



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO. 15465 OF 2023 IN
REVIEW APPLICATION (ST.) NO. 38006 OF 2023 IN
WRIT PETITION NO 748 OF 2021**

Bhagwan Shikshan Prasarak Mandal
Through its Secretary
Dr. Rajeev Yadavrao Khedkar,
Age – 64 years, Occu. Medical Practitioner,
Having its registered office at
Bhagwan Shikshan Prasarak Mandal's
Premises, Dr. Y.S. Khedkar Marg,
N-6, CIDCO, Aurangabad

.. Applicant

VERSUS

The State of Maharashtra
Through the Secretary,
Technical Education Department,
Mantralaya, Mumbai – 32 and others

.. Respondents

...
Advocate for applicant : Mr. Atul M. Karad
AGP for the respondent – State : Mr. G.A. Kulkarni
Advocate for respondent no. 6 : Mr. Ganesh Gadhe
Advocate for respondent no. 7 : Mr. K.M. Suryawanshi
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 16 FEBRUARY 2023
PRONOUNCED ON : 20 FEBRUARY 2023**

ORDER (MANGESH S. PATIL, J.) :

This is an application seeking condonation of delay of 406 days in preferring the review application in respect of the order passed in writ petition no. 748 of 2021 dated 27-09-2022 by the respondent no.5 therein, which is the management which was running a Pharmacy college.

2. We have heard both the sides.

3. The respondent no. 7 herein had filed writ petition no. 748 of 2021 being an employee of the Pharmacy college which was being run by the applicant, seeking benefit of 6th pay commission recommendations pursuant to the government resolutions dated 12-08-2009 and 20-08-2010 with effect from 01-11-2006. By the order which is sought to be reviewed, the writ petition was allowed. Applicant – management was directed to extend the benefit to him and directing them to pay the arrears within eight weeks.

4. Learned advocate Mr. Karad for the applicant – management submits that identical issue was raised by some other employees of the same Pharmacy college being writ petition no. 11259 of 2017. It was allowed by the order dated 28-08-2019. Civil appeal no. 6229 of 2023 was filed before the Supreme Court against that order. Civil appeal was decided on 26-09-2023, categorically observing that the employees in that petition should have been granted arrears only for three years prior to the filing of the writ petition and without any interest, by applying the decision in the matter of ***Union of India and others Vs. Tarsem Singh; (2008) 8 SCC 648***. He submits that in view of such supervening event, the review application has been filed belatedly.

5. Delay has not been caused deliberately or intentionally. **Tarsem Singh** could not be pointed out to this Court which decided writ petition by the order under review. If the delay is not condoned, it would cause serious prejudice to the applicant and the delay be condoned.

6. Per contra, learned advocate for the respondent no. 7 strongly opposed the application. By adverting our attention to the affidavit in reply, he at the outset, submitted that the application does not even attempt at demonstrating some cause which had prevented the applicant from filing the review application in time. He would submit that the applicant is the management which is taking a chance. It could have preferred the review application within time. No attempt was ever made to challenge the order sought to be reviewed.

7. He would submit that this was not an isolated matter of the kind. Similar such petitions were filed by different staff members which were all contested by the applicant – management. Only after the recent order of the Supreme Court in civil appeal no. 6229 of 2023, the application seeking review has been preferred.

8. He would submit that, in fact, the review itself would not be maintainable in the light of Explanation to Order XLVII Rule 1, of the Code of Civil Procedure. Subsequent decision of the Supreme Court in

civil appeal no. 6229 of 2023 cannot be a legally sustainable ground. He would submit that in the absence of even an attempt to explain the delay, this Court cannot exercise even the discretion. The delay is huge and has not at all been explained.

9. He would refer to the decisions in the matters of :

i) Office of the Chief Post Master General and others Vs .Living Media India Limited and Another; 2012 DGLS (SC) 12

ii) Basawaraj and Another Vs. The Special Land Acquisition Officer; 2013 AIR SCW 6510 and

iii) Majji Sannemma Alias Sanyasirao V. Reddy Sridevi and others; AIROnline 2021 SC 1231

10. We have considered the rival submissions and perused the papers.

11. Indeed, the law of limitation is harsh but has its own place in law. It gives finality to the decisions of the Court. The provisions of the Limitation Act, 1963 have to be applied rigorously.

12. A bare perusal of the civil application demonstrates that it is absolutely devoid of even an attempt to explain the long delay of 406 days. There is no dispute about the period of delay. In the absence of even an attempt to explain the delay, we are emboldened to state that the application is liable to be rejected.

13. Even if some pragmatic view is to be adopted, even according to the applicant – management, it is pursuant to the decision

of the Supreme Court in civil appeal no. 6229 of 2023 realizing the fact that even a similar relief can be had in the present matter as well, that the review application has been preferred belatedly.

14. Apart from the fact that by virtue of explanation to Rule 1 of Order XLVII of the CPC, such subsequent decision cannot be a ground to seek review, even that civil appeal was decided by the Supreme Court on 26-09-2023 and the present review application together with the delay condonation application has been filed on 11-12-2023 i.e. after about 2-1/2 months of the decision of the civil appeal. The application is conspicuously silent as to why the review was not filed immediately after the Supreme Court decided the civil appeal on 26-09-2023. Thus, even for such subsequent period, not even an attempt has been made to explain the delay.

15. In fact, the period of limitation had started running since the date the writ petition was decided i.e. 27-09-2022. It was imperative for the applicant not only to have explained the circumstances which prevented it from seeking review within the statutory time after the Supreme Court decided the civil appeal but even in respect of the period prior thereto. Since the applicant – management has miserably failed even to offer some explanation in respect of the delay, to demonstrate that it was prevented by some cause from seeking the review, in our considered view, it is not entitled

to have the delay condoned by resorting to section 5 of the Limitation Act.

16. We need not delve deep by referring to the aforementioned decision cited by the respondent no. 7. We have borne the principles in mind and have no hesitation in concluding that there was no sufficient cause for the applicant – management in filing the review application.

17. It is true that the order under review does not refer to the principles laid down in **Tarsem Singh**. It is also apparent that in civil appeal no. 6229 of 2023 which was in respect of some other employees of the same management, the Supreme Court modified the order of this Court by applying the principle laid down in **Tarsem Singh**. However, in our considered view, the merits of the review application would not be germane to the enquiry in to the application for condonation of delay in preferring the review. We, therefore, cannot accept the submission of the learned advocate for the applicant that merely because the order under review does not refer to **Tarsem Singh** that itself would be a sufficient ground to condone the delay.

18. The application is rejected.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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