

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 3438 OF 2017

Shri Pandurang Kesav Londhe and others. ... Petitioners.

V/s.

Government of Maharashtra and others. ... Respondents.

Mr. Manoj A. Patil for the Petitioners.

Mr. R. P. Kadam, AGP for Respondent Nos. 1 and 2.

SANJAY
KASHINATH
NANOSKAR

Digitally signed by
SANJAY KASHINATH
NANOSKAR

Date: 2023.11.02
15:28:38 +0530

**CORAM : NITIN JAMDAR, AND
MANJUSHA DESHPANDE, JJ.**

DATE : 30 October 2023.

P.C. :

The Petitioners who are 15 in number have approached this Court since their Miscellaneous Application No. 494/2015 taken out for condonation of delay in filing Original Application No. 312/2015 has been dismissed by the Maharashtra Administrative Tribunal by order dated 16 December 2015.

2. The Petitioners worked in Police Department of the State of Maharashtra as Assistant Sub-Inspector. A recovery was made from their salary. Though the cause of action arose for each of the petitioners separately, a combined Original Application was filed and an application for condonation of delay was taken out by the Petitioners. A chart is annexed to this petition showing the names,

dates of appointment, dates of retirement, and the details of recovery in respect of the Petitioners.

3. The Tribunal noted the dates of retirement, that is, the Petitioner No.15 retired in 2009, Petitioner Nos.13 and 14 in 2010, Petitioner Nos.4 to 9 in 2013, and Petitioner Nos.1 to 3 in 2010. The Original Application was filed in the year 2015. Therefore, the delay in all the cases was more than 2 years and in one case this order was challenged six years after the retirement. Therefore, even after retirement, ranging from two to six years, the Petitioners raised no grievance regarding recovery from their salary.

4. The Tribunal noted that the Petitioners themselves did not deny the fact that the amount recovered from their salary was not due to them and admitted that it was in excess of their entitlement. This recovery could not be considered as any continuing loss caused to the Petitioners and challenge to the same was rightly rejected. Some of the amount was already recovered. The Tribunal noted that there was no explanation for inordinate delay in approaching the Tribunal. As regards the contention on merit that the Petitioners did not mislead the Authority to unjust enrichment, the Original Application was rejected on the ground of delay in approaching the Tribunal.

5. The Petitioners relied upon the orders in respect of similarly situated employees passed by the Tribunal in Original

Application No.845/2011 (*Shri Suresh Shankarrao Mhaske v. Superintendent of Police, Kolhapur*). The first order is on 30 April 2022 and the second order is 31 October 2014 which is passed upon remand by this Court in Writ Petition No.12112/2012 on 21 September 2013. The distinguishing feature in respect of the employees in Original Application No.845/2011 is that during the hearing of the Original Application, the recovery itself was stayed and that those employees had come in time when the recovery was sought to be initiated. In the present case, the recovery is long concluded. Thereafter the Petitioners were also superannuated from the service. It is only when one set of employees had succeeded in their challenge in aforesaid two orders that the present Petitioners filed their Original Application.

6. The Tribunal has rightly concluded that the Petitioners failed to approach earlier. If there is no challenge raised in time, the Tribunal was entitled to presume, apart from delay, that the Petitioners had acquiesced to the position of recovery. Therefore, we cannot hold that the Tribunal has taken into consideration non-germane aspects or that the discretion exercised by the Tribunal in not condoning delay is perverse. Only because another view is possible on reiterating the said facts, the same cannot be a ground for interference by the High Court.

7. At this stage, the learned counsel for the Petitioners

submits that due to inadvertence the application for condonation of delay included the cases of those Petitioners whose cases were within limitation and that an opportunity be given to those Petitioners. We deprecate this state of affairs. Firstly, in spite of different facts and circumstances and cause of action, a single Original Application was filed. To make the matter worst, a common application for condonation of delay was filed including those Petitioners whose cases are now stated to be within limitation not requiring condonation of day. No argument was made that their cases be separated nor a review petition was filed thereafter seeking review of the impugned order. It is out of indulgence we observe that it is open to the Petitioners, whose cases were within limitation and did not require condonation of delay, to apply to the Tribunal for review of the impugned order as what we have confirmed is the reason for not condoning delay. If in the cases of some of the Petitioners, the Original Application is filed within limitation as contended, then the observation in the impugned order would not come in their way.

8. With the aforesaid observation, writ petition is disposed of.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)