

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

**MISC APPLICATION NO.228 OF 2022
IN
ORIGINAL APPLICATION NO.310 OF 2022**

**DISTRICT: Raigad
SUB : Extra Ordinary Leave**

Smt. Sneha Sanjay Thakur)
Age – 51 years, Occ. Sister Incharge,)
Vitthal Sayanna General Hospital, Thane)
R/at Brahman Aali, Siddhesh Building, Alibaug)
Dist. Raigad.).... **Applicant**

Versus

1. The Deputy Director, Health Services,)
Mumbai Circle, Thane.)
2. The Superintendent of Police, O/at Alibaug)
Dist. Raigad.)
3. The Director, Health Services -)
Commissionerate, Arogya Bhavan, St.)
George Hospital Premises, P.D'Mello Road,)
Mumbai 400 001.)...**Respondents**

Ms Savita T. Suryavanshi, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondent

CORAM : A.P. Kurhekar, Member (J)

DATE : 22.11.2022.

JUDGMENT

1. The present M.A. is filed to condone the delay of 3 years, 4 months & 25 days caused in filing Original Application in which the Applicant has challenged order dated 06.11.2017 whereby her absence for 297 days was treated as extra ordinary leave.

2. The Applicant was serving as Staff Nurse. In the period from 30.06.2012 to 22.04.2013, she was absent for total 297 days and it was treated as extra ordinary leave without pay by order dated 06.11.2017. The Applicant has filed O.A.No.310/2022 challenging the order dated 06.11.2017 on 01.04.2022. Thus, there is delay of 3 years, 4 months & 24 days for filing O.A. as shown in the Misc. Application.

3. Ms Savita Suryavashi, learned Counsel for the Applicant sought to contend that delay was caused on account of Covid-19 Pandemic situation. She further submits that because of impugned order, Applicant's chances of promotion are delayed/hampered and it is recurring loss and continuous cause of action. She referred to the decision of the Hon'ble Supreme Court in **Union of India & Ors. Vs. Tarsem Singh, Civil Appeal No.5151-5152 of 2008 arising out of SLP (C) Nos. 3820-3821 of 2008.**

4. Per contra, Smt. Archana B. K., learned Presenting Officer opposes the application *inter-alia* contending that there is huge and inordinate delay and has pointed out that limitation had expired much before onset of Covid-19 Pandemic situation and the Applicant has not make out sufficient ground to condone the delay.

5. True, while considering the application under Section 5 of Limitation Act, the Court should adopt justice-oriented approach but at the same time, there has to be reasonable and sufficient cause for condoning the delay. Thus, existence of sufficient cause is condition precedent to condone the delay. True, what counts is not the length of delay but sufficiency of the cause. What constitutes sufficient cause cannot be laid down by any hard and sufficient rules. It depends upon the facts and circumstances of each case.

6. Now, turning to the fact of the present case, the Applicant sought to challenge the order dated 06.11.2017 and limitation to challenge such order expired on 06.11.2018. However, O.A. was filed on 01.04.2022 quite belatedly. Thus, there is huge and extra ordinary delay for more than three years in filing O.A.

7. The submission advanced by learned Counsel for the Applicant that because of Covid-19 Pandemic situation, the Applicant could not approach the Tribunal within the period of limitation or thereafter earlier holds no water. The cause of action accrued to Applicant on 06.11.2017 when there was no Covid-19 infection at all. The limitation of 1 year expired on 06.11.2018. However, thereafter also no steps were taken to file the OA. within reasonable time. Covid-19 infection started in 2020. It is only in a case where limitation expired during the period of pandemic situation, in that event only, limitation is extended in view of the order of the Hon'ble Supreme Court in ***Suo-Motu W.P.No.03/2020***, decided on 10.01.2022. The Hon'ble Supreme Court held that in case where limitation would have expired during the period between 15.03.2020 to 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.

8. Suffice say, the benefit of order of the Hon'ble Supreme Court can be taken where limitation expires in pandemic situation that is from 15.03.2020 to 28.02.2022. In present case, as stated above the cause of action accrued on 06.11.2017 and limitation of 1 year expired on 06.11.2018 when there was no Covid situation. Infection of Covid 19 was started in 2020 which was followed by lockdown. Suffice to say, Covid-19 Pandemic situation could not be the ground to condone the delay as limitation expired much earlier of onset of Covid-19 infection.

9. The reliance placed on the decision of the Hon'ble Supreme Court in ***Tarsem Singh's*** case is misplaced. The said matter pertains to disability pension to which the petitioner was entitled in law, and

therefore, nonpayment of pension or less pension found recurring cause of action. Whereas in present case, there is no question of recurring cause of action. Indeed, the cause of action accrued on 06.11.2017 and limitation of 1 year expired on 06.11.2018. Even thereafter also no steps were taken in right earnest and O.A. came to be filed quite belatedly on 01.04.2022. Suffice to say, there is huge and inordinate delay in filing O.A. The Applicant is serving as Staff Nurse and slept over her rights.

10. For the aforesaid reasons, I have no hesitation to conclude that no sufficient cause is made out to condone the huge delay and Misc. Application is liable to be dismissed. Hence, the following order :-

ORDER

- (A) Misc. Application is dismissed with no order as to costs.
- (B) Consequently, O.A. is dismissed being barred by limitation.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 22.11.2022
Dictation taken by: V.S. Mane
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