



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

**WRIT PETITION NO.951 OF 2023 WITH
CIVIL APPLICATION NO.12074 OF 2023**

- 1) Central Provident Fund Commissioner,
Employees Provident Fund Organization,
Head Office, Bhavishya Nidhi Bhavan,
Bhikaji Cama Place, New Delhi – 110 066
- 2) The Additional Central Provident Fund
Commissioner, Employees Provident Fund
Organization, Zonal ACC Office, Maharashtra
(Excluding Mumbai), 2nd Floor, Pune Cantonment
Board Building, Near Golibar Maidan,
Camp, Pune, Maharashtra – 411 001
- 3) The Regional Provident Fund Commissioner-I
Employees Provident Fund Organization,
Regional Office, Bhavishya Nidhi Bhawan,
Plot No.2, Town Centre, Commercial Area,
CIDCO, New Aurangabad – 431 029

... PETITIONERS

VERSUS

- 1) Subhashchandra Nandanwar
(son of Sadashiv Paikujji Nandanwar)
Age 63 years, Occ. Retired,
R/o Chandranagar, Naik Nagar Road,
Near Bhagwan Nagar, Nagpur
State of Maharashtra – 440 027
- 2) Union of India
through Secretary,
Ministry of Labour & Employment,
Shram Shakti Bhawan,
New Delhi- 110066
(Res.No.2 formal party)

... RESPONDENTS

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Mr. Nitin K. Chaudhari, Advocate for petitioners
Mr. Suresh Kulkarni, Advocate for respondent No.1.
Mr. Rahul Bagul, Standing Counsel for respondent No.2.

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**CORAM : R.G. AVACHAT AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 5th May, 2025

ORAL JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.

2. The challenge in this Writ Petition, under Article 226 of the Constitution of India, is to clause Nos.4 and 5 of the operative order passed by the Central Administrative Tribunal (CAT), on 21/2/2020, in Original Application, (OA) No.741/2018. For better appreciation, the entire operative order passed by the CAT is reproduced as it is below :

- “(I) The impugned orders dated 27/3/2018, 28/3/2018 and 4/4/2018 (Annexure A-1) are quashed and set aside.
- (II) The applicant shall deem to have voluntarily retired on 1/3/2018 or the date when three months notice given by the applicant vide his notice dated 30/11/2017 expired.

- (III) The respondents shall pass necessary orders with regard to (ii) above within four weeks of receipt of a certified copy of this order.
- (IV) The respondents shall also grant the consequential benefits i.e. payment of retiral dues to the applicant within eight weeks of passing of the order as directed at (iii) above.
- (V) The applicant shall be entitled for the interest on the arrears of pension and pensionary benefits at the rate of 6.5% p.a. from the date the same have become due to him till payment thereof.”

3. **FACTS**:

The respondent No.1, representing himself to have belonged to "Halba" Scheduled Tribe (ST), applied for appointment to the post of Lower Division Clerk (LDC). As he was successful, he got the appointment on the post of LDC reserved for Scheduled Tribe candidate. It was an employment with the petitioner– Employees Provident Fund Organization (EPFO). Respondent No.1 was initially appointed in Mumbai region and after having subjected to various transfers, his last posting was at Aurangabad. On 30/11/2017, the respondent No.1 preferred application for voluntary retirement in terms of Rule 48 of the Central Civil Services (Pension) Rules. According to him, he had

completed little over 33 years of service and his health was not on his side to work any longer. His application was not responded to by the concerned authorities. It was a notice for a period of 90 days as is mandatorily required in terms of the said rule. It is only in March 2021, the employer turned down the petitioner's request. Even therebefore, the Vigilance Department had given him a certificate indicating no departmental enquiry was pending against him.

4. The record indicates that, in the year 2007 and 2008, the employer, at least not less than 4 occasions, called upon the respondent No.1 to submit his caste certificate for submitting to the Caste/ Tribe Certificate Scrutiny Committee for its verification. The respondent No.1 did not respond thereto.

5. Admittedly, in the meanwhile, the Apex Court passed the judgment in case of **Chairman and Managing Director, Food Corporation of India & ors. Vs. Jagdish Balaram Bahira & ors. (2017) 8 SCC 670**. A detailed reference to the observations therein would be made a little later.

