

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

MISC. APPLICATION NO. 195 OF 2019
WITH
ORIGINAL APPLICATION ST. NO. 674 OF 2019

DISTRICT : BEED

Suresh s/o Ghanshyam Tandale,)
Age. 55 years, Occ. : Service,)
R/o Mathura, Plot No. 271, N-3,)
CIDCO, Aurangabad.) .. **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through its Secretary,)
Food, Civil Supply & Consumer)
Protection, Mantralaya,)
Mumbai - 32.)
2. The Controller,)
Legal Metrology (Weights and)
Measures), 7th Floor,)
Fountain Telecom, Building No.1,)
Hutatma Smarak Chowk,)
M.G. Road, Mumbai - 400 001.)
3. Deputy Controller,)
Legal Metrology (Weight and)
Measures), Plot No. 5-8-94/1,)
Darshan Bungalow,)
Bansilal Nagar, Railway Station)
Road, Aurangabad.)
4. The Assistant Controller,)
Legal Metrology, (Weight and)
Measures), B & C Quarters,)
Chandmari, Palvan Chowk,)
Dhanora Road, Beed,)
Dist. Beed.).. **RESPONDENTS**

APPEARANCE :- Shri B.R. Kedar, learned Advocate for the
applicant.

: Smt. M.S. Patni, learned Presenting Officer
for the respondents.

CORAM : Hon'ble Shri B.P. Patil, Acting Chairman

RESERVED ON : 21st January, 2020

PRONOUNCED ON : 23rd January, 2020

ORDER

1. The applicant has filed the present application for condonation of delay of 668 days caused in filing the accompanying Original Application St. no. 674/2019 challenging the order of suspension.

2. It is contention of the applicant that he has been suspended by the order dtd. 2.11.2015. The said suspension is against the provisions of law laid down by the Hon'ble Supreme Court. It is his contention that the said suspension cannot be continued beyond 90 days in view of the decision of the Hon'ble Supreme Court in case of **AJAY KUMAR CHOUDHARY VS. UNION OF INDIA THROUGH ITS SECRETARY & ANR.** reported at **(2015) 7 SCC 291**. It is his contention that the similar issue has been dealt with and decided by the principal seat of this Tribunal at Mumbai in O.A. nos. 35/2018 and 936/2018 decided on

11.9.2018 & 12.2.2019 respectively. Therefore he filed the accompanying O.A. challenging the suspension order dtd. 2.11.2015. It is his contention that the suspension order came to be passed on 2.11.2015. Thereafter he made representation to the respondents on 29.11.2015, but the respondent no. 1 had not decided it. He has not received any communication from the respondents till December, 2017. He was waiting for the decision on his representation. Thereafter he was busy in searching the bridegroom for his marriageable daughter. Thereafter he performed the marriage of his daughter and therefore he could not challenge the suspension order in time. Thereafter he filed another representation on 4.1.2018, 25.9.2018, 1.1.2019 and 22.1.2019, but the respondents had not decided the same. It is his contention that he was waiting for the decision on his representations, but no decision has been taken. Therefore delay has been caused in filing the accompanying O.A. Therefore, he approached this Tribunal by filing the accompanying O.A. St. no. 674/2019 and challenged the suspension order dtd. 2.11.2015.

3. It is his contention that due to aforesaid reasons delay has been caused in filing the accompanying O.A. The impugned order is order of suspension and it is continuous cause of action. There is no delay in filing the accompanying O.A. Therefore he prayed to

condone the delay caused in filing the accompanying O.A., by filing the present M.A.

4. Respondents have not filed the affidavit in reply and resisted the contentions of the applicant in M.A. Therefore the M.A. proceeded without affidavit in reply of the respondents.

5. I have heard the arguments advanced by Shri B.R. Kedar, learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondents. I have also gone through the documents placed on record.

