

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 9672 OF 2024

Avinash Madhukar Ahire }*Petitioner*

: *Versus* :

The Commissioner, Nashik

Municipal Corporation, Nashik and anr. }*Respondents*

WITH

WRIT PETITION NO. 10830 OF 2023

The Commissioner, Nashik Municipal

Corporation, Nashik and anr. }*Petitioners*

: *Versus* :

Avinash Madhukar Ahire }*Respondent*

Ms. Nivedita Deshpande, for the Petitioner in WP-9672-2024
and for Respondent in WP-10830-2023.

Ms. Chaitrali Anand Deshmukh, for the Petitioner in WP-
10830-2023 and for Respondent in WP-9672-2024.

CORAM : SANDEEP V. MARNE, J.

Dated : 19 August 2024.

P.C. :

1) These are cross petitions filedg by the employer-
Municipal Corporation and the employee challenging the
judgment and order dated 20 September 2022 passed by the

Industrial Court, Nashik in Complaint (ULP) No.103/2018. The Industrial Court has partly allowed the complaint and while observing that the employee is already promoted as junior Clerk vide order dated 25 May 2010, it has directed the Municipal Corporation to give all promotional and consequential benefits attached to the promotional post of Junior Clerk from 30 September 2007. While the Municipal Corporation is aggrieved by the entire judgment and order dated 20 September 2022 and has filed Writ Petition No.10830/2023, the employee is aggrieved by the order of the Industrial Court to the limited extent of non-grant of promotional and consequential benefits w.e.f. 20 December 2000.

2) I have heard Ms. Deshmukh the learned counsel appearing for the Municipal Corporation in support of Writ Petition No. 10830/2023 and for opposing Writ Petition No.9672/2024. Ms. Deshmukh would submit that the employee was appointed on the post of 'Safai Kamgar' w.e.f. 20 December 2000 on compassionate grounds as per the Lad-Page Committee recommendations considering his educational qualifications. That he was not qualified to be appointed in class-III category at the time of his initial appointment. That he came to be subsequently promoted to the post of Junior Clerk w.e.f. 24 May 2010. That he filed complaint after 18 long years from the date of initial appointment, which was clearly time barred and could not have been entertained by the Industrial Court. That even after grant of

promotion to the post of Junior Clerk on 24 May 2010, there was delay of 8 long years in approaching the Industrial Court. She would submit that having accepted initial appointment on the post of 'Safai Kamgar' without any demur, the employee could not have turned around and filed complaint after 18 long years. She would submit that grant of the benefit of retrospective promotion to employee would create administrative difficulties and would unsettle the settled seniority for the last 18 long years. She would therefore pray for setting aside the judgment and order dated 20 September 2023.

3) *Per-contra*, Ms. Deshpande, the learned counsel appearing for the employee in support of Writ Petition No. 9672/2024 and for opposing Writ Petition No. 10830/2023 would submit that the Municipal Corporation has discriminated the employee visa-a-vis other similarly situated persons. She would submit that in respect of several other similarly situated persons, they were absorbed in Class-III cadres from time to time as indicated in para-10 of the Complaint. She would further submit that the objection of limitation was not even raised in the Written Statement filed by the Municipal Corporation. She would submit that in any case, the cause of action for the employee was of continuous nature and that therefore the Complaint cannot be said to be time barred. She would submit that the Petitioner has filed several representations as detailed in para-7 of the complaint and was continuously corresponding with the Municipal Corporation with regard to injustice meted out to him. She would

submit that the Industrial Court has rightly held the employee eligible for grant of promotion as Junior Clerk from retrospective date. However, while doing so, the Industrial Court has erroneously directed grant of consequential financial benefits only from 13 September 2007, when in fact the promotion as well as the financial benefits ought to have been granted to the employee from the date of his initial appointment i.e. 20 December 2000. She would accordingly pray for allowing Writ Petition No.9672/2024 and for dismissal of Writ Petition No.10830/2023.

4) I have considered the submissions canvassed by the learned counsel appearing for the parties. It appears that the employee's mother was working in the Municipal Corporation, possibly on the post of Sweeper. As per the recommendations of the Lad Page Committee, wards of employees engaged as Sweepers are to be considered for compassionate appointments upon retirement of the employee. This is how, the Complainant requested for his appointment on compassionate grounds in place of his mother. It is Complainant's contention that he held the qualifications of B.E. Honours, LGS, LSGD and MSCIT at the relevant time and ought to have been granted appointment in Class-III category. He complained that despite being fully qualified for being appointed in Class-III cadre, he was deliberately granted appointment in Class-IV Cadre as 'Safai Kamgar' by giving discriminatory treatment to him. The appointment of the Complainant was effected on 20 December

