

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISCELLANEOUS APPLICATION NO.27 OF 2020
IN
ORIGINAL APPLICATION NO.13 OF 2020**

DISTRICT : PUNE

Shri Ramkisan Shrirang Pawar,)
Age. Adult, Occu. Service,)
At. Post Shirur, Tal. Shirur,)
Dist. Pune 412 210) **...Applicant**

Versus

1. Maharashtra Public Service Commission,)
Through the Secretary,)
5th, 7th and 8th Floor, Cooperage Telephone)
Exchange Building, Cooperage,)
Mumbai 400 021.)
2. The State of Maharashtra,)
Through the Principal Secretary,)
Skill Development and Entrepreneurship,)
Department, Mantralaya,)
Mumbai 400 032)
3. Shri Digambar Ambadas Dalvi,)
Assistant Director,)
Directorate of Vocational Education and)
Training, R/at. Y-6/94, Government)
Colony, Bandra (E), Mumbai 400 051) **...Respondents**

Shri S.S. Dere, learned Advocate for Applicant.

Shri A.A. Desai, learned Special Counsel with Ms. S.P. Manchekar, learned Chief Presenting Officer for Respondents No.1 and 2.

Shri C.T. Chandratre, learned Advocate for the Respondent No.3.

CORAM : **JUSTICE MRS. MRIDULA BHATKAR, (CHAIRPERSON)**
SHRI P.N. DIXIT, (VICE-CHAIRMAN)

PER : **JUSTICE MRS. MRIDULA BHATKAR, (CHAIRPERSON)**

RESERVED ON : **22.10.2020**

PRONOUNCED : **29.10.2020**
ON

J U D G M E N T

1. The Applicant prays for condonation of delay of 8 months. In the Original Application, the applicant wants to challenge the Selection Process and the interview conducted on 12.04.2018 for the post of Director of Vocational Education and Training. The Applicant filed the O.A. on 07.01.2020.

2. Learned Advocate Shri S.S. Dere has submitted that under Section 21 of Administrative Tribunals Act 1985 after the cause of action, within the period of one year, the application is to be filed. Therefore, after 11.04.2019, there is delay of 8 months. He submitted that the applicant was called for the interview. However, he was not allowed to give the interview because he was not having approved certificate issued by the University of Educational Institute about experience of Teaching. He submits that at that time he was not aware of the ground of his rejection. Moreover the approval of such authority was one of the requisite for the

interview and therefore the applicant kept quiet. However, in the month of June 2019 the applicant received information that one Shri Digambar Ambadas Dalvi, Assistant Director, Directorate of Vocational Education and Training, Respondent No.3 in this application, though was not having the approval of the University at the time of interview he was given time to produce relevant documents especially experience certificate. The Applicant also has knowledge that the Respondent No.3 is recommended by Respondent No.1 Maharashtra Public Service Commission (M.P.S.C).

3. Learned Counsel Shri S.S. Dere submits that the Applicant is a resident of Aurangabad. It was difficult for him to collect the necessary documents in support of his case. Hence he wants to challenge mainly on the ground of discrimination and violation of Article 14 of the Constitution of India as Respondent No.3 was given special treatment than others and also challenge the Selection Process on the ground of transparency. Learned Counsel further submits that the applicant stands at serial no.1 in the merit list. As soon as he could lay hands over the documents, one Shri A.M. Jadhav who is other candidate who has filed the O.A.No.325/2018 (Shri A.M. Jadhav Versus The State of Maharashtra & Ors.), had challenged the same Selection Process. Learned Counsel submits that the applicant is having very good case on merit and the delay is not deliberate and therefore he is to be given opportunity to seek relief for his grievance.

4. Learned Counsel Shri A.A. Desai who is appearing for Respondents No.1 and 2 while opposing this application has argued that it is a long

delay of 8 months which is not justified by the applicant and no reasons are mentioned in the application. Learned Counsel has submitted that the applicant if at all had grievance against the Selection Process ought to have taken the steps of his own to procure the documents and should have filed the application within the time like other applicant in O.A.No.325/2018. The applicant is negligent and therefore the long delay of 8 months cannot be condoned. It is necessary for the applicant to explain the delay by sufficient and good reasons then only it can be condoned. However, neither in the application nor in the submission the delay is properly explained.

5. Learned C.P.O. Ms. S.P. Manchekar along with learned Advocate Shri A.A. Desai for the Respondent No.1 & 2, and learned Counsel Shri C.T. Chandratre for the Respondent No.3, all have adopted the same submissions.