6. Admittedly the impugned order has been passed on 2.11.2015. Admittedly the applicant has filed representation with the respondents on 29.11.2015. After expiry of period of 6 months from the date of filing of the representation the applicant ought to have filed O.A. within one year. It means the applicant ought to have filed O.A. on or before 29.5.2017. But the applicant has filed accompanying O.A. along with M.A. on 27.3.2019. Admittedly delay of about 1 year and 10 months has been caused for filing the accompanying O.A.

7. Learned Advocate for the applicant has submitted that after passing the impugned order the applicant immediately made representation to the respondents on 29.11.2015, but the

respondent no. 1 had not decided the same. Applicant was waiting for decision on his representation and therefore he could not file the O.A. It is his contention that the applicant was busy in searching the bridegroom for his marriageable daughter. Thereafter he performed the marriage of his daughter. As he was busy in that process, he could not challenge the suspension order in time. He has submitted that as the respondents have not decided his earlier representations, the applicant has made representations on 4.1.2018, 25.9.2018, 1.1.2019 and 22.1.2019. But the respondents have not decided those representations and therefore after waiting for long time he has filed the present M.A. and O.A. Therefore, he prayed to condone the delay caused in filing the accompanying O.A.

8. Learned Advocate for the applicant has submitted that the order of suspension is in continuation and therefore there is continuous cause of action. Therefore no delay has been caused in filing the accompanying O.A. as it being a continuous cause of action. He has placed reliance on the judgment of Hon'ble Supreme Court in case of **M.R. GUPTA VS. UNION OF INDIA AND OTHERS** reported at **AIR 1996 SC 669**, wherein it is observed as follows :-

“Where the employee’s grievance was that his fixation of initial pay was not in accordance with the

Rules, the assertion being of continuing wrong the question of limitation would not arise. So long as the employee is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to the Rules. It is no doubt true that if the employee's claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. Similarly, any other consequential relief claimed by him, such as, promotion, etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. (Para 5)"

9. Learned Presenting Officer has submitted that the delay of 668 days has been caused in filing the accompanying O.A. Applicant has not explained the said delay by giving plausible, just and proper explanation. She has submitted that the delay is intentional and deliberate and therefore it cannot be condoned. She has submitted that the applicant has not given plausible explanation for condonation of delay. Therefore she prayed to reject the M.A.

10. On perusal of record it reveals that the impugned suspension order has been passed on 2.11.2015. Thereafter the applicant kept mum for a long time. After waiting for reasonable time he ought to have filed the accompanied O.A. within time. But he has not filed the accompanying O.A. in time. Applicant prayed to condone the delay caused in filing the accompanying O.A. on account of marriage of his daughter. Record shows that

marriage of the applicant's daughter has been performed on 28.11.2017. Even thereafter the applicant has not approached the Tribunal at the earliest for challenging the impugned order of suspension. It shows that the applicant deliberately failed to approach this Tribunal in time. Delay caused in filing the accompanying O.A. is inordinate, intentional and deliberate. No plausible, just and proper explanation has been given by the applicant for condonation of said delay. This shows that the delay was intentional and deliberate. Therefore, in my view the applicant has not explained the delay caused in filing the accompanying O.A. by giving plausible explanation. Therefore, the delay cannot be condoned.

11. I have gone through the decision referred by the learned Advocate for the applicant in case of **M.R. GUPTA VS. UNION OF INDIA AND OTHERS** (supra). I have no dispute regarding the settled principles laid down therein. However, the said decision is not applicable in the present case considering the facts in the present case.

12. The applicant has not given satisfactory explanation for condoning delay, but valuable rights of the applicant are involved in the accompanying O.A. Therefore, in my view, it would be just to condone the delay by imposing costs on the applicant.

13. In view of above discussion, the present Misc. Application is allowed, subject to cost of Rs. 5,000/- (Rs. Five thousand only). Applicant shall deposit the cost on or before 10.2.2020. On depositing the cost the O.A. st. no. 674/2019 be scrutinized and registered. On failure to deposit the costs within the stipulated period, the M.A. stands dismissed automatically without reference to the Tribunal. There shall be no order as to costs.

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad

Date : 23rd January, 2020