

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

MISC. APPLICATION NO. 110 OF 2017
IN
ORIGINAL APPLICATION NO. 265 OF 2018

DIST. : NANDED

Dr. Archana d/o Kartikrao Teltumbde,
@ Archana w/o Anilkumar Wahurwagh,
Age : 40 years, Occu. : Private Service,
As Assistant Professor,
R/o Samta Colony, Ring Road,
Kaulkhed, Akola.

.. **APPLICANT**

V E R S U S

- 1) Maharashtra Public Service Commission,
Through the Secretary,
Bank of India Building,
3rd Floor, Mahatma Gandhi Road,
Hutatma Chowk, Mumbai -01.
- 2) The State of Maharashtra,
Through its Secretary,
Medical Education Department,
Mantralaya, Mumbai-32.
- 3) Maharashtra University of
Health Science Nashik,
Through Registrar,
Mahasrul, Dindori Road,
Nashik, Dist. Nashik.
- 4) The Director,
Directorate of Ayurveda,
Maharashtra State,
Sent George Hospital Campus,
Fort, Mumbai.
- 5) Dr. Sanjeevani Samadhan Shekokar,
Age major, Occu. Service,
R/o C/o S.L. Shekokar,
Opp. Sant Tukaram Hospital,

Gorakshan Road, Samta Colony,
Akola, Dist. Akola -444 001.
/Government Ayurved College,
Vazirabad Nanded,
Tq. and Dist. Nanded.

.. RESPONDENTS

APPEARANCE : Shri Gajanan Kadam, learned Advocate for
the applicant.
: Shri B.S. Deokar, learned Presenting Officer
for the respondent nos. 1, 2 & 4.
: Shri Shamsunder B. Patil, learned Advocate
for respondent no. 3
: Ms. Rebekah Daniel, learned Advocate
holding for Shri S.B. Talekar, learned
Advocate for respondent no. 5.

**CORAM : JUSTICE A.H. JOSHI, CHAIRMAN
AND
ATUL RAJ CHADHA, MEMBER (A)**
RESERVED ON : 22.2.2019
PRONOUNCED ON : 27.2.2019

JUDGMENT

(Per : Justice A.H. Joshi, Chairman)

1. Heard Shri Gajanan Kadam, learned Advocate for the applicant, Shri B.S. Deokar, learned Presenting Officer for the respondent nos. 1, 2 & 4, Shri Shamsunder B. Patil, learned Advocate for respondent no. 3 and Ms. Rebekah Daniel, learned Advocate holding for Shri S.B. Talekar, learned Advocate for respondent no. 5.

2. The present applicant filed Original Application no. 265/2018. In this Original Application, the applicant has challenged the appointment of res. no. 5 - Dr. Sanjeevani Samadhan Shekokar - on the post of Assistant Professor in Maharashtra Ayurvedic Services, Group-A. Prayer clause (C) of the O.A. reads as follows :-

“C) The appointment of respondent no. 5 on the post of Assistant Professor (Dravyaguna), Government Ayurvedic College, Maharashtra Ayurvedic Services, Group-A, dated 28.10.2011, made by the respondent no. 1, may kindly be quashed and set aside.”

(quoted from page 9 of O.A.)

3. Original Application has been filed by the applicant on 14.2.2017 along with Misc. Application for condonation of delay caused in filing the Original Application. As per the estimation given by the applicant in the present Misc. Application, the delay caused in filing O.A. is of 1537 days.

4. In order to explain the delay, the applicant has pleaded in para 2 & 3 of the Misc. Application as under :-

“2. The applicant says and submits that, there is delay of 1537 days in filing the original application the said delay is not intentional and the same is accidental. It is fact of the matter is that, the present applicant was not

having information and knowledge that, the respondent no. 5 is not possessing 03 years teaching experience as required under the advertisement.

3. *One of the candidate of the said exam Dr. Meena Raghunathrao Sawte, has filed O.A. no. 100/2012, before this Tribunal. However on 15.12.2016, said O.A. has been dismissed by this Hon'ble Tribunal, on the ground that, the applicant therein was not having any locus to challenge the eligibility of respondent no. 5 as said Dr. Meena Sawte, scored only 30 marks out of 100 marks and as per the procedure of MPSC, any candidate who obtained 40 or less marks is not eligible for recommendation. The present applicant then only came to know that the respondent no. 5 is not eligible for the said post and she is not having the experience of 3 years as per advertisement. The present applicant got the various documents from said Dr. Meena Sawte, after dismissal of her O.A. no. 100/2012 by this Hon'ble Tribunal. The present applicant got the information of the documents which are Exhibit 'E' and 'F' to the present Original Application through said Dr. Meena Sawte. Prior to this the present applicant was not aware about actual experience of respondent no. 5."*

(quoted from page 2 & 3 of M.A.)

