



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 WRIT PETITION NO. 2391 OF 2022

RAMDAS TARACHAND KHAIRNAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Mr. P.P. More Advocate h/f. Mr. V.S. Panpatte Advocate for
Petitioner.

Ms. M.N. Ghanekar, A.G.P. for Resp. Nos. 1 and 2.

Mr. R.A. Joshi Advocate for Resp. Nos.4 and 5.

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CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.

DATE : 12th APRIL 2024

ORDER :

1. Present Petition has been filed to get declaration to the petitioner that he is entitled to get pay-scale of trained graduate teacher since his initial appointment dated 27th July 1989.

2. Heard learned Advocate Mr. More holding for learned Advocate Mr. Panpatte for the petitioner, learned AGP Ms. Ghanekar for respondent Nos. 1 and 2 and learned Advocate Mr. Joshi for respondent Nos. 4 and 5.

3. Learned Advocate for the petitioner has taken us through the documents and submitted that the petitioner is trained graduate teacher since the date of his appointment. The appointment of the petitioner came to be approved by the Education Officer (Secondary), Zilla Parishad, Dhule by order dated 11th July 1990 and at that time petitioner's qualification as well as pay-scale were of the trained graduate teacher. Thereafter, as regards the order regarding permanent appointment is concerned, it came to be passed on 8th November 1991. Though the educational qualification has been correctly stated, the pay-scale was wrongly considered and given as trained under graduate teacher. Thereafter the said order came to be corrected by order dated 15th December 2000 and proper pay-scale was given to the petitioner from 13th June 1998, which according to the petitioner, ought to have been given from 27th July 1989. Learned Advocate also states that the petitioner has retired from the service on 31st May 2019. He submits that due to the mistake on the part of the State, the pensionary benefits are not properly accorded to the petitioner and therefore, that mistake is required to be corrected.

4. It is to be noted that the cause of action appears to have

been occurred to the petitioner after the order was passed on 8th November 1991 on the first occasion and thereafter on 15th December 2000 when the correction was made in the pay-scale which was not from the date of initial appointment of the petitioner. Present Petition has been filed on 12th January 2022 and therefore, it suffers from delay and laches. The contention of learned Advocate Mr. More that the petitioner was submitting representations one after the other, does not advance his case further. Decisions of the Supreme Court are legion that repeated representations neither extend the cause of action for enforcing a right under Article 226 nor the period of limitation, wherever applicable. The delay and laches in invoking the writ jurisdiction cannot be explained by referring to the act of the petitioner submitting repeated representations on the same issue although the inaction / omission of the respondent to consider such representations could sufficiently be viewed as an implied refusal to address the claim.

5. At this stage, a prayer is made by Mr. More for direction to the respondents to consider the petitioner's representation. We regret, such a direction cannot be routinely passed in view of the decision in *Union of India vs. M.K. Sarkar*, reported in (2010) 2

SCC 59, where the Supreme Court sounded caution in the following words:-

"16. A court or tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct 'consideration' without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

6. Since the petitioner has approached the Court with a stale claim and there is also gross delay and laches, we do not find this to be a fit case where we should exercise our constitutional powers under Article 226 of the Constitution of India. The Writ Petition stands dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/APR24