
(2013) 03 BOM CK 0053
In the Bombay High Court
Case No : Writ Petition No. 10241 of 2012

Basawant Devidas Nandgavali	Vs	APPELLANT
Secretary, Water Resources Department and Others		RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2013) 3 ALLMR 113 : (2013) 5 BomCR 464 : (2013) 3 MhLj 389

Hon'ble Judges : A.S. Oka, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : Rajaram Deshmukh assisted with Santaram A. Tarale, for the Appellant; J.S. Deo, AGP for Respondent Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Rule. Heard finally by consent. Perused affidavits on record. The petitioner has prayed for to quash and set aside the impugned order passed by the Maharashtra Administrative Tribunal (hereinafter referred as "MAT") and for opportunity to contest his claim of notional and deemed date of promotion on merits by condoning the alleged delay. It is case of the Petitioner that on 27-7-1976 he was appointed as Junior Engineer (Mechanical) in the office of the Irrigation Department at Aurangabad. On 15-9-1983 employees from the open category were promoted as Deputy Engineer (Mechanical) against reserved post on the ground that the persons from the reserved categories were not available though the Petitioner was eligible for promotion against the reserved post. The petitioner was promoted on 18-2-1991 as Deputy Engineer (Mechanical) at Nanded, when he came to know that his name was shown in the select list of 1982 itself but for reasons unknown he was not promoted. The petitioner made representation on 14-8-1991 and demanded deemed date of promotion with effect from 1982, but the respondent failed to reply or communicate any decision on the representation. On 8-12-1995 the caste validity certificate of the Petitioner issued by the Tahasildar, Aurangabad was declared valid by the District

Magistrate, Aurangabad. On 14-6-1996 the respondent informed the petitioner that his name was in the select list and the Promotion Committee had considered it in 1982, however according to the Committee the confidential report of the Petitioner was adverse and not up to the mark. No copy of any adverse confidential report was communicated to the Petitioner. On 6-12-1996 the Deputy Secretary, Irrigation Department, Mantralaya referred to the Caste Certificate of the Petitioner to the Caste Scrutiny Committee, Aurangabad, which on 11-2-1998 had rejected the claim of the Petitioner, declared that the petitioner was not belonging to reserved category "Gadi Lohar (NT)" and the Petitioner was reverted to the post of Assistant Engineer (Mechanical). The Petitioner filed Writ Petition No. 2415 of 1998 and challenged the order of the Caste Scrutiny Committee, which was rejected by this Court. The Petitioner preferred the SLP before Hon"ble Supreme Court, in which the Social Welfare Department, Aurangabad Division was directed to consider the caste claim, but on 21-11-2000 the caste claim was declared invalid. In another Writ Petition No. 5173 of 2001 this Court had directed the Caste Verification Committee to validate the Caste Certificate of the Petitioner. Accordingly, the caste validity certificate was issued 8-12-2003. SLP filed by the State was rejected and the State withdrew it's earlier order of reversion and promoted the petitioner on 14-9-2005 to the post of Executive Engineer (Mechanical). The Petitioner's request for deemed date of promotion was rejected on 21-5-2010. Hence, Petitioner filed Original Application No. 924 of 2011 before the Maharashtra Administrative Tribunal (MAT) along with Miscellaneous Application No. 15 of 2011 for delay condonation. But it was rejected on 20-9-2011. Thus, present Writ Petition was filed.

2. It is grievance of the Petitioner that despite repeated representations by him, no proper reply was given by the State. Delay in issuance of the Caste Validity Certificate to the petitioner was due to gross negligence committed by the respondent-State to decide his claim within reasonable period. In the result, the Petitioner had no other option but to indulge in long fought litigation for his right to notional or deemed date of promotion from the year 1982. He was never communicated with any adverse remark in his confidential report or confidential report from 1976 to 1982. The petitioner was reverted on the ground that there was no validation of Caste Certificate. The long fought litigation fetched good result that the Petitioner was restored to the post of Deputy Engineer (Mechanical) on 7th February, 2005 with all consequential benefits from the year 1991. It is stand of the Petitioner that he ought to have been promoted in the year 1982 itself. But, officer of the respondents were acting in the interest of their near ones and were hiding the information from the Petitioner. Although promotion cannot be claimed as a matter of right, there is immense sanctity to the seniority list which is required to be regularly maintained. The administrative authority exercising the discretion to promote is legitimately expected to maintain proper balance between the adverse effects which may rise from its decision upon the right, liberty and interest of the persons concerned who may

be deprived of benefit of promotion and the purpose of the decision to promote righteous person as permissible according to Rules and Regulations or Law applicable in such case. As far as possible, to save expenses on public exchequer, the prolonged litigation leading to unrest, chaos in services ought to be avoided by the Government, State instrumentality or Public Authority as employer. What is expected legitimately is legal, rational, and transparent decisions following the appropriate procedure by due examination of merits of each case.

3. In *State of U. P. and others Vs. Harish Chandra and others*, , it was observed by the Apex Court:

It is undoubtedly true that the applicant seeking for condonation of delay is duty bound to explain the reasons for the delay but as has been held by this Court in several cases, the very manner in which the bureaucratic process moves, if the case deserves merit the Court should consider the question of condonation from that perspective.

On the facts of that case it was observed:

That apart the respondents themselves approached the High Court in the year 1990 making grievance that they had not been appointed even though they are included in the Select List of 1987 and 1987 list itself expired under the Rules on 4-4-1988. In this view of the matter and in view of the merits of the case we are of the opinion that sufficient cause has been shown for condoning the delay and accordingly we have condoned the delay.

4. In *N. Balakrishnan Vs. M. Krishnamurthy*, , the Hon''ble the Supreme Court observed:

It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory.

The law was summed up in the following words:

Rules of limitation are not meant to destroy the right of the parties.

In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door of substantial and real justice against him so as to render him remediless.

5. In the facts and circumstances brought to our notice, we are satisfied that delay occurred to file application for condonation of delay, was not necessarily inordinate. Delay was not solely attributable to the Petitioner so as to leave him without any solution to his problem. Liberal, reasonable, and justice oriented approach is necessary under the circumstances when lapse of time was not

solely attributable to the Petitioner, who was merely seeking to rectify what according to him was "grave injustice" done to him, by examination of his case on the basis of evidence & merits. The Petitioner deserved an opportunity to contest original application on merits before the MAT, Mumbai. Delay was therefore condonable to advance the cause of substantial and real justice. In our view, therefore the Learned MAT, Mumbai erred to reject prayer for condonation of delay. For the reasons stated above, sufficient cause is made out to condone delay and to allow the Petitioner to invite decision on merits, on the basis of evidence in his case. Hence, impugned Judgment and Order dated 20-9-2011, passed by the MAT, Mumbai in Miscellaneous Application No. 5 of 2011 is quashed and set aside. Delay is condoned. Opportunity shall be given to the petitioner to contest the Original Application filed in the case on merits, according to law. Cost of this Petition quantified at Rs. 7,500/- shall be paid to the Petitioner by the respondent No. 1. Rule is made absolute accordingly.