2000. If the Complainant felt aggrieved by grant of appointment in lower category, he ought to have filed Complaint before the Industrial Court within reasonable time of his appointment after 20 December 2000 by making necessary representation. If the averments in para-7 of the Complaint are taken into consideration, it does appear that the Complainant addressed first representation on 16 June 2001. Though copy of the said representation is not available on record and therefore the exact purpose for which the same was made is difficult to comprehend at this junction, suffice it to observe that if the representation was not acted upon, the Complainant ought to have waited for some reasonable time for response from the Municipal Corporation and ought to have filed Complaint before the Industrial Court thereafter. However, it appears that the Complainant simply kept on making representations to the Municipal Corporation and did not adopt any remedy in respect of his grievance. It is well settled law that making repeated representations does not extend the period of limitation. Reference in this regard can be made to the judgment of Apex Court in ***S.S. Rathore Vs. State of Madhya Pradesh*** (1989) 4 SCC 582.

5) Even on merits, it appears that the employee had no case. As against the grievance of the Complainant that he was fully eligible to be appointed in Class-III category, the Municipal Corporation filed written statement contending that as on 15 December 2000, the Complainant possessed qualifications of only

SSC and Graduation. According to the Municipal Corporation it was necessary for the Complainant to also possess the qualifications of LSGD, MSCIT, as well as Marathi Typing at 30 w.p.m. and English Typing at 40 w.p.m. It is on account of non-possession of these eligibility criteria that the Complainant was offered appointment in Class-IV Cadre. It appears that the Complainant acquired LSGD qualification in June 2002, MSCIT qualification in June 2003. Similarly, he acquired the qualification of Marathi and English Typewriting in August 2002. Thus the employee was not qualified to be appointed in class-III category as on the date of his first appointment.

6) Without going into the merits of the claim of the Complainant any further, the Complainant apparently did not adopt any remedy in respect of this cause of action for considerable period of time. In the meantime, he came to be promoted to the post of Junior Clerk on 25 May 2010 and he was assigned seniority in the Cadre of Junior Clerk w.e.f. 23 December 2009. Again the Complainant failed to adopt any remedies and went on making representations intermittently. He made representations dated 7 October 2011, 4 August 2012, 4 May 2016 and 14 February 2018. The representation dated 14 February 2018 is on record which was made for taking objection to the final seniority list of 2016. In the said representation, the Complainant prayed for placing his name in the seniority list of Junior Clerk w.e.f.. 20 December 2000. Thus, the representation dated 14 February 2018 was not for granting promotion to the post of

Junior Clerk from retrospective date or for changing his appointment from the post of 'Safai Kamgar' to the post of 'Junior Clerk'. The said representation was only for the purpose of raising an objection to the placement in seniority list published in the year 2016. Therefore, the representation dated 14 February 2018 cannot be treated as representation for the purpose of changing the post of the Complainant from 'Safai Kamgar' to that of 'Junior Clerk'. Therefore, the Municipal Corporation rightly rejected the representation by order dated 16 February 2018 stating that after his promotion to the post of Junior Clerk vide order dated 24 May 2010, he has been assigned seniority w.e.f. 23 December 2009. This is how his objection to the seniority list came to be rejected. Apart from the fact that the said decision dated 16 February 2018 was *qua* the grievance relating to placement in seniority list (and not for change of cadre), the said decision dated 16 February 2018 otherwise did not create any cause of action for the Complainant to file complaint before the Industrial Court. The said decision is given only on account of grievance raised by the Complainant on '*Aple Sarkar Portal*'. It appears that under the mechanism created by the Municipal Corporation for online redressal of grievances, it is mandatory to give response to every representation. This is how the representation made by the Complainant came to be responded to on 16 February 2018. Therefore, it cannot be contended that any fresh cause of action got created in favour of the Complainant on 16 February 2018 for filing complaint under the provisions of Section 28 of the Maharashtra Recognition of

Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**). Reference in this regard can be made to the judgment in *Surjeet Singh Sahni v. State of U.P.*, (2022) 15 SCC 536 in which it is held as under:

8. As observed by this Court in a catena of decisions, mere representation does not extend the period of limitation and the aggrieved person has to approach the Court expeditiously and within a reasonable time. If it is found that the writ petitioner is guilty of delay and laches, the High Court should dismiss it at the threshold and ought not to dispose of the writ petition by relegating the writ petitioner to file a representation and/or directing the authority to decide the representation, once it is found that the original writ petitioner is guilty of delay and laches. Such order shall not give an opportunity to the petitioner to thereafter contend that rejection of the representation subsequently has given a fresh cause of action.

