in the year 2004 as well as subsequent promotion granted in 2020 alongwith a prayer for deemed date of promotion, the Original Application as filed was within limitation. It therefore allowed the civil application and observed that if there was any delay, the same was condoned.

10. By virtue of the order of condoning the delay, the Tribunal would now examine the prayers made in the Original Application which include a challenge to the order dated 08.03.2004 appointing MP on the post of Garden Superintendent as well as the subsequent order dated 20.05.2020 promoting MP on the post of Additional Comptroller in the Governor's Household. The question to be considered is whether the delay in challenging the order dated 08.03.2004 appointing/promoting MP on the post of Garden Superintendent on 08.03.2004 was within limitation.

11. At this stage, it would be necessary to refer to the decision of the Constitution Bench in *S.S.Rathore* (supra). Therein the provisions of Section 20 of the Act of 1985 were considered since the issue pertained to relief sought in a service matter reference was made to Section 20 (2) (b) of the Act of 1985. Thereunder a person is deemed to have availed of all the remedies available to him under the service Rules for seeking redressal of his grievances when no final order is made by the Government or other authority on the representation made by such person on expiry of the period of six months from the date on which the appeal was

filed or representation was made is deemed to be the period indicating that all the remedies have been availed. Reference was then made to Section 21 of the Act of 1985 and it was held that when a representation has been made, the cause of action would first accrue when such representation is disposed of. If no order is made on the representation, the right to sue would first accrue on the expiry of six months from the date when such representation was made.

The aforesaid decision thus lays down the law after interpreting the provisions of Sections 20 and 21 of the Act of 1985. On a representation being made and nothing being heard thereon for a period of six months, it is presumed that the cause of action would arise on the expiry of that period of six months.

12. In *P.S.Sadasivaswamy vs. State of Tamil Nadu* [(1975)1 SCC 152] while considering the aspect of delay and laches in challenging an order of promotion, the Hon'ble Supreme Court observed that a person aggrieved by an order promoting a junior over his head should approach the High Court at least within six months or at the most within a year of such promotion. The High Court could refuse to exercise its extra ordinary powers under Article 226 of the Constitution in case of persons who do not approach expeditiously for relief and put forward stale claims and try to unsettle settled matters. Though these observations have been made prior to the Act of 1985 coming into force, the same cannot be ignored.

In *Union of India and others vs. A. Durairaj (Dead) by LRs.* [(2010) 14 SCC 389] the provisions of Section 21 of the Act of 1985 were considered. It was held that if anyone who feels aggrieved by non-promotion or non-selection should

approach the Court/Tribunal as early as possible. If a person having a justifiable grievance allows a matter to become stale and approaches the High Court/Tribunal belatedly, grant of any relief on the basis of such belated application would result in serious administrative complications to the employer. Even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay.

Yet again in *State of Uttaranchal and another vs. Shiv Charan Singh Bhandari and others [(2013) 12 SCC 179]* it was observed that filing of repeated representations would not save the period of limitation. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and would not even remotely attract the concept of discretion.

Lastly, in *Union of India and others vs. C.Girija and others [(2019) 15 SCC 633]* it was observed that where inclusion of the name of a candidate in the select panel was issued on 09.01.2001 and the aggrieved candidate filed representation on 25.09.2007 which was after more than six and half years, the mere fact that such representation was replied by the employer on 27.12.2007 would not make a stale claim into a live claim. Filing of representation on 27.09.2007 with regard to selection made in 2001 would not result in wiping out the aspect of delay and laches.

