



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5592 OF 2021

Dwarkabai w/o Prabhakar Ramteke .. Petitioner

versus

The State of Maharashtra & others .. Respondents

Mr. A. G. Dalal, Advocate for the Petitioner.

Mr. V. S. Badakh, AGP for Respondent Nos. 1 to 4.

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

RESERVED ON : 2nd MAY, 2024.
PRONOUNCED ON : 8th MAY, 2024.

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

1. The Petitioner, being aggrieved by the refusal of condonation of delay in M.A. No.65/2018 in Original Application Stamp No. 883/2016 by the Maharashtra Administrative Tribunal (for short “the Tribunal”), has preferred this Writ Petition under Articles 226 and 227 of the Constitution of India.

2. It is the case of the Petitioner that her husband Prabhakar Wanganuji Ramteke was in service of Tahsil Office, Jintoor as a clerk with effect from 23.01.1968. He died while in service on 30.06.1985 after performing 17 years of service. The Petitioner

claims that her marriage with Prabhakar was solemnised in 1984 after his first wife Rukhminibai died on 04.07.1984. The Petitioner claims to be the legally wedded wife of Prabhakar and therefore seeks pensionary benefits. It is further case of the Petitioner that she had filed an Application for seeking family pension but since no action was taken, a proceeding was filed before the Tribunal for seeking retiral benefits of the deceased Prabhakar. The said Application, however, was not entertained for the reason that Dadaji, the brother of deceased Prabhakar, had obtained succession certificate from the competent Court. The Petitioner, therefore, was required to prefer proceeding bearing M.A.(R.J.E.) No. 2/2006 for revocation of the succession certificate dated 17.04.1986 issued by the Civil Court, Jintoor in favour of the brother of the deceased. The said Application was allowed and the succession certificate issued in favour of the brother of the deceased was revoked. Thereafter, the Petitioner preferred another Application bearing Misc. Civil Application No. 10/2009 before the Civil Judge, Senior Division, Jintoor for grant of heirship certificate, which came to be allowed in her favour. On 17.07.2010, the Petitioner submitted heirship certificate to the office of Respondent No. 2 requesting for grant of pensionary benefits. The said representation however, was not considered and hence the

Original Application was filed before the Tribunal for the said relief. Misc. Application No. 65/2018 which was filed in Original Application Stamp No. 883/2016 was rejected by the Tribunal and hence this Petition.

3. Respondent No. 4 filed reply contending that his office does not act on its own volition, but authorizes pensionary benefits only on receipt of proper pension papers duly attested by the Sanctioning Authority of the State Government. It is also pointed out that the Tribunal has refused to condone the delay and in the facts of the case, grant of relief is opposed.

4. We have heard the learned Advocates for both the sides extensively and perused the material record placed before this Court.

5. At the outset, it needs to be recorded that the learned Tribunal has not decided the Original Application of the Petitioner on merit but has passed an order on the Application for condonation of delay, thereby rejecting the same. Therefore, the only issue that falls for consideration before this Court is as to whether the delay caused

in preferring the Original Application before the Tribunal, deserves to be condoned.

6. The law on the point of condonation of delay is fairly settled to say that inordinate and unexplained delay need not be condoned. However, at the same time, there is no complete embargo on the Court for condoning delay in appropriate cases where the fundamental rights of the party are affected and there is no deliberate/intentional act in moving the Courts in reasonable time. Needless to say that the number of days of delay or time would not be relevant but the peculiarity of the fact and the explanation given by the party would be more relevant for condonation/non-condonation thereof.

7. The learned Advocate for the Petitioner has relied upon the judgment of the Hon'ble Supreme Court in case of S. K. Mastan Bee vs. General Manager, South Central Railway and another, **(2003) 1 Supreme Court Cases 184**, wherein, according to him, in the same set of facts the delay was condoned with observation that denial of pension to the Petitioner was violation Article 21 of the Constitution of India.

8. The learned AGP opposed the said contention on the ground that the Tribunal has taken into consideration the said judgment and has distinguished the facts in both the cases and as such no interference is called for in the impugned order.

9. In order to decide as to whether the delay caused in filing of the Application deserves to be condoned or not, it would be relevant to take into consideration the facts of the case in hand. On perusal of the record we find peculiar set of facts involved herein. The Petitioner is the second wife of deceased Prabhakar. In the year 2006, she did file Application before the Tribunal for seeking pensionary benefits after death of her husband. The said Application however, was rejected for the reason that Dadaji, the brother of Prabhakar had obtained succession certificate from the competent Court. The Tribunal therefore held that it would not be possible to pass any order till such succession certificate issued in favour of the brother of the deceased is revoked. The Petitioner, therefore, was required to prefer proceeding before the concerned Court bearing M.A.(R.J.E.) No. 2/2006 for revocation of succession certificate dated 17.04.1986. The concerned Court revoked the succession certificate issued in favour of the brother of the deceased. It is after this, the

Petitioner was required to file another Application bearing Misc. Civil Application No. 10/2009 for the purpose of issuance of heirship certificate in her favour. The said heirship certificate came to be granted on 17.02.2010. After obtaining the heirship certificate, the Petitioner moved representation before Respondent No. 2 with a request for grant of pensionary benefits in view of issuance of heirship certificate in her favour. The Petitioner also claims that she made several representations but they were not responded to by Respondent No. 2.

10. No doubt, apparently it seems that after obtaining heirship certificate on 17.02.2010, an Application came to be filed before the Tribunal in the year 2016 i.e. after six years. However, at the same time, one cannot ignore the fact that the first Application filed before the Tribunal was rejected only on the ground that there was succession certificate issued in favour of the brother of the deceased and till the time the same is revoked, it was not open for the Tribunal to pass any order in favour of the Petitioner. In the backdrop of this order, the Petitioner initiated proceeding for revocation/cancellation of the succession certificate issued in favour of the brother of the Petitioner and subsequently obtained heirship

certificate in her favour. All these facts clearly indicate that the Petitioner was vigilant about her rights and had initiated a proceeding to establish the same before the competent Courts. It is only after making representation to Respondent No. 2 on the basis of heirship certificate, she did not file Application before the Tribunal immediately. We have reason to believe that the Petitioner was under a bonafide belief that obtaining the heirship certificate would serve her purpose and she would be granted benefits. Pertinently, there is nothing on record to indicate that Respondent No. 2 has even considered the said representation and/or has refused the same in order to give cause of action to the Petitioner to file Application before the Tribunal.

11. In our considered view, the learned Tribunal has missed the said issue/aspect of the matter. We are, therefore, of the view that this is not a case wherein there is any inaction; deliberate or otherwise, on the part of the Petitioner in not filing the Application before the Tribunal in time. So also, the law recognizes the right of the Petitioner to the service benefits of her deceased husband and the delay caused should not be an impediment to deprive her of those

benefits in her old age, when she has no source of income to sustain herself. We, therefore, find it to be a fit case for condonation of delay.

12. We have perused the order passed by the Tribunal which indicates that the rejection was only on the ground of delay without touching the merits of the case. We, therefore, do not wish to record any finding on the merits of the matter. Hence, this Writ Petition is allowed. The impugned order passed by the learned Tribunal, is set aside. Misc. Application No. 65/2018 filed in Original Application Stamp No. 883/2016, stands allowed. The Original Application be registered. The Tribunal is requested to decide the Original Application within a period of six months.

(R. M. JOSHI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

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