

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1457 OF 2024

1. **Government of Maharashtra,**
through Secretary, Public Health
Department, having its office
at G. T. Hospital Compound,
Fort, Mumbai
2. **District Tuberculosis Officer,**
District Tuberculosis Centre, Raywadi
Complex, Alibag,
District Raigad 422 201.
3. **Office of Accountant General,**
Maharshi Karve Road, Fort,
Mumbai – 400 021. ...Petitioners

Versus

Shri. Bhimrao Tulsiram Lahupachang,
Retired Laboratory Scientific Officer,
Office of District Tuberculosis Officer,
Raywadi Complex, Alibag, District Raigad,
402 201 and residing at Aakar Building,
2nd Floor, Chendhare Shivaji Nagar,
Alibag, District Raigad. ...Respondent

Mr. N. K. Rajpurohit, AGP for the Petitioner (State).

Ms. Advaita M. Lonkar i/b. Mr. Om M. Lonkar for Sole Respondent.

CORAM : A. S. CHANDURKAR,
JITENDRA JAIN, J.J.

DATE : 7th FEBRUARY 2024.

JUDGMENT :- (Per Jitendra Jain, J.)

1. By this petition under Article 226 and 227 of the Constitution of India, the Petitioner-State seeks to challenge an order of the Maharashtra Administrative Tribunal (for short “Tribunal”) dated 10th December 2018, whereby the Original Application No.896 of 2018 filed by the Respondent herein is allowed.

2. Brief facts are as under:-

- (i) The Respondent was appointed as Laboratory Technician with the Petitioner-State and falls in Group ‘C’ in Government Service.
- (ii) On 31st March 2017, the Respondent retired from the said service.
- (iii) On 10th July 2017, the Petitioner No.2 passed an order rectifying fixation of the pay scale of the Respondent at Rs.6,500/- which was wrongly fixed in 2000 at Rs.6,700/-. Therefore, the recovery was sought from the Respondent retirement dues and out of retirement benefits, Rs.60,000/- was recovered and the balance was directed to be recovered at Rs.7,500/- per month from the pension of the Respondent.
- (iv) The Respondent challenged the aforesaid order before the Tribunal in OA No.896 of 2018. The Tribunal vide its order dated 10th December 2018 allowed the said OA by quashing the order dated 10th July 2017 and further the order of recovery was set aside and

the amount of Rs.60,000/- recovered was directed to be refunded with interest. The Tribunal relied upon the decision in the case of **State of Punjab & Ors. Vs. Rafiq Masih**¹.

(v) It is on this backdrop that the present petition is filed by the Petitioner-State challenging the order of the Tribunal dated 10th December 2018.

3. We have heard learned counsel for the Petitioners and Respondent and with their assistance have perused the records of the present petition.

4. At the outset, the Respondent raised a preliminary ground on the delay in filing the present petition after 5 years from the impugned order and submits that the cause stated in the writ petition does not constitute sufficient cause for this Court to entertain the present petition at such a belated stage. The Petitioner relied upon paragraph 16 and 17 of the petition and prayed that there is a sufficient cause for condoning the delay and, therefore, the present petition should be entertained.

5. We have perused paragraph 16 and 17 of the petition relied upon by the Petitioner to ascertain, whether the Petitioners were prevented from sufficient cause to file the present petition after a period of 5 years. Although, no time limit is provided to file a writ petition, there has to be a reasonable time frame within which the Petitioner can

¹ (2015) 4 SCC 334

approach this Court under Article 226 of the Constitution of India. In the present case on a perusal of paragraph 16 and 17, we do not find that the Petitioner has made out a case for this Court to exercise its discretion to condone the delay.

6. The Petitioner in paragraph 16 has stated how the impugned order dated 10th December 2018 travelled from presenting officer to District Tuberculosis Officer and further to Deputy Director and to the Commissioner after which on 9th January 2019, the District Tuberculosis Officer sent a letter to the Commissioner and Director Public Health seeking its opinion. The said paragraph further states that the Government approved the filing of the writ petition on 21st September 2019 and thereafter, the papers were submitted to the Government Pleader on 12th December 2019. Thereafter, in paragraph 17, the Petitioners have relied upon the Covid period for explaining the delay. The Petitioner further stated that on 31st May 2022, the District Tuberculosis Officer retired and the successor took charge on 1st June 2022 and, thereafter, the charge was given to another person on 11th October 2022 upto 16th July 2023.

7. In our view, the lock down was announced on 20th March 2020, which is almost after 1 year and 4 months from the date of the impugned order. During this period, it is not the case of the Petitioner that they did not file other writ petitions, which also went through the

same process of approval at various stages and there was a delay. The solitary instance of the file being moved from one department to another department cannot be a ground which could be construed as sufficient cause. Furthermore, the Supreme Court only extended limitation period which expired post 20th March 2020, but the said decision cannot be construed to mean that the matters which were delayed or have become time barred before March 2020 would also get the protection of the Covid period. Furthermore, the Petitioner from May 2022 to July 2023 have referred to change of person incharge on account of superannuation, but that could hardly be a ground to treat the same as sufficient cause when examined from December 2018. There is no explanation from July 2023 to January 2024 when the writ petition was filed. In our view, the averments made in paragraph 16 and 17 are general averments and would not constitute “Sufficient Cause” for this Court to condone the delay of 5 years in filing the present petition. Therefore, on this count itself, the petition is to be dismissed.

8. However, we have perused the order of the Tribunal dated 10th December 2018. The Tribunal has relied upon the decision of the Supreme Court for quashing the recovery from Group ‘C’ employee. We do not find any wrong in the Tribunal following the decision of the Supreme Court which squarely covers the case of the Petitioner.

Furthermore, the Tribunal has not adjudicated upon the powers of the Petitioner to fix the pay scale on account of mistake but what is quashed by the Tribunal is the order of recovery and the said order is in consonance with the decision of the **Rafiq Masih (supra)**.

9. We, however, clarify that the issue of powers of the Petitioner to refix the pay scale on account of mistake is kept open for being raised in appropriate case.

10. In view of above, the petition is dismissed. No order as to costs.

[JITENDRA JAIN, J.]

[A. S. CHANDURKAR, J.]