



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11211 OF 2024

Dilipkumar Baban Bhambre,
Age-65 years, occu:Pensioner,
R/o-Bhambre Mala, Nalegant,
Nagar-Kalyan Road, Ahmednagar.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through It's Secretary,
Urban Development Department,
Mantralaya, Mumbai,
- 2) The Commissioner,
Ahmednagar Municipal Corporation,
Ahmednagar.

...RESPONDENTS

...
Mr. Santosh S. Jadhavar Advocate for Petitioner.
Mr. A.D. Wange, A.G.P. for Respondent No.1.

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

DATE : 9th OCTOBER, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Heard learned counsel appearing for the petitioner.
2. The petitioner invokes the constitutional powers of this Court under Article 226 of the Constitution of India to seek grant

of benefit of time bound promotion scheme to him with effect from 4th July 2008 and to fix his salary in higher pay scale and accordingly to fix the pension and pensionary benefits payable to him with consequential relief.

3. The petitioner submits that he was appointed as *Bigari* by respondent No.2, however, he was assigned with the work of clerk since beginning till his retirement on 31st May 2019. He was rendering the said service for more than 12 years on class-IV post. He had approached the Industrial Court, Ahmednagar to seek the promotion but his complaint came to be rejected and therefore, he had approached this Court by filing Writ Petition No.1019 of 1990 to challenge the said order of rejection of the complaint by the learned Member, Industrial Court, Ahmednagar. During pendency of the Writ Petition, the petitioner was made permanent on the post of *Bigari* and therefore, he had withdrawn the said Writ Petition. This Court, while disposing of the said Petition, had directed the respondent Council to consider the case of the petitioner sympathetically for grant of promotion whenever occasion arises. The petitioner came to be appointed on regular basis by respondent No.2 as *Bigari* by appointment order dated 2nd July 1996 but he was assigned with the duty of clerk. Respondent No.2 had not considered his case for

promotion. Government of Maharashtra had then framed scheme of time bound promotion vide Government Resolution dated 8th June 1995. Petitioner was not given the benefit in respect of the same. He retired by attaining the age of superannuation. The petitioner, thereafter, decided to approach this Court in August 2019. The petition was prepared, he had sworn the same on 4th August 2019. The matter was ready for filing, however, the clerk of the Advocate inadvertently failed to file the same. Due to Covid-19 Pandemic, he had not pursued the said matter with the Advocate and when the case status was checked by the petitioner's name, it could not be found out and then it was revealed that the petition itself has not been filed and therefore, he has approached now.

4. Learned Advocate for the petitioner reiterated all those facts and submitted that since the grievance is regarding non grant of monetary benefits, which is a continuous and recurring grievance / cause of action, it can be entertained belatedly and therefore, the petition does not suffer from delay and laches.

5. It is not even necessary to issue notice to respondent No.2. Learned AGP has waived notice for respondent No.1.

6. The first and foremost fact to be noted is that though the

petitioner had approached this Court earlier and by order dated 19th August 2006, while disposing of the Writ Petition No.1019 of 1990, this Court had stated that the case of the petitioner be considered sympathetically for promotion whenever occasion arises, it is hard to believe that no occasion arose since 2006 till 31st May 2019 wherein petitioner's name could be considered for promotion. Another fact to be noted is that now the petitioner is not seeking or cannot seek prayer for promotion since he has retired from service. He intends to seek the prayer for benefit of time bound promotion scheme, but it is stated to be with effect from 4th July 2008. He has produced on record a communication by his union dated 31st July 2008. Thereafter directly on 1st September 2014 the petitioner has made an application to respondent No.2 for promotion. Similar was the communication on 16th April 2019 wherein he has stated that in all 13 employees were granted promotion by order dated 1st July 2009 and 32 employees were granted promotion by order dated 31st October 2018, which according to him, by superseding him. That means, there were occasions in the past but the petitioner had not approached the appropriate forum. In both these communications, he never asked for grant of benefit of time bound promotion to him. He seeks writ of mandamus but never

made communication or demand to respondent No.2 till his retirement.

7. Now, there is some document to show that petitioner had tried to approach this Court in 2019 but due to the mistake of clerk of the Advocate, the said petition was not filed. Covid-19 pandemic was over in 2022. He has not even pursued the matter with his Advocate for two years thereafter also. Under such circumstance, the Petition certainly suffers from delay and laches. It cannot be said that the petition only concerns the monetary benefits. It is in respect of the claim for promotion and then in spite of eligibility if that promotion is not granted as the person cannot be accommodated due to limited posts, then only he would come within the said scheme. Here, there was no question of considering his name for promotion and even if it was there, he never agitated the same at the relevant time. Therefore, we do not find this to be a fit case where we can exercise our constitutional powers.

8. The Writ Petition stands dismissed, at the threshold.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE