

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

WRIT PETITION NO. 6 OF 2025

Shri Uday Laxman Pawar,
Age, 55 years, Indian Inhabitant
Hindu- Maratha, Occu.: Jobless
(Project Affected Person)
Residing at Raotale, Chiplun,
Taluka- Chiplun, District- Ratnagiri

...Petitioner

Versus

1. The Secretary,
Urban Development Department,
(Municipal Administration)
Revenue and Forest Department,
State Government of Maharashtra
Mantralaya Bldg., Mumbai

2. The Director of Municipality
Administration,
Office of Directorate of Municipal
Administration, 3rd Floor,
Transport Service Bldg., No:42-44,
Sir Pochkhanwalla Road, Municipal
Colonay, Shivaji Nagar Worli,
Mumbai-400030

3. The Divisional Commissioner of
Municipal Administration,

Kokan Division, 1st Floor, Kokan Bhavan,
CBD Belapur, New Mumbai

4. The District Collector and Asst.
Commissioner for Municipal
Administration, Ratnagiri
C/o. Collector Building, Vijay
Stambh, Ratnagiri

5. The District Collector
(Land Acquisition) Collectorate of
Ratnagiri District, Collector Building,
Vijay Stambh, Ratnagiri.

6. The District Collector
Ratnagiri (Rehabilitation of Irrigation
Projects Affected Persons) Collector
Building, Vijay Stambh, Ratnagiri\

7. The Chief Officer and The
Administrator, Chiplun Nagar
Parishad, (Chiplun Municipal Council)
Chiplun, Dist- Ratnagiri

8. Shri. Ramesh Ramchandra
Kadam Adult, Ex-Mayor of Chiplun
Nagar Parishad, residing at Jayash
Bungalow, Near S.T. Depot, Chiplun,

District-Ratnagiri.

9, Shri. Suchay Nathuram Redies,
Adult Ex-Corporator of Chiplun
Nagar Parishad, Res/At- Ganeshkrupa
Mumbai- Goa Rad, At/Po: Ozarwadi,
Chiplun, Tal. Chiplun, Dist. Ratnagiri

10. Shri Shirish Sitaram Katkar,
Adult Ex-Corporator of Chiplun
Nagar Parishad, Res/at: At/Po:
Khind Chowki, Chiplun City, Tal.
Chiplun, Dist. Ratnagiri 415605

11. Shri Prakash Vasant Kane,
Adult Ex-Vice President Chiplun Nagar
Parishad, Res/at: C/o. Kane Restaurant,
Chiplun, Tal. Chiplun, Dist. Ratnagiri 415605.

12. Shri Uday Dattatray Ghag,
-Adult Respondents, President, Human
Rights Association, Allover India, Konkan
Division and International having address
at: 304, Sai Sarthak Apartment, 3rd floor,
Radhakrushna Nagar, Raotale, Tal. Chiplun,
Dist. Ratnagiri 415605

....Respondents

Mr. Prakash Pawar for the Petitioner.

Ms. P. B. Chavan, AGP for the State.

**CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ.**

**RESERVED ON : 13th FEBRUARY, 2025
PRONOUNCED ON: 11th MARCH, 2025**

JUDGMENT (PER ASHWIN D. BHOBE, J.)

1. Heard Mr. Prakash Pawar, learned Advocate for the Petitioner and Ms. P. B. Chavan learned AGP for the State.

2. By this petition under Article 226 of the Constitution of India, filed in the year 2024, the Petitioner claiming to be a Project Affected Person (“PAP”), has assailed the letter dated 05.04.1997 and the Resolution No.89 dated 07.11.2002 passed by the Respondent No.7, denying employment to the Petitioner.

3. **Case of the Petitioner:-**

a) Agricultural land (Gavthan Land) bearing Survey No.96/3 situated in village Sondegghar, District Ratnagiri. along with the dwelling house, owned by Mr. Laxman Subhanrao Pawar, Petitioner’s father was acquired by the State of Maharashtra, vide Land Acquisition Award dated

06.11.1975, under the provisions of Land Acquisition Act, 1894, for the purpose of “*Public Irrigation Scheme of the State Government*”.

b) Laxman S. Pawar expired on 19.05.1980 leaving behind his widow Padmavati L. Pawar, one unmarried daughter and two sons including the Petitioner, who all were dependent on the pensionary benefits of Laxman Pawar, who was an ex-service man.

c) Petitioner, to support his mother, sister and brother took up job as a daily wages employee (Grade III) in the Respondent No.7, w.e.f. 01.02.1993.

d) Petitioner was removed from service by the Respondent No.7 in the month of May 1993.

e) On 10.04.1996, Petitioner applied to the Respondent No.6 for a PAP certificate.

f) Respondent No.6, issued Project Affected Certificate bearing No.GB/DESK-2/RPA/1/96 dated 25.10.1996, to the Petitioner.

g) Petitioner was shown at Sr. No.18 of the "रत्नागिरी

जिल्ह्यातील पाटबंधारे प्रकल्पामुळे बाधीत प्रकल्पग्रस्त अंतीम प्रतीक्षा यादी" published by the Respondent No.6.

h) On 26.12.1996 Petitioner submitted an application to the Respondent No.7, seeking appointment on the post of Grade III Clerk, in Open Category under the Project Affected Person Scheme. Request made by the Petitioner was for continuation/reinstatement of his earlier service rendered as daily wage worker.

i) Respondent No.7 by its letter dated 05.04.1997 informed the Petitioner that the vacancy available in the office of the Respondent No.7 was in the category of Other Backward Class and in the event the Petitioner was from the Other Backward Class, Petitioner should submit Caste Certificate within 15 days, failing which the application dated 26.12.1996 would stand rejected.

j) Petitioner relying on the Government Resolution dated 21.01.1980, filed a second application dated 02.05.1997 before the Respondent No.7, seeking appointment as a PAP.

k) Respondent No.7 referred the said application dated

02.05.1997 to the Respondent No.4, for guidance and further action. Respondent No.4 in turn informed the Petitioner that the said application was forwarded to the Respondent No.7 on 05.07.1997.

l) Petitioner sent reminder letter dated 22.07.2002 to the Respondent No.7.

m) Respondent No.7 by its letter dated 07.02.2003 informed the Petitioner that his request dated 22.07.2002 was disposed off.

n) By letter dated 26.03.2003, Respondent No.7 informed the Petitioner to apply to the Respondent No.7 for the reasons for disposal of the Petitioner's application dated 22.07.2002.

o) Petitioner was furnished copies of the Resolution No.89 dated 07.11.2002 passed by the Respondent No.7 during the period 2002 to 2003 wherein the request for appointment made by the Petitioner was placed before the Respondent No.7, wherein it was resolved that "the Petitioner shall not be taken into Municipal service".

p) Petitioner has filed the following representations/complaints/letters to the following authorities:-

Respondent No.	Date of Complaint/Representation
Respondent No.2	02/03/2021, 16/08/2021, 12/11/2021, 11/02/2022, 10/04/2023 and 24/05/2023
Respondent No.3	23/02/2023, 14/08/2023 and 06/11/2023
Respondent No.4	07/09/2022, 16/11/2022, 20/01/2023, 23/02/2023, 10/04/2023, 11/05/2023, 12/06/2023, 10/07/2023, 14/08/2023, 08/09/2023, 04/10/2023, 06/11/2023, and 30/11/2023.
Respondent Nos. 2,3, 4, 6 and 7	Legal notice dated 20.01.2024

q) That despite receipt of legal notice dated 20.01.2024, the Respondent Nos. 2, 3, 4 and 6, have neither complied with the requisition made in the said notice nor have responded to the same.

4. Petitioner is before this Court seeking the following reliefs:-

- “(i) Under the circumstances present Writ of Mandamus be allowed.*
- (ii) Impugned letter dated 05.04.1997 and Resolution No.89 dated 07.11.2002 passed during the year 2002 – 2003 by the Respondent No.7 denying employment to the Petitioner be declared null and void and/or be set aside.*
- (iii) All Respondents be instructed to adhere Government Circular No. AEM/1080/35/16A dated 21.01.1980 and to provide reinstatement in grade-III since, 1993 to the Petitioner in employment with Respondent No.7 the employment to protect the interest and rights under Project Affected Person rehabilitation Act to safeguard the interest of Petitioner as fundamental rights to survive.*
- (iv) Any other just and proper order in terms of Mandamus be passed in the interest of natural justice and equity to safeguard the interest of Petitioner as Project Affected Person.”*

5. Grievance of the Petitioner, as a PAP, is denial of employment.

Submissions:-

6. Ms. Chavan, Priyanka learned AGP for the State has raised a preliminary objection to the maintainability of the petition. Objection is that the petition is barred by limitation. She submits that the cause of action as claimed by the Petitioner in the petition has arisen on 05.04.1997 and/or 07.11.2002, thus the Petition would be hopelessly barred by limitation. She further submits that the legal notice dated 20.01.2024, neither gives a cause of action nor can the

stale claim of the Petitioner be revived by issuance of the notice after a period of 27 years from 05.04.1997 and 12 years from 07.11.2002. She, therefore, prays that the petition be dismissed on this count alone.

7. Ms. Chavan, without prejudice to the contentions on maintainability, on merits submits that the Respondent No.7 has rightly rejected the claim of the Petitioner to the post of daily wages worker (Grade III).

8. Mr. Pawar, in response to preliminary objections submits that the petition is within time as according to him a cause of action to file the petition has arisen on account of the failure of the Respondent to comply with the requisition made in the legal notice dated 20.01.2024. He relies on paragraph No.15 of the memo of the petition.

Mr. Pawar by relying on the Government Resolution dated 21.01.1980, submits that the Petitioner being a PAP was entitled for appointment on “highest priority” basis in the Respondent No.7 which appointment has been wrongly denied by the Respondent No.7. He submits that the Respondent No.7 has failed to protect the rights of the Petitioner as a PAP under the Project Affected Person Rehabilitation Act, 1999. He therefore, prays that the petition be

allowed.

9. As the Respondents have raised objection on the ground of delay and laches, we deem it proper to address the said issue. Thus, the question that falls for determination is whether the claim made by the Petitioner in the present petition would be barred by delay and laches?

10. Fact of the Petitioner being removed from employment in the month of May 1993; the request of the Petitioner for reinstatement in service being rejected in the month of April 1997; the Respondent No.7 vide Resolution No.89 dated 07.11.2002 having declined to grant appointment to the Petitioner, are not in dispute.

11. Paragraph No.15 of the memo of the petition refers to cause of action, whereas para 16 refers to limitation period. For the sake of convenience, paragraph No.15 and 16 of the petition are transcribed in verbatim:-

“15. Cause of Action: The name of Petitioner is still in the unemployed list from the year, 1996 vide Project Affected Person Certificate dated 25.10.1996 issued by the District Collector (Project Affected Person Rehabilitation) Ratnagiri/Respondent No.6. Therefore the Petitioner has been deprived from his legal rights to get re-instatement in his previous service with the Respondent No.7 in the view of Government Circular No. AEM/1080/35/16A dated

21.01.1980 read with Projected Affected Certificate dated 25.10.1996. The cause of action is occurring until date and continuously happening when impugned Resolution No. 89 passed by Respondent No.7 on 07.11.2002 in violation of Government Policies and injustice and disparity has been occurred to the Petitioner no positive action has been taken by Respondent No.7 even after receiving legal Notice dated 20.01.2024 on 23/01/2024 and 22/02/2024. The cause of action is also continuously happening when Respondent No.2, 3, and 4 have continuously failed to give strict instructions to the Respondent No.7 to adhere the provisions of Government Circular No. AEM/1080/35/16A dated 21.01.1980 read with Circular No. MAD/1003/368/03/5 dt. 03.01.2004 and to implement the Government guidelines and to provide re-instatement in previous service to continue in same III grade employment as Project Affected Person. Till the date injustice is happening to the Petitioner even after service of copy of legal notice were sent to them. Therefore, cause of injustice is continuously happening with the Petitioner and directions of Hon. High Court are being expected through this Writ Mandamus to give proper instructions to the Government concerned authorities of Respondent No.2,3,4 and 7.

16. Limitation Period: The Petitioner is Project Affected Person by virtue of the sacrifices of father's house in Gavathan in Sondghar, Village Dapoli, District - Ratnagiri, together with all landed property for the benefit of people to make irrigation project by the Medium/Small Irrigation Project Department Ratnagiri acquired land through Collector Ratnagiri (Revenue) accordingly to Award Gazette who then after doing continuous follow-up issued Project Affected Person Certificate to the Petitioner vide No.GB/Desk-2/RPA/1/96 dated 25.10.1996 Then the Petitioner applied to the Respondent No. 7 for providing re-instatement from 1993 from daily wages to permanent in same III grade clerk on the basis of Project Affected Person Certificate issued by Government Respondent No. 6 till the date this issue is pending with Respondent No.7. Meantime the Respondent No.7 illegally passed Resolution with corrupt view and malafide intention to rejecting to provide

employment to the Petitioner as Project Affected Person vide its Resolution No.89 dt. 07.11.2002 passed during the year 2002-2003 making disobedience and violation of Government guidelines for giving employment to PAP as described in Government Circular No. AEM/1080/35/16A dated 21.01.1980 r/w No. MAD/1003/368/03/5 dt. 03.01.2004. It is clearly disobedience of Government decision and policy by the Respondent No.7 and its officers who are giving harassment to the Project Affected Person/Family of Ex-Military man who had sacrificed his home and land for public welfare. So the injustice is continuously occurring today also as the claim for employment as PAP is still live in the office of the Respondent No.6 for want of rehabilitation. Therefore injustice has caused to the Petitioner and hence cause of action and limitation is continuously occurring and running. Hence, this Writ Petition of Mandamus is within time limit as per provisions of Indian Limitation Act.”

Analysis:-

12. From the facts referred to hereinbefore, the Petitioner in the year 2024, is seeking indulgence of this Court to order reinstatement /continuation of his service with the Respondent No.7, w.e.f. the year 1993. Claim of the Petitioner is based on Government Resolution dated 21.01.1980. Admittedly, the Respondent No.7 has rejected the request made by the Petitioner as a PAP, as way back as 05.04.1997 and 07.11.2002.

Petitioner being aggrieved by the said decision of the Respondent No.7, was expected to assert his rights before an appropriate forum within a reasonable time. Petition does not

contain any averment of the Petitioner having taken recourse to any proceeding prior to the filing of the present petition. Records placed before us leave no room for doubt that the Petitioner slept over his rights for a long duration.

13. The Hon'ble Supreme Court in the case of Gattu Lal Vs. Gulab Singh¹, has referred to a passage from Lindley on partnership, 12th edition on the concept of laches, which reads as follows:-

“Independently of the Statutes of Limitation, a plaintiff may be precluded by his own laches from obtaining equitable relief. Laches presupposes not only lapse of time, but also the existence of circumstances which render it unjust to give relief to the plaintiff; and unless reasonable vigilance is shown in the prosecution of a claim to equitable relief, the court, acting on the maxim vigilantibus non dormientibus subveniunt leges, will decline to interfere.”

14. Faced with the said situation, Mr. Pawar learned Advocate for the Petitioner relies on the representations/complaints made by the Petitioner to the Respondent No.2, Respondent No.3 and 4, referred to in paragraph 12(1), (2) and (3) of the petition, by submitting that the cause of action for the Petitioner, to question the said decision is a continuing cause of action. Said contention of the Petitioner is liable to be rejected for the following reasons:-

¹ 1985 (1) SCC 432

a) Subject matter of the present petition is a service related claim by the Petitioner. The Respondent No.7 rejected the request for reinstatement of service, made by the Petitioner on 05.04.1997 and 07.11.2002. Petitioner sought to revive the said claim by his representations made in the year 2021 onwards. Petition is filed in the year 2024. Thus, on the face of the record, the claim of the Petitioner is inordinately delayed, thus a stale claim.

b) Representations relating to matters which have become stale, can be rejected on such ground alone. Neither such belated representations nor replies to any such representations, can furnish a fresh cause or action or revive a stale or dead claim. Request for reinstatement is liable to be rejected as the claim of the Petitioner is neither a continuing wrong nor does the said claim create a continuing source of injury. If the inordinately delayed/stale claim of the Petitioner is reopened, it would affect the settled rights of third parties.

c) This is not a case where the claim of the Petitioner is not considered by the Respondent No.7. On

the contrary, the Respondent No.7 has specifically rejected the claim of the Petitioner for reinstatement/continuation of service. Petitioner ought to have taken recourse to test the rejection of his claim in the year 1997 and 2002, within a reasonable time, which the Petitioner has failed.