7) Chief Justice Dipankar Datta (as His Lordship then was) speaking for Division Bench of this Court in *Maruti R. Wankhede Vs. Union of India* Writ Petition No. 8470 of 2019 decided on 8 September 2021 has summarized the principles relating to continuous cause of action as under:

12. It would be proper for us, at this stage, to summarize the propositions of law deducible from the authorities cited at the bar and those considered therein for the purpose of consideration of its application to the present case. They are:

(i) **When an order is passed by a Court/Tribunal to consider or deal with a representation of an individual raising a stale or a dead claim and such claim is rejected even on merits on an impression that failure to do so may amount to disobedience of the order of the Court/Tribunal, such an order does not revive the stale or dead claim, nor amount to some kind of “acknowledgment of a**

jural relationship” to give rise to a fresh cause of action. [C. Jacob (supra)];

(ii) Disposal of proceedings by seemingly innocuous orders directing consideration of representation though result in quick or easy disposal of cases in overburdened adjudicatory institutions but such orders do more disservice than service to the cause of justice. [P. Venkatesh (supra)];

(iii) Denial of pay fixation of an employee, while he is in service, not in accordance with the rules resulting in payment of a quantum of salary not computed in accordance with the rules can give rise to assertion of a continuing wrong against such act giving rise to the cause of action each time he is paid less than his entitlement and so long as such employee is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of such wrong computation. [M.R. Gupta (supra)];

(iv) Even if a delayed claim relating to disability pension is found to be of substance on merits and succeeds, the arrears should be restricted to three years prior to filing of the writ petition. [Tarsem Singh (supra)];

(v) When the issue relates to fixation of salary or payment of any allowances, the challenge is not barred by limitation or doctrine of laches, as the denial of benefit occurs every month when the salary/allowances are paid thereby giving rise to a fresh cause of action based on continuing wrong. [Yogendra Shrivastava (supra)]; and

(vi) If a petition is filed beyond a reasonable period, say three years, normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. [Shiv Dass Vs. Union of India, reported in (2007) 9 SCC 274].

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15.The Tribunal, in our view, rightly applied the ratio of the decisions in Jai Dev Gupta Vs. State of Himachal Pradesh & Anr., reported in (1997) 11 SCC 13, Naresh Kumar vs. Department of Atomic Energy & Ors., reported in (2010) 7 SCC 525, and Udai Shankar Awasthi Vs. State of U.P. & Anr., reported in (2013) 2 SCC 435, **to the effect that submission of representations is not a valid ground for approaching the forum**

late and favourable recommendation, if any, pursuant to such representation did not vest any right in the petitioner.

(emphasis added)

8) In my view, the Complainant could not have approached the Industrial Court in the year 2018 with his stale grievance relating to the change of cadre for which the cause of action arose on 20 December 2000. I am unable to accept the contention that the grievance with regard to the change of cadre is continuous cause of action. The grievance relating to change of cadre, promotion or seniority do not constitute continuous cause of action. For the Complainant, the injury was complete on 20 December 2000 and he ought to have adopted remedy in respect of such injury immediately thereafter.

9) It is also relevant to be noted that change of cadres, dates of promotion and seniority position after lapse of considerable period of time also creates heart burn amongst other employees of the establishment. In the present case, the Complainant lived with the reality that he was in Class-IV Cadre of Safai Kamgar for over 10 years from 20 December 2000 till he was promoted as Junior Clerk on 24 May 2010. After his promotion as Junior Clerk vide order dated 24 May 2010, his seniority position got crystalised on the post of Junior Clerk for next 8 long years. He sought to unsettle the said settled position of seniority by filing a Complaint before the Industrial Court in the year 2018, which was clearly impermissible in law. The Industrial

Court has erred in directing grant of promotional benefits and consequential benefits to the Complainant on the post of Junior Clerk from 13 September 2007 by entertaining the complaint filed by him in the year 2018. The Industrial Court ought to have dismissed the complaint as the same sought to raise a completely stale claim. The order dated 20 September 2022 passed by the Industrial Court thus suffers from palpable error warranting interference of this Court in exercising jurisdiction under Article 227 of the Constitution of India.

10) Writ Petition No.10830/2023 accordingly succeeds. Judgment and order dated 20 September 2022 passed by the Industrial Court, Nashik in Complaint (ULP) No. 103/2018 is set aside. Since the judgment and order dated 20 September 2022 is set aside, nothing would survive to be agitated in Writ Petition No.9672/2024. Accordingly, **Writ Petition No.10830/2023 is allowed and Writ Petition No.9672/2024 is dismissed.** There shall be no order as to costs.

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[SANDEEP V. MARNE, J.]