

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**MISC. APPLICATION NO. 510 OF 2018  
WITH  
ORIGINAL APPLICATION NO. 940 OF 2018**

**DISTRICT : AURANGABAD**

**Namdeo Mahadevrao Wakude,** )  
Age : 67 years, Occu. : Pensioner, )  
R/o : Plot No. 9, Sujata Housing Society) )  
Behind Saint John English School, )  
Jalgaon Road, Harsool, Aurangabad, )  
Dist. Aurangabad. ) .. **APPLICANT**

**V E R S U S**

- 1) **The State of Maharashtra,** )  
Through its Director, )  
Forensic Science Laboratory, )  
M.S., Mumbai. )  
Having its office at Vidya Nagar, )  
Kalina, Santacruz (E), Mumbai. )
- 2) **The Deputy Director,** )  
Regional Forensic Science Laboratory,)  
Old Nizam Bunglow, Cantonment, )  
Aurangabad, Dist. Aurangabad. )
- 3) **The Indian Audit & Account** )  
**Department,** Office of the Accountant) )  
General, (Accounts & Entitlement-2))  
Civil Line, Nagpur, Dist. Nagpur. ) **.. RESPONDENTS**

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**APPEARANCE** : Shri V.B. Wagh, Advocate for the Applicant.  
: Shri B.S. Deokar, Presenting Officer for  
Respondents.  
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**CORAM** : **Shri V.D. Dongre, Member (J)**  
**AND**  
**Shri Bijay Kumar, Member (A)**

**DATE** : **21.06.2021.**  
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**O R D E R**  
**(Pronounced on 21<sup>st</sup> June, 2021)**  
**(Per : Shri Bijay Kumar, Member (A))**

1. Applicant Shri Namdeo Mahadevrao Wakude, R/o plot no. 9, Sujata Housing Society, Behind Saint John English School, Jalgaon Road, Harsool, Aurangabad, District- Aurangabad has filed O.A. No. 940/2018 on November 28, 2018 followed by M.A. No. 510/2018 which was filed on December 17, 2018. The applicant, through the miscellaneous application, is essentially seeking relief of condonation of delay of 2 years, 6 months and 9 days (922 days) counted from June 8, 2016 i.e. the date of passing of common judgment dated June 8, 2016, for 21 original applications, passed by a Single Judge Bench of Shri R.B. Malik-Member (J) of Maharashtra Administrative Tribunal, Mumbai.
2. The applicant has submitted that he was initially appointed as a Senior Laboratory Assistant, Class -III in the office of Forensic Science Laboratories at Mumbai vide order dated June 14, 1979. He was appointed basis a temporary promotion to the post of Scientific Assistant vide an order dated November 2, 1982 for initial period of 3 months with a break of one day up to April 30, 1983 and thereafter, the period of break varied from one month to 12 months and period of temporary promotion too,

verged from one month to five months. The applicant stated that he was promoted to the post of Scientific Assistant on regular basis vide an order dated August 4, 1986 and posted in the office of Deputy Director, Regional Forensic Science Laboratory, Aurangabad. The applicant further stated that he was given temporary promotions during the above stated periods of November 2, 1982 to July 31, 1986 subject to availability of selected candidate from M.P.S.C.

3. The applicant has further stated that the period of his temporary services on the post of scientific assistant from November 2, 1982 to July 31, 1986 had not been taken into account while granting him benefits of the time bound promotion w.e.f. August 4, 1998 and that he retired from service on superannuation on January 31, 2009.

4. The applicant further stated that other 9 employees working in the cadre of Senior Laboratory Assistants or Scientific Assistants under territorial jurisdiction of the Maharashtra Administrative Tribunal, Mumbai had filed O.A. No. 1195/2013. A Single Judge Bench of Maharashtra Administrative Tribunal, Mumbai passed a common judgment for 21 similar O.As. dated June 8, 2016 allowing that the period of ad-hoc

promotion of the concerned applicants should be considered for the purpose of time bound promotion and Assured Career Promotion Scheme. The applicant further states after coming to know about the above-mentioned order dated June 8, 2016 passed by the Maharashtra Administrative Tribunal, Mumbai in OA No. 1195/2013, that he started making representations to competent authorities from November 17, 2016 onwards and made in all, 4 representations, however, the concerned authorities have not communicated any decision on the representations made by him. However, a similar representation made by another person namely, Shri Y. T. Suryawanshi has been rejected by the authorities on August 26, 2016 which causes apprehension in the mind of the applicant that his application, too, will be rejected.

5. The applicant has cited Judgment passed by Hon'ble Mumbai High Court, bench Aurangabad in W.P. No. 2334/2009, reported in 2009 (5) ML.J., page No. 296 to support his claim that authorities should have accepted his representations and given him same benefit as has been granted to applicants in O.A. No. 1195/2013 by MAT Mumbai.

6. On the other hand, the Respondents 1 & 2 have submitted affidavit in reply to this Miscellaneous Application on April 4, 2019 and thereby, opposed the MA on ground of unexplained delay in filing the Miscellaneous Application. The Respondents have also filed additional affidavit on February 6, 2020 and cited a case law emanating from the case of The Secretary, State of Karnataka and others vs. Uma Devi and others [2006 AIR SCW 1991].