13. Keeping the aforesaid legal position in mind, it becomes clear from perusal of various representations made by RY on 29.12.2003, 25.03.2004, 27.12.2005 and 03.01.2007 that RY was always aggrieved with the promotion of

MP on the post of Garden Superintendent. Even if none of these representations were replied by the State, nothing prevented RY from challenging the order dated 08.03.2004 on the basis of which MP was placed on the post of Garden Superintendent. If a challenge to that order would have been raised by RY by initiating appropriate proceedings, the stand of the State as to whether the order dated 08.03.2004 was in the nature of an appointment or by way of promotion would have become clear. Instead, RY waited till 20.05.2020 when MP was given further promotion on the post of Additional Comptroller of Governor's Household. While challenging that order when the State came up with a stand that though MP had been appointed on the post of Garden Superintendent, that order had not been challenged, RY amended the proceedings and sought to challenge the order dated 08.03.2004 alongwith an application for condonation of delay. The initial representation having been made on 29.12.2003 in the matter of RY's seniority *vis-a-vis* with that of MP as well as on 25.03.2004 specifically raising objection to the promotion of MP on 08.03.2004, on expiry of period of six months from failure to reply to the said representations, the cause of action accrued in favour of RY to challenge the order dated 08.03.2004. Instead, RY kept on making representations thereafter on 27.12.2005 and 03.01.2007 with the same grievance. The representations were again made on 07.07.2012 and 01.02.2019. It is thus clear that it is a case of repeated representations being made by RY since he was aggrieved by the appointment of MP on the post of Garden Superintendent on 08.03.2004. When the aforesaid legal position is applied to the said facts, it

becomes absolutely clear that the challenge now sought to be raised to the order dated 08.03.2004 in the year 2020 is highly belated. The only explanation sought to be furnished by RY is that it was only in the reply filed by the State to the Original Application that it was disclosed that the order dated 08.03.2004 issued in favour of MP was an order of appointment on the post of Garden Superintendent and not an order of promotion. Had RY immediately challenged the order dated 08.03.2004, this aspect would have been revealed to RY. It would not be permissible for RY to raise a challenge to that order by taking shelter of the stand taken by the State of Maharashtra that MP was issued an order of appointment on the post of Garden Superintendent on 08.03.2004. A plea of fraud and voidness as raised in these facts therefore becomes irrelevant and cannot furnish a valid reason to seek condonation of delay. We find that the Tribunal glossed over the aforesaid vital aspect when it proceeded to observe that the Original Application was filed within limitation and the delay if any was condoned. For this purpose, it is not necessary to enter into the details as to whether RY had given his consent for his posting at Mumbai or that he was not willing to do so. The same would have been relevant had a challenge to the order dated 08.03.2004 been raised expeditiously.

14. It is true that normally this Court would be slow in interfering with the discretion exercised by the Tribunal in condoning the delay. However as stated hereinabove material aspects of matter that are on record have been ignored while proceeding to hold that the Original Application was filed within limitation and the delay if any was liable to be condoned. As stated earlier, it has been observed in

State of Uttaranchal and another (supra) that remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and would not even remotely attract the concept of discretion. The decisions relied upon by the learned counsel for MP lay down the principles to be kept in mind while condoning the delay especially in civil proceedings. The Constitution Bench in *S.S.Rathore* (supra) having specifically laid down the law in the context of Sections 20 and 21 of the Act of 1985, the same would have to be followed.

15. We are thus satisfied that the challenge raised by RY to the appointment/promotion of MP on the post of Garden Superintendent on 08.03.2004 is highly belated and such challenge suffers from unexplained delay and laches. Numerous representations having been made immediately thereafter and the same not having been pursued, the claim as made to its illegality suffers from vice of delay and laches.

16. In the result, the following order is passed:

(i) The order dated 09.02.2022 passed on Civil Application No.338 of 2021 condoning the delay in raising the challenge to the order dated 08.03.2004 as well as the order dated 13.04.2022 passed on Review Petition No.5 of 2022 is quashed and set aside.

(ii) Original Application No.245 of 2021 shall be adjudicated in the light of prayer clauses (a), (c) to (e) therein. It is held that the challenge to the order dated 08.03.2004 is barred by limitation. It is

clarified that this Court has not examined the challenge to the order dated 20.05.2020 on merits. The Tribunal shall decide the Original Application on its own merits without being influenced by any observation in this judgment.

Rule is made absolute in both the writ petitions in aforesaid terms with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

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