15. In the case of State of Tripura and Ors. Vs. Arabinda Chakraborty and Ors.² the Hon'ble Supreme Court has held that the period of limitation commences from the date on which the cause of action arises for the first time and simply by making representations in absence of any statutory provision/appeal, period of limitation would not get extended. Paragraph No.18 reads as under:-

“18. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making

² 2014 (6) SCC 460

representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done.”

16. In the case of Union of India and Ors. Vs. M. K. Sarkar³, the Hon’ble Supreme Court in Paragraph No.15 has held as follows:-

“15. When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.”

17. It is trite law that the doctrine of delay and laches should not be lightly brushed aside by a Writ Court exercising its extraordinary jurisdiction. The said doctrine is not an arbitrary or a technical doctrine. Such stale claims cannot be considered on sympathy or liberal approach.

18. In the case of State of Uttar Pradesh and Ors. Vs. Rajmati Singh⁴ the Hon’ble Supreme Court was considering a

³ 2010 (2) SCC 59

⁴ 2022 SCC OnLine SC 1785

service related claim which was inordinately delayed, obsolete stale and barred by principles of delay and laches. The Hon'ble Supreme Court relying on its earlier decisions has held that representations relating to matters which have become stale or barred by limitation can be rejected on that ground alone. In paragraph No.21, the Hon'ble Supreme Court has observed as follows:-

“21. We reiterate that undue sympathy and a perceived liberal approach by a judicial forum can lead to significant adverse consequences. It not only gives rise to illegitimate expectations in the mind of fence sitting employees, but also leads to undue burdens on the public exchequer. Not only this, the indulgence shown by a Court solely on equitable considerations, dehors the law, breeds indiscipline in public services and incorrigible employees start looking for a dividend on the period of their absence or for dereliction of duty. While there is no evidence to suggest that the respondent deliberately absented herself from duty, the facts speak for themselves in that she failed to take any recourse provided under law for more than three decades. We may say at the cost of repetition that the respondent had hardly served as an untrained teacher on temporary basis for a period of 2½ years and in terms of the impugned judgment of the High Court, she has been held entitled to get arrears of pay of more than 40 years, besides all the retiral benefits. We are, therefore, of the view that the High Court ought not to have drawn adverse inferences against the appellants or put the entire onus on them to prove that the respondent was unjustifiably denied the resumption of duties. The approach of the High Court in this regard is completely erroneous and contrary to the settled principles of law. The impugned Judgment thus cannot sustain and is liable to be set aside.”

19. In addition to the fact of the Petitioner having sat silent and accepted the decision of the Respondent No.7, passed in the year 1997 and 2002, another factor that would weigh against the Petitioner is the fact that the Petitioner as on date of the petition, was 55 years of age. Vide Government Resolution dated 03.02.2007 the upper age limit for recruitment of Project Affected Persons in Group-C and Group-D, has been fixed to 45 years for general as well as reserved category.

20. Ms. Chavan, learned AGP has raised an objection to the maintainability of the petition. Article 226 of the Constitution does not, in terms impose any limitation or restrain on the exercise of power to issue writs. Issue of maintainability and entertainability has been explained by the Hon'ble Supreme Court in the case of *Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Ors.*⁵ in paragraph No.4 has held as under:-

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The

5 2023 SCC OnLine SC 95

power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainment of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable

may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.”

21. In the light of the above position of law, we decline to entertain the present petition on the ground of delay and laches and having found the claim of the Petitioner being a stale claim.

22. The **Writ Petition is accordingly dismissed** with no orders as to cost.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)