



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3936 OF 2024

Sarjerao s/o Ashruba Gadekar .. Petitioner

versus

The Union of India & others .. Respondents

Mr. S. S. Wagh, Advocate for the Petitioner.

Mr. R. B. Bagul, Standing Counsel for Union of India.

**CORAM : RAVINDRA V. GHUGE AND
R. M. JOSHI, JJ.**

RESERVED ON : 17th APRIL, 2024.
PRONOUNCED ON : 24th APRIL, 2024.

PER COURT : (Per R. M. Joshi, J.)

1. Being aggrieved by the order dated 07.02.2024, passed in Original Application No. 165/2022, by the Central Administrative Tribunal, Mumbai, Bench at Mumbai, the present Petition has been filed.

2. It is the case of the Petitioner that he was appointed on 22.12.1990 as a driver in the office of Respondent No. 3 on temporary basis. On 19.12.1992, he was made permanent in the service. On 31.01.1997, without any reason, Respondent No. 1 issued an order of suspension against the Petitioner. It is further alleged that on

04.03.1997, without holding any enquiry, Respondent No. 3 terminated the services of the Petitioner and as such, the said order of termination is illegal and void *ab initio*. The Petitioner approached the Tribunal by filing Original Application No. 1021/1997 wherein by order dated 09.07.2001, Respondent No. 1 was directed to take decision on the Representation/Appeal filed by the Petitioner on 23.08.2001. The Petitioner claims that the Respondents never communicated the decision on his Appeal/Representation till 2017, for 16 years. He, therefore, filed an Application under Right to Information Act and a reminder was also issued on 01.02.2018 seeking information with regard to the Appeal. In response to the said communication, it was informed to the Petitioner on 01.02.2018 about a decision being taken in the Appeal on 22.10.2001 rejecting his request for reinstatement in service. The Petitioner, therefore, after 4 years, preferred Original Application No. 165/2022 before the Central Administrative Tribunal taking exception to his termination from service.

3. The learned Tribunal, by passing the impugned order, has dismissed the Application on the ground of delay. It is observed

that there is no sufficient cause made out by the Petitioner for condonation of delay.

4. The learned Advocate for the Petitioner submits that the Petitioner was Class IV employee and as such was not fully conversant with the procedure of law and therefore, it is a fit case for condonation of delay. The learned Advocate for the Respondents opposed the said contention by referring to the facts of the case and relying upon the judgment of the Hon'ble Supreme Court in case of Pathapati Subba Reddy (died) by LRs & others vs. The Special Deputy Collector (LA), in **Special Leave Petition (Civil) No. 31248/2019**.

5. The law on the point of condonation of delay is fairly settled to say that the length of delay is not much material if a party is in a position to provide sufficient cause or reason beyond its control for condonation thereof. At the same time, the law contemplates that inordinate delay should not be condoned unless extra ordinary case has been made out by the party and there is no negligence and/or want of due diligence on the part of such party.

6. In this backdrop, the facts of the present case indicate that though the Petitioner was working as a driver, he was terminated from service on 04.03.1997. He had preferred a Departmental Appeal against the said termination in the year 2001, after 4 years. The Petitioner has claimed that the decision in the Appeal was never communicated to him and hence he made Application under Right to Information Act in the year 2017. Such information was provided to him on 01.02.2018. This shows that from 2001 till 2017, i.e. at least for a period of 16 years, the Petitioner did not even bother to know about outcome of the Appeal filed by him against termination. Even if it is accepted for the sake of argument that the Respondents did not communicate the said order to the Petitioner, but admittedly, on 01.02.2018, in response to the Application under Right to Information Act, it was within the knowledge of the Petitioner about the said decision being taken in Appeal on 22.10.2001. Even thereafter, the Petitioner did not file any proceeding against the said termination and rejection of Appeal before the Tribunal till 2022. If the Petitioner came to know about dismissal of his Appeal on 01.02.2018, he ought to have preferred such proceeding immediately before the Tribunal. Even though, we consider the period of Covid 19 Pandemic, still the Application is filed

in the year 2022. These facts clearly indicate that the Petitioner is not diligent in pursuing his cause before the Court of law.

6. It would be fruitful to make reference to the judgment of Hon'ble Supreme Court in case of Pathapati Subba Reddy (supra) wherein while dealing with the issue of limitation it is observed thus :-

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of

substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.

7. In the light of the above legal position settled by the Hon'ble Supreme Court, the facts of the present case clearly indicate

that there is inordinate delay in preferring the proceeding challenging the order of termination of the Petitioner from service. The Petitioner is not found diligent and infact negligent in not filing the Application before the Tribunal in time. There is nothing to indicate that Petitioner was prevented from filing proceedings for reason beyond his control. We, therefore, are unable to persuade ourselves to condone the delay inspite of the fact of Petitioner being a Class IV employee.

8. Having regard to the facts and circumstances of the case and reasons recorded by the learned Tribunal in impugned order, we do not find any case being made out by the Petitioner to cause any interference therein. Hence, the Writ Petition stands dismissed.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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