

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**MISCELLANEOUS APPLICATION NO. 128 OF 2019  
WITH  
ORIGINAL APPLICATION ST. NO. 97 OF 2019**

DISTRICT: - NANDED/HINGOLI.

**Dr. Shridhar S/o. Kishanrao Kendre,**

Age-62 years, Occu. : Retired Govt.

Medical Officer, R/o: Penda,

Post-Pardi (Kh) Tq. Kinwat,

District Nanded.

.. APPLICANT.

**V E R S U S**

- 1. The State of Maharashtra,**  
Through Secretary,  
Public Health Department,  
Health Services, Mantralaya,  
Mumbai-400032.
  - 2) Director of Health Services,**  
St. Jorge Hospital Parisar /  
Arogya Bhavan,  
CST Mumbai 400001
  - 3) Deputy Director, Health Services,**  
Near Baba Petrol Pump,  
Railway Station Road,  
Aurangabad 431001
  - 4) Chief Executive Officer,**  
Zilla Parishad, Hingoli.
  - 5) District Health Officer,**  
Zilla Parishad, Hingoli.
  - 6) Chief Executive Officer,**  
Zilla Parishad Nanded.
  - 7) District Health Officer,**  
Zilla Parishad, Nanded.
- .. RESPONDENTS.

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**APPEARANCE** : Shri. Rajendra M. Lone, learned  
Advocate for the applicant.  
: Shri D.R. Patil, learned Presenting  
Officer for the resp. Nos. 1 to 3.  
: Smt. Sarita Gaikwad, learned Advocate  
holding for Smt. Pratibha Bharad,  
learned Advocate for respondent Nos. 4  
and 5.  
: Shri Ashish B. Shinde, learned  
Advocate for respondent Nos. 6 & 7  
(**absent**).  
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**CORAM** : **B.P. PATIL, ACTING CHAIRMAN**

**RESERVED ON** : **25<sup>TH</sup> SEPTEMBER, 2019**

**PRONOUNCED ON:** **30<sup>TH</sup> SEPTEMBER, 2019**  
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### **ORDER**

This is an application filed by the application for condonation of delay of about 6 years, 9 month and 13 days caused for filing the accompanying Original Application.

2. It is contention of the applicant that he has filed the accompanying Original Application seeking directions to the respondents to grant him interest on the delayed payment of leave encashment and D.C.R.G. and also to grant him three additional increments in view of the Government Resolution dated 14.12.2011.

3. It is contention of the applicant that the delay has been caused for filing the Original Application. The delay has been caused as he has no knowledge regarding issuance of Government Resolution dated 14.12.2011 and, therefore, he prayed to condone the delay. It is his contention that his valuable rights are involved in the accompanying Original Application and, therefore, he prayed to condone the delay of about 6 years, 9 months and 13 days caused for filing accompanying Original Application.

4. Respondent Nos. 1 to 3 resisted the contentions of the applicant on the ground that the applicant has not explained the delay by giving just and proper reasons. It is their contention that the delay is inordinate and deliberate. The delay has not explained by the applicant properly by giving plausible explanation. Therefore, they prayed to reject the present Miscellaneous Application.

5. I have heard the arguments advanced by Shri. Rajendra M. Lone, learned Advocate for the applicant, Shri D.R. Patil, learned Presenting Officer for the resp. Nos. 1 to 3 and Smt. Sarita Gaikwad, learned Advocate holding for Smt. Pratibha Bharad, learned Advocate for respondent Nos. 4 and 5. I have perused application, affidavit, affidavit in reply filed by

respondent Nos. 1 to 3. I have also perused the documents placed on record by both the parties.

6. Shri Ashish B. Shinde, learned Advocate for respondent Nos. 6 & 7 remained absent.

7. Admittedly, the applicant was serving as Medical Officer with the respondents. He retired on 30.04.2015 on attaining the age of superannuation.

8. Learned Advocate for the applicant has submitted that the applicant possesses the Diploma in Medical Laboratory Technology (DMLT) and, therefore, he was entitled to get additional increments in view of the Government Resolution dated 14.12.2011, but he had no knowledge regarding issuance of the said Government Resolution till his retirement and, therefore, he could not able to file the Original Application within time. He has further submitted that the applicant has claimed interest on the delayed payment of leave encashment and D.C.R.G. But he could not able to file the O.A. within time. He has submitted that the valuable rights of the applicant are involved in the Original Application and, therefore, he prayed to allow the Miscellaneous

Application by condoning the delay caused for filing accompanying Original Application.