5. Learned Advocate for the applicant has placed reliance on the judgment of Hon'ble High Court of Judicature at Bombay, Bench at Nagpur, dictated by one of us (Justice A.H. Joshi), in the

case of **Ashok s/o Balaji Ratan Vs. Nagpur Improvement Trust** reported at 2004 (3) Mh. L. J. 659, which is rendered by relying on the judgment referred therein which is reported at [(1987) ILLJ 500 SC]. Learned Advocate for the applicant has placed specific reliance on the observations contained in said judgment. Para 6 of the said judgment reads as under :-

"6. It must be grasped that judiciary is respect not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

There Lordships further observed that --

"making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a stepmotherly treatment when the 'State' is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic

methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

6. Present Misc. Application is very strongly opposed by the Respondent State, however, by arguing sole point that delay has to be explained by the applicant by explaining it on day to day basis, which has not been done.

7. Learned Advocate for the res. no. 5 on the other hand argued that Applicant possessed the exact and concrete information about alleged lack of qualification of res. no. 5 and

based thereon applicant submitted written complaint on 12.12.2011 to the res. no. 2, copy of which is placed on record at page 21. In the said complaint / application the applicant made a specific statement as follows :-

“श्रीमती संजीवनी समाधान शेकोकार यांचा अधिव्याख्याता पदाचा अनुभव हा फक्त दोन वर्षे सहा महीने एवढा असून त्यांनी तिन वर्षे अनुभवाचे खोटे प्रमाणपत्र महाराष्ट्र लोकसेवा, मुंबई यांना सदर केले असून त्यांची निवड आयोगमार्फत करण्यात आली आहे.”

(quoted from page 21 of M.A.)

8. Learned Advocate for res. no. 5 has argued that the fact that the appointment of res. no. 5 was challenged by Dr. Meena Raghunathrao Sawate by filing O.A. no. 100/2012 before this Tribunal, which was also dismissed by this Tribunal by the order dtd. 15.12.2016. Thereafter the present O.A. is filed by the applicant on 14.2.2017. It is most likely that the present applicant was outwardly following and pursuing O.A. no. 100/2012 and because Dr. Meena Sawate has failed in her O.A., now the present applicant has come forward and filed the present O.A. no. 265/2018 almost as a proxy.

9. Present Applicant's sole contention that, she collected various documents from Dr. Meena Sawate (applicant in O.A. no. 100/2012) as the present applicant wants information about document at Exh. E & F as referred therein from Dr. Meena Sawate, is not appear a genuine reason.

10. In fact the present applicant is required to plead regarding what she was doing from the date of her complaint application i.e. from 12.12.2011 till filing of present O.A., which the applicant has not done.

11. Applicant's specific statement that Smt. Sanjevani Samadhan Shekokar possessed requisite experience for two years and six months could have been asserted by her only upon having exact knowledge of the said fact, applicant pleaded that this fact came to her knowledge *from said Dr. Meena Sawte, after dismissal of her O.A. no. 100/2012 by this Hon'ble Tribunal*, is far from the truth.

12. Learned Advocate for res. no. 5 further relied on the reported judgment of Hon'ble Supreme Court in the case of **Tridipkumar Dingal And Others Vs. State of West Bengal And Others reported at (2009) 1 SCC 768** to argue that the position, which is settled and is in operation for a long period, should not be disturbed / unsettled.

13. This Tribunal has to examine whether the applicant has explained the delay caused in filing O.A., properly.

14. After scrutiny of record this Tribunal finds that the objection that the applicant has failed to explain delay on day to day basis is based on record. View taken by Hon'ble High Court in the case of **Ashok s/o Balaji Ratan** (supra) has to be seen from the point of view that deficiency in qualification whether at all condemnable. Moreover, while the delay does not perish the right of remedy rather than the inordinate delay frustrates the remedy.

15. Moreover it is also demonstrated that alleged deficiency in qualification was within the knowledge of the applicant way back since 12.2.2011, which is evident from applicant's written objection, copy whereof is at page 21 of record.

16. It can be safely inferred based on preponderance of probability that applicant had acquired with the appointment of res. no. 5 and only after dismissal of O.A. no. 100/2012 applicant wake up or is set up as a proxy. Fortunately for applicant she got the same Lawyer who had represented applicant in O.A. no. 100/2012.

17. Be the things remain as they stand, fact remains that present O.A. is hopelessly time barred and applicant has miserably failed to explain the cause of delay even moderately

much less on day to day basis. Applicant's plea is like telltale and does not inspire confidence.

18. Hence present M.A. does not have any merit and therefore it deserves to be rejected. Accordingly, the present M.A. is rejected with costs.

19. In view of dismissal of M.A., O.A. no. 265/2018 does not survive.

(ATUL RAJ CHADHA)
MEMBER (A)

(A.H. JOSHI)
CHAIRMAN

Place : Aurangabad
Date : 27.2.2019