6. After the statutory notice period was over, the respondent No.1 asked his employer for release of his retiral benefits. Since his request was turned down, he approached the CAT by filing OA No.741/2018.

7. Heard. We do not propose to reiterate the submissions advanced by learned Advocate for the petitioners since those may be our reasons in support of the order. On the other hand, learned Advocate for respondent No.1 would submit that, the petition has been filed about three years after the order impugned in this petition was passed. He relied on a host of authorities to submit that, this Court shall not exercise discretionary powers in favour of the petitioners since it is a case of huge delay and laches as well. He would further submit that, due to passage of time, rights have been accrued in favour of respondent No.1. Turning to the merits of the case, the learned Advocate would submit that, the Central Government employees are not governed by the provisions of the Maharashtra Scheduled Castes, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category

(Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (hereinafter referred to as the Act of 2000). He would further submit that, it was sufficient for the employer to verify the certificate submitted by the candidate at the time of securing employment with it. It was a business between the employer and the District Magistrate (competent authority) who has issued such certificate. He relied on number of office memorandums in this regard. He would further submit that, the other authorities of the petitioner had in fact been ready to release all the retiral benefits of the respondent No.1. He would further submit that, not less than 10 similarly placed employees have been benefited. The employer i.e. the petitioner herein has, without demur, released all the retiral benefits of those employees. Their names figure in the affidavit-in-reply. According to him, it is a complete discrimination and violative of Articles 14 and 16 of the Constitution of India. The main limb of submission of learned Advocate for respondent No.1 is that, once the respondent No.1 issued a notice of voluntary retirement and the statutory period of 90 days was allowed to be passed post receipt of the notice, the retirement is automatic and no employer-employee

relationship thereafter remains between them. The respondent No.1 thus became entitled for all the retiral benefits. The learned Advocate has relied on host of the judgments of this Court, indicating directions to release the retiral benefits of the employees whose case was placed similar to that of the respondent No.1 herein. He would further submit that, the scope of Articles 226 and 227 of the Constitution of India is discretionary in nature.

8. He would further submit that, an employee who has rendered not less than 33 years of service, would be on street if his pensionary benefits are not released, when the similarly situated employees have been granted the same reliefs even without approaching the Courts of law.

9. We have considered the submissions advanced. Perused the order impugned herein. Also perused the authorities relied on by learned Advocate for respondent No.1. Most of them are the authorities of Division Bench of this Court. Although, the relief in respect of the similarly placed employees has been granted therein, we are unable to persuade ourselves by those authorities in the face of the

judgment of the three judge Bench of the Supreme Court in case of Food Corporation of India (supra). Admittedly, the respondent No.1 had obtained the job with the petitioner as LDC on the post reserved for Scheduled Tribe category. That time, he submitted a copy of his tribe certificate. The original was with him. It is true that, until 2007, the employer did not ask him to submit his original tribe certificate for verification. There are, however, communications in the year 2007, indicating the petitioners to have time and again called upon the respondent No.1 to submit original tribe certificate for submitting it for verification along with Form E.

10. Section 6 of the Act of 2000 reads thus :

6. Verification of Caste Certificate by Scrutiny Committee.—

(1) The Government shall constitute by notification in the Official Gazette, one or more Scrutiny Committee(s) for verification of Caste Certificates issued by the Competent Authorities under sub-section (1) of section 4 specifying in the said notification the functions and the area of jurisdiction of each of such Scrutiny Committee or Committees.

(2) After obtaining the Caste Certificate from the Competent Authority, any person desirous of availing of the benefits or concessions provided to the Scheduled Castes, Scheduled Tribes, De-notified

Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes or Special Backward Category for the purposes mentioned in section 3 may make an application, well in time, in such form and in such manner as may be prescribed, to the concerned Scrutiny Committee for the verification of such Caste Certificate and issue of a validity certificate.

(3) The appointing authority of the Central or State Government, local authority, public sector undertakings, educational institutions, Co-operative Societies or any other Government aided institutions shall, make an application in such form and in such manner as may be prescribed by the Scrutiny Committees for the verification of the Caste Certificate and issue of a validity certificate, in case a person selected for an appointment with the Government, local authority, public sector undertakings, educational institutions, Co-operative societies or any other Government aided institutions who has not obtain such certificate.

(4) The Scrutiny Committee shall follow such procedure for verification of the Caste Certificate and adhere to the time limit for verification and grant of validity certificate, as prescribed.

11. A Division Bench of this Court, in case of Ashabai Bhila Koli & ors. Vs. Bharat Sanchar Nigam Ltd. & ors. (Writ Petition No.9885 of 2019 with companion petitions, decided on 13/3/2020, has observed in paragraph No.15 thus :

"15. The Apex Court in case of Chairman and Managing Director, Food Corporation of India and others Vs. Jagdish Balaram Bahira and others (supra) was dealing with the matter of an employee from a

public sector undertaking and as observed above Sub Section 3 of Section 6 of the Maharashtra Act No. XXIII of 2001 even covers public sector undertakings. Sub Section 3 of Section 6 of the Maharashtra Act No. XXIII of 2001 is mandatory.”

12. The submission of the learned Advocate for respondent No.1 that the Central Government employees are no way governed by the provisions of the Act of 2000 holds no water.

13. The Apex Court, in case of Food Corporation of India (supra), has given the following directions:-

69.5. By Maharashtra Act 23 of 2001 there is a legislative codification of the broad principles enunciated in Madhuri Patil (State of Maharashtra Vs. Milind, (2001) SCC 4 : 2001 SCC (L&S) 117. The legislation provides a statutory framework for regulating the issuance of caste certificates (Section 4); constitution of Scrutiny Committees for verification of claims (Section 6); submission of applications for verification of caste certificates (Sections 6(2) and 6(3); cancellation of caste certificates (Section 7); burden of proof (Section 8); withdrawal of benefits obtained upon the invalidation of the claim (Section 10); and initiation of prosecution (Section 11), amongst other things.

69.6 The power conferred by Section 7 upon the Scrutiny Committee to verify a claim is both in respect of caste certificates issued prior to and subsequent to the enforcement of the Act on 18/10/2001. Finality does not attach to a caste

certificate (or to the claim to receive benefits) where the claim of the individual to belong to a reserved caste, tribe or class is yet to be verified by the Scrutiny Committee.

69.7 Withdrawal of benefits secured on the basis of a caste claim which has been found to be false and is invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise.

Directions No.69.6 and 69.7 are material one.

Those directions in so many words state that, finality does not attach to a caste certificate which has remained to be validated or verified by the Scrutiny Committee.

14. It has further observed that, withdrawal of benefits secured on the basis of a caste claim, which has been found to be false and invalidated is a necessary consequence which flows from the invalidation of the caste claim and no issue of retrospectivity would arise.

15. It is true that, in the case in hand, the caste certificate of the respondent No.1 has not yet been held to have been forged or invalidated. The respondent No.1's stand appears to be adamant. In response to the various letters issued by the employer, it was his contention in his response/

communication dated 27/3/2007 as follows :

"I, therefore, fail to understand why and how, your office is adopting, the procedure other than established by your own department in similar cases. This issue may kindly be got clarified from the superior offices. Moreover, a Form-E sent by you vide your letter dated 8/3/2007, it is actually an application form which has to be filled in and signed by the employee. As a matter of fact and you will agree that, it is my privilege whether I should apply for the same or not and I cannot be compelled to do so. The rules of verifications are same for all categories i.e. SC/ST/OBC. Accordingly, the verification has to be got done from all the employees of all the categories. But this is not being done. Only the employees of specific categories are being harassed. This is therefore nothing but discrimination and breach of provisions made under the constitution of India, as well as disregard to the orders/ instructions issued by Government of India from time to time.

16. According to learned Advocate for respondent No.1, this stand was based on office memorandums issued by the DOPT from time to time.

17. The respondent No.1 was even forwarded with a copy of Form-E for being submitted by him along with certain documents for being sent to the Tribe Certificate Scrutiny Committee. All along he did rest his claim on the office memorandums. His further stand is that, once the employer

allowed him to retire without any demur, the necessary benefits arising from his retirement must flow in his favour.

18. The Apex Court, in case of Chief Regional Officer, the Oriental Insurance Company Ltd. Vs. Pradip & anr. (2020 SCC OnLine SC 95), referred to para 65 of the judgment in case of Food Corporation of India (supra) which reads thus :

“17. In the decision in Food Corporation of India & ors. Vs. Jagdish Balaram Bahira & ors. (2017) 8 SCC 670, this Court held :

65. Administrative circulars and government resolutions are subservient to legislative mandate and cannot be contrary either to constitutional norms or statutory principles. Where a candidate has obtained an appointment to a post on the solemn basis that he or she belongs to a designated caste, tribe or class for whom the post is meant and it is found upon verification by the Scrutiny Committee that the claim is false, the services of such an individual cannot be protected by taking recourse to administrative circulars or resolutions. Protection of claims of a usurper is an act of deviance to the constitutional scheme as well as to statutory mandate. No government resolution or circular can override constitutional or statutory norms. The principle that the Government is bound by its own circulars is well settled but it cannot apply in a situation such as the present. Protecting the services of a candidate who is found not to belong to the community or tribe for whom the reservation is intended substantially encroaches upon legal rights of genuine members of the reserved communities whose just entitlements are negated by the grant of a seat to an ineligible person. In such a situation where the rights of genuine members of reserved groups

or communities are liable to be affected detrimentally, government circulars or resolutions cannot operate to their detriment.”

19. In view of the aforesaid dictum, all the office memorandums which run counter to the directions issued by the Apex Court in case of Food Corporation of India (supra) have been held to be void.

20. So far as regards the contention of the learned Advocate for respondent No.1 that since the employer did not respond to the voluntary retirement notice and allowed to lapse the statutory period of 90 days, the employer now cannot be heard to say (estopped) that it will not release the retiral benefits are concerned, it is true that the employer sat on the notice and it is only in the fourth month of the notice, it came with a stand to have refused to accept the petitioner's request for voluntary retirement in terms of the phraseology of Rule 48. The respondent No.1 really stood retired for want of inaction on the part of the petitioner- employer in not refusing to accept his notice. However, here again the direction of the Apex Court in Food Corporation of India (supra) would come into play, whereby the benefits attached to the caste certificate

which has remained unverified shall not be released. It is not that all the doors for respondent No.1 are closed. He can still submit his tribe certificate for verification and once the Scrutiny Committee validates his certificate, the petitioners would be bound to release all the retiral benefits. It is surprising that, the respondent No.1 does not wish to submit his tribe certificate for verification. It is true that, some of the other employees placed similar to the case of respondent No.1 have been granted their retiral benefits. However, in our view, there cannot be a parity in case of illegality. The petitioner- employer may hold enquiry against those employees who are responsible for release of such benefits and even may recover the loss suffered by the Union in that regard.

21. On the ground of delay and laches is concerned, it is not that the petitioner has approached this Court after 7 or 8 years. The petition has been filed before 3 years of passing of the order impugned herein. The meanwhile period was covered by Covid-19 pandemic. Moreover, in paras No.15 and 16 of the petition, the petitioner has explained the delay caused in approaching this Court.

22. It is true, in the following cases relied upon by learned Advocate for respondent No.1, it has been observed thus :-

- (1) John. A. Fernandes & anr. Vs. Secretary (Transport)
Government of Goa & ors. [2018 (5) Mh.L.J.862]

Constitution of India, Arts. 226 & 227 – Writ Jurisdiction – Petitioner must approach Court diligently and without laches – Court is entitled to refuse exercise of equity jurisdiction if Court finds that petitioners have not approached Court diligently and is responsible for resultant prejudice to innocent parties.

- (2) Sayaji s/o Mahadu Gavhane & ors. Vs. Bajaj Auto Ltd.
[2018(3) Mh.L.J. 296]

Constitution of India, Arts. 226 & 227 – Writ Jurisdiction – Exercise of – Is discretionary and it is not required to be exercised unless substantial injustice has ensued or is likely to ensue.