7. The matter was argued on June 15, 2021 and thereafter, closed for orders. While arguing the matter Shri V.B. Wagh, the learned advocate for the applicant has submitted following documents to support the claim of the applicant-

(1). Copy of Government of Maharashtra, Law & Judiciary Department circular bearing no. 681-2016/ Misc./E, dated-February 28, 2017.

(2). Order passed by Hon'ble Supreme Court of India, in Civil Appeal No. 7510 of 1995, decided on August 21, 1995, M.R. Gupta vs. Union of India and others

(3). Order dated January 31, 2017, passed by Single Judge Bench of Maharashtra Administrative Tribunal in MA No. 283/ 2016 in OA No. 706/ 2016.

8. The learned P.O. argues on point that the case of applicant is not similar to the case in OA 1195/2013 and the inordinate delay is not explained properly and therefore, the miscellaneous application may be dismissed.

Analysis of the facts in the matter-

9. The case law cited by applicant reported in 2009 (5) MLJ. Page No. 296 in W.P. No. 2334/2009 by the Hon'ble Mumbai High Court, Nagpur Bench is relevant when point of merit of the O.A. No. 939/2018 could be taken up for consideration. Likewise, Government of Maharashtra, Law & Judiciary Department Circular bearing no. 681-2016/ Misc./ E, dated February 28, 2017 is relevant when the merit of the said OA No. 939/2018 is taken up for examination. At this stage we are only dealing with delay condonation and not merit or demerit of the case in Original Application. The Order passed by Hon'ble Supreme Court of India, in Civil Appeal No. 7510 of 1995, decided on August 21, 1995, M.R. Gupta Vs. Union of India and others, relates to "continuing wrong" which has been amply clarified in Para No. 5 of the said order relevant extract of which is being reproduced below-

*".....**So long as the appellant is in service**, a fresh cause of action arises every month when he (the appellant) is paid his monthly salary on the basis of a wrong computation made contrary to the rules." (**emphasis supplied**).*

10. In our opinion, as the appellant has retired in the year 2009, and he said to have for all practical purposes, acquiesced to the grant of benefits of time bound promotion / assured career promotion scheme, the instant matter, is different in its very nature and therefore, the same does not seem to be relevant for the purpose of counting period of limitation from the date of passing of common judgment in O.A. No. 1195/ 2013.

11. Further, the order dated January 31, 2017, passed by Single Judge Bench of Maharashtra Administrative Tribunal in M.A. No. 283/ 2016 in OA No. 706/ 2016 sets a sort of acid test for condoning delay in filing application in matters of continuing wrong, relevant extracts of para 7 of the said order are being quoted below-

*"To summarise, normally, a belated service related claims be rejected on the ground of delay and laches ( where remedy is sought by filing a writ petition) or limitation ( where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to continuing wrong. Where a service related claim is based on continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong creates a continuing source of injury.*

*But, there is an exception to this exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of day as it does not affect the rights of third parties. But, if the claim involved issues relating to seniority or promotion, etc. affecting others, delay would render the claim stale and doctrine of laches / limitation....."(emphasis supplied)*

12. Now, referring to the case law cited by learned advocate for the Respondents, i.e. **Secretary, State of Karnataka and Others vs. Uma Devi and others [2006 AIR SCW 1991]**, which relates to a matter of treatment to continuation of service under court orders and therefore, do not seem to be impacting the issue of limitation under consideration.

13. In this matter, an order passed by Hon'ble Supreme Court in Civil Appeal No. 12037-48, of 1996, decided on September 2, 1996, **State of Karnataka and others Vs.S.M. Kotarayya and others**, reported in SCC (1996) 6 Supreme Court Cases 267, is referred to, in which the respondents, while working as teachers in the Department of Education, availed of Leave Travel Concession during the year 1981-82. But, later it was found that they had never utilized the benefit of LTC but had drawn the amount and used it. Consequently, recovery was made in the



year 1984-86. Some persons in similar cases challenged the recovery before the Administrative Tribunal which allowed their applications in August 1989. On knowing the same, the respondents filed application August 1989 before the Tribunal with an application to condone the delay. The Tribunal condoned the delay by the impugned order. Allowing the appeal, the Supreme Court held although it is not necessary to give explanation for the delay, which occurred within the period mentioned in sub-sections (1) or (2), explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-section (1) and (2) as to why they could not avail the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay.

14. In view of above analysis the Miscellaneous Application does not pass the test laid down by various case laws discussed above and we do not find merit in the Misc. Application No. 510/2018 and therefore, dismiss the same. Consequently, the O.A. No. 940/2018 stands dismissed. There shall be no order as to costs.

**MEMBER (A)**  
**(Bijay Kumar)**

**MEMBER (J)**  
**(V.D. Dongre)**

Kpb/D.B. M.A. 510/2018 with O.A. 940/2018 VDD & BK