9. Learned Advocate for the applicant has placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of **ESHA BHATTACHARJEE VS. MANAGING COMMITTEE OF RAGHUNATHPUR NAFAR ACADEMY AND OTHERS [CIVIL APPEAL NOS. 8183-8184 OF 2013 ARISING OUT OF S.L.P. (C) NOS. 24868-24869 OF 2011]** decided on 13<sup>TH</sup> September, 2013; wherein it is observed by the Hon'ble Supreme Court as follows: -

*“6. In Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others, a two judge Bench observed that the legislature has conferred power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression sufficient cause employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice, for that is the life-purpose for the existence of the institution of courts. The learned Judges emphasized on adoption of a liberal approach while dealing with the applications for condonation of delay as ordinarily a litigant does not stand to benefit by lodging an*

*appeal late and refusal to condone delay can result in an meritorious matter being thrown out at the very threshold and the cause of justice being defeated. It was stressed that there should not be a pedantic approach but the doctrine that is to be kept in mind is that the matter has to be dealt with in a rational commonsense pragmatic manner and cause of substantial justice deserves to be preferred over the technical considerations. It was also ruled that there is no presumption that delay is occasioned deliberately or on account of culpable negligence and that the courts are not supposed to legalise injustice on technical grounds as it is the duty of the court to remove injustice. In the said case the Division Bench observed that the State which represents the collective cause of the community does not deserve a litigant-non-grata status and the courts are required to be informed with the spirit and philosophy of the provision in the course of interpretation of the expression sufficient cause.”*

10. Learned Advocate for the applicant has submitted that in view of the principle laid down by the Hon'ble Supreme Court in the aforesaid decision, in the interest of justice the delay caused for filing the accompanying Original Application, may be condoned.

11. Learned Presenting Officer has submitted that the applicant was aware about the Government Resolution dated

14.12.2011. He had not filed the Original Application within time. He has submitted that there was deliberate and intentional delay on the part of the applicant and, therefore, the same cannot be condoned. He has further submitted that the applicant has not given plausible explanation for condonation of delay. Therefore, he prayed to reject the Miscellaneous Application.

12. On perusal of the record, it reveals that the Government issued Government Resolution dated 14.12.2011 granting advance increment to the Medical Officers, who completed Diploma, Post-graduate course while in service. The Government has published Government Resolution in Gazette. Therefore, the applicant cannot plead ignorance regarding the issuance of the Government Resolution and its publication. Therefore, the applicant's plea in that regard is not acceptable. The, ground raised by the applicant is not just and proper. Ignorance of publication of Government Resolution is not a just ground for condonation of delay. The applicant has not filed the accompanying Original Application within time from the date of publication of G.R. Not only this, but he had also not raised grievance about his claim before the competent authority after his retirement. The delay of

more than 6 years has been caused for filing the accompanying Original Application. The delay has not been explained properly by the applicant by giving just / plausible explanation. In the absence of sufficient and just explanation, inordinate delay caused for filing the accompanying Original Application cannot be condoned.

13. I have gone through the decision referred hereinabove by the learned Advocate for the applicant. I have no dispute about the settled legal position laid down therein. In the instant case the applicant has not shown the sufficient cause for condonation of delay. Therefore, principle laid down, by the Hon'ble Supreme Court in the aforesaid judgment, is not attracted in the instant case.

14. As discussed hereinabove, the applicant has failed to explain the inordinate delay caused for filing the accompanying Original Application by showing sufficient cause. Therefore, the inordinate delay caused for filing accompanying O.A. cannot be condoned. There is no merit in the Miscellaneous Application. Hence, it requires to be dismissed.



15. In view of the discussion in foregoing paragraphs, the Miscellaneous Application stands rejected. Consequently, the registration of accompanying Original Application stands refused.

There shall be no order as to costs.

**ACTING CHAIRMAN**

**PLACE : AURANGABAD.**

**DATE : 30<sup>TH</sup> SEPTEMBER, 2019**

M.A.NO.128-2019 In O.A.St.No.97-2019(SB)-HDD-2019