The employer did not institute Writ Petition within reasonable time from the Industrial Tribunal's impugned order dated 19/1/2011. Writ Petition was not even instituted within reasonable time from the date of institution of Writ Petition by the workmen. Writ Petition was instituted almost 18 months after order of High Court dated 30/1/2015, allowing the Review Petition and restored Writ Petition to the file. If the employer was indeed aggrieved by any finding recorded by the Industrial Court in its order dated 19/1/2011, then, it was the duty of the employer to institute a petition to question the same within reasonable time from the date of institution of Writ Petition by the workmen. The employer, however, took its chance and has chosen to institute Writ Petition after inordinate and unexplained delay. The technical objection, raised by the employer, that application of the employees for restoration of Complaint (ULP) was allegedly instituted 07 days beyond prescribed period of limitation, in the petition which has been instituted almost five years

after the finding of maintainability was rendered against the employers, would certainly, not constitute any promotion of justice, which is the very purpose for which such extraordinary powers to issue writs have been vested in the High Court.

- (3) Pathapati Subha Reddy (Died) by L.Rs,. & ors. Vs.
The Special Deputy Collector (L) [Special Leave Petition
(Civil) No.31248 of 2018, decided on 8th April 2024]

Limitation Act – The interplay between Sections 3 and 5 – Section 5 needs “sufficient cause” to be proved as a condition precedent to condone delay.

Held: Section 3 being a substantive provision of mandatory nature needs to be interpreted strictly – Section 5 being a discretionary provision has to be interpreted liberally because it helps the Courts to do substantial justice – Based on the object of the law of limitation, viz., public policy, both these Sections have to be construed harmoniously – The existence of “sufficient cause” for condoning delay in filing the suit, appeal or application is a condition precedent to exercise the discretionary power of Courts to condone the delay.

23. The order impugned herein was passed on 21/2/2020. The Hon’ble Supreme Court of India, in Suo Motu Writ Petition (C) No.3 of 2020, passed the order on 23/3/2020 as under :

Human and Civil Rights – Humanitarian and Natural Disasters, Epidemics and Pandemics – Outbreak of Coronavirus (COVID-19) pandemic in country - Difficulties faced by lawyers/ litigants in physical filing of their cases within period of limitation prescribed under general law or special law provided by State and/or Central laws.

Period of limitation in all such proceedings, irrespective

of the limitation prescribed under the general law or special laws whether condonable or not, held, shall stand extended w.e.f. 15/3/2020 till further orders to be passed by Supreme Court – present order binding on all Courts and Tribunals within the country – High Courts to communicate this order to all subordinate Courts within their jurisdiction – Limitation Act, 1963 – Generally – Practice and procedure – Delay/ Laches/ Limitation.

Again on 27/4/2021, the Apex Court passed the following order in Misc. Application No.665/2021 :-

Practice and Procedure – Delay/Laches/ Limitation- COVID-19 Pandemic – Hardship of litigant-public – Relief -Second surge in COVID-19 Pandemic – Earlier orders relaxing limitation periods, restored and extended indefinitely till further orders – Clarifications issued – Period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.

Again the Apex Court, in Misc. Application No.21/2022 in the very Suo Motu Writ Petition, passed the order on 10/1/2022 :-

“5.1 The order dated 23/3/2020 is restored and in continuation of the subsequent orders dated 8/3/2021, 27/4/2021 and 23/9/2021, it is directed that the period from 15/3/2020 till 28/2/2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2 Consequently, the balance period of limitation remaining as on 3/10/2021, if any, shall become

available with effect from 1/3/2022.”

24. We, therefore, find it to be not a case to dismiss the petition on the ground of having approached this Court after little over two and half years of passing of the impugned order.

25. The CAT appears to have not addressed the issue raised by the petitioners therein relying on the judgment in case of Food Corporation of India (supra). It straightaway interpreted Rule 48 and allowed the OA. In our view, the order impugned herein is contrary to the law laid down by the Apex Court in case of Food Corporation of India (supra). An interference therewith is, therefore, warranted.

26. In the result, the Writ Petition succeeds. It is allowed in terms of prayer clause (B). Rule made absolute accordingly.

27. In view of disposal of the Writ Petition, Civil Application No.12074/2023 stands disposed of.

(SANDIPKUMAR C. MORE, J.)

(R.G. AVACHAT, J.)

fmp/-