6. Learned Counsel for the Respondents 3, Shri C.T. Chandratre while further assailing submits that the Applicant has no ground to come to the Tribunal and challenge the Selection Process for which he himself has appeared. The delay is in fact one year and 8 months. Assuming the applicant had the knowledge of the documents which were obtained by Mr. A.M. Jadhav, the applicant in O.A.No.325/2018 in the month of June 2019 still there was a gap a 6 months for filing this application which is not explained and on that ground the application which is delayed is to be dismissed. In support of his submissions learned Counsel has relied on the following judgments :-

- (a) Union of India and others Versus Tarsem Singh. (2008) 2 SCC (LC) 765.
- (b) State Of Nagaland Versus Lipok AO & Ors, SCC. reported in AIR 200 SCC 2191.
- (c) G. Sudhakar Reddy Versus State of Telangana and Ors. by Telangana High Court reported in 2020(3) SLR 790 (TEN).
- (d) Sagufa Ahmed & Ors. Vs. Upper Assam Plywood Products Pvt. Ltd. & Ors. [Civil Appeal Nos. 3007-3008 of 2020].

7. Considered the submissions. Admittedly there is delay of 8 months, the applicant could have taken the steps of his own to procure the documents under Right to Information Act, 2005 like Shri Jadhav in O.A.No.325/2018. However, he kept quiet and appears that he accepted the decision of refusal to take interview by the M.P.S.C till he got information the he was given unequal treatment by the M.P.S.C. The Applicant is staying at Aurangabad and therefore the submission that it took some time for him to collect the documents from Aurangabad and come to Mumbai and file the O.A. in January, 2020 cannot be said to be deliberate or act of negligence on the part of the Applicant. In case of ***State Of Nagaland Versus Lipok AO & Ors (cited supra)***, the ratio laid down in this case is favorable to the applicant. The Hon'ble Supreme Court while dealing with the explanation "sufficient cause" under Section 5 of the Limitation Act, 1963 has held that it must receive liberal construction so as to advance substantial justice and it also held that the Tribunal should not adopt a pedantic injustice approach in rejecting the application for condonation of delay.

8. There is one more angle on the point of delay which needs to be taken into account. The O.A.No.325/2018 is still pending and it is part heard and issue involved in O.A.No.325/2018 and O.A. filed by the present applicant are same and interlinked. The Respondent (M.P.S.C.) has recommended the Respondent No.3 who is also the Respondent No.3 in O.A.No.325/2018. The respondents thus are the same in both the applications. Thus, the Selection Process is stuck due to interim stay granted by this Tribunal. Thus the cause has a continuity and therefore the forum should be available to seek the remedy. The case of the applicant may stand or fall on its merit, however, he should not be rendered without forum.

9. In the case of ***Union of India and others V/s. Tarsem Singh, (cited supra)***, the ex-serviceman had approached the Hon'ble High Court to save his disability pension and has prayed for the granting of arrears of 16 years. The Hon'ble Supreme Court allowed the said appeal on the ground that normally the delayed service related claim will be rejected on the ground of delay and laches or limitation. However, the Hon'ble Supreme Court has carved out the case relating to continuing wrong. Thus where wrong is continuous then the period of limitation is not applicable.

10. In the case of ***G. Sudhakar Reddy Versus State of Telangana and Ors. (cited supra)***, the disciplinary proceedings and the suspension was challenged and there was delay of nearly 5 years of initiating / conducting of enquiry and for other reasons also. Therefore,

the Writ Petition was allowed. In view of the facts of the case, this is not applicable and hence not useful to the present case.

11. In case of **Sagufa Ahmed & Ors. Vs. Upper Assam Plywood Products Pvt. Ltd. & Ors. (cited supra)**, the order passed by the National Company Law Appellate Tribunal, dismissing the application for condonation of delay was challenged. The Hon'ble Supreme Court mainly dealt with Sub Section (3) of Section 421 of Companies Act, 2013, wherein it has explained and considered the term "prescribed period" in Section 4 of the Limitation Act, 1963 and in the present application we are considering Section 5 of the Limitation Act, 1963. Therefore we are relying on the ratio laid down in judgment in case of **State Of Nagaland Versus Lipok AO (cited supra)**.

12. Hence, we condone the delay and allow this Miscellaneous Application with following order :-

O R D E R

Miscellaneous Application is allowed with costs of Rs.10,000/- which is to be paid to the Police Welfare Fund of Maharashtra Police.

Sd/-

(P.N. Dixit)
Vice-Chairman

Sd/-

(Mridula Bhatkar J.)
Chairperson

prk
Mumbai.
Date : 29.10.2020