

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**M.A.NO. 11/2017 IN O.A. NO. 245/2016
(Shri Satish Pundlik Dhangar Vs. The State of Maha. and Ors.)**

**CORAM : Hon'ble Shri Rajiv Agarwal, Vice Chairman (A)
AND
: Hon'ble Shri B.P. Patil, Member (J)**

DATE : 4TH AUGUST, 2017.

O R D E R

[Per : Hon'ble Shri B.P. Patil, Member (J)]

1. In the present Miscellaneous Application, the applicants have prayed to condone the delay of 6 years and 8 months caused in filing the accompanying Original Application No. 245/2016.

2. The applicant was appointed as Gardner (Mali) by the respondent no. 4 on 19.06.1997 on temporary basis. Thereafter, he worked continuously with respondent no. 4. On 14.07.2009 respondent No. 4 issued the termination order and terminated the services of the applicant w.e.f. 15.07.2009. The applicant thereafter made several representations with the respondents and requested them to appoint him on the post of Gardner (Mali), but his applications were not considered by the respondents. Therefore, again he filed application on 6.4.2014 with the respondent No. 4 requesting him to appoint him on the post of Gardner (Mali) considering his experience. Respondent No. 4 informed him by letter dated 24.09.2014 that no post of

Gardner (Mali) is vacant and therefore, his request cannot be considered. Thereafter, applicant filed representation with the respondent Nos. 2 & 3 against the said communication. On 24.09.2015, respondent No. 4 issued letter to him informing that his proposal for appointment dated 21.02.2015 has been submitted to the respondent No. 2. Thereafter, the applicant submitted application dated 24.04.2015 and requested him to appoint him on the post of Gardner (Mali). But on 08.06.2015, request of the applicant came to be rejected on the ground that he had not worked satisfactorily, when he was appointed. Therefore, the applicant approached this Tribunal on 8.3.2016 and filed Original Application bearing No. 245/2016 and challenged the communication dated 8.6.2015.

3. Thereafter, the applicant amended the O.A. and prayed to quash and set aside the impugned termination order dated 14.07.2009 issued by respondent No. 4. It is his contention that there is delay of 6 years and 8 months in filing the accompanying Original Application for challenging the termination order dated 14.07.2009. It is his contention that he made several applications dated 20.07.2009, 07.09.2011, 11.11.2011, 06.04.2014, 11.12.2014, 15.12.2014 and 24.04.2015 with a request to appoint him on the post of Gardner (Mali), but the respondents have not considered

those applications filed by the applicant and therefore, the delay has been caused. It is his contention that the delay was not willful, deliberate and intentional. His valuable rights are involved in the present O.A. No. 245/2016 and therefore, he prayed to condone the delay caused in filing the aforesaid O.A.

4. Respondent Nos. 2 to 4 have filed their affidavit in reply and resisted the contentions of the applicant. It is their contention that the applicant was not punctual in his work and therefore, his services have been terminated. It is their contention that no post of Gardner (Mali) was available on the establishment of respondent No. 4. The applicant was appointed on temporary basis under Police Welfare Funds and he was not appointed in the office of the District Superintendent of Police.

5. As his work was not satisfactory, he has been removed from the post of Gardner (Mali). They have admitted that the applicant filed application on 20.07.2009 for reappointing him on the post of Gardner (Mali), but his application was rejected on the same day. Not only this, but in response to the subsequent applications, the respondent No. 4 informed the applicant on 24.09.2014 that no post of Gardner (Mali) is available. It is their contention that respondent No. 4 sent the

application of the applicant to his higher authorities on the request of the applicant. The applicant had knowledge regarding his termination from the service, as well as, the rejection of the application dated 20.07.2009, but he has not challenged the said order in time. There is intentional, willful and deliberate delay on the part of the applicant. The delay is inordinate and therefore, they prayed to reject the M.A. filed for condonation of delay.

7. Respondent No. 5 has filed his affidavit in reply and resisted the contentions of the applicant. He also raised similar contentions to that of the contentions of the respondent Nos. 2 to 4 raised in their affidavit in reply. He has contended that after termination of services of the applicant, he has been appointed as a Gardner (Mali) by the respondent No. 4 w.e.f. 11.08.2009, since then he is working on the said post. He has contended that he filed application with the respondents and made a request to regularize his services, but his request was rejected for want of Recruitment Rules. Therefore, he filed O.A. No. 638/2015 for claiming regularization of his services before this Tribunal, but thereafter, it has been disposed of with liberty to approach the Hon'ble High Court by order dated 3.3.2017. He has contended that he filed W.P.No. 3193 of 2017 before the Hon'ble Bombay High Court, Bench at Aurangabad and the

same is pending. He has contended that the applicant has not given satisfactory reason for condonation of delay. Therefore, he prayed to reject the application filed by the applicant for condonation of delay.

8. We have heard Shri Kakasaheb B. Jadhav, learned Advocate for the applicant, Shri S.K. Shirse, learned Presenting Officer for respondent No. 1 to 4 and Shri S.R. Patil, learned Advocate for respondent No. 5. We have perused the documents placed on record by the respective parties.

9. Learned Advocate for the applicant has submitted that the applicant was appointed as Gardner (Mali) in the office of respondent No. 4 on 19.06.1997 on temporary basis. He has argued that respondent no. 4 issued appointment orders time to time. Thereafter, he worked up to the year 2009. He has submitted that the applicant had worked with respondents till termination of his services w.e.f. 15.06.2009 by an order dated 14.06.2009. He has argued that thereafter, he approached respondent No. 4 by filing several applications and requested to reappoint him by canceling the termination order dated 14.06.2009, but the request of the applicant has not been considered by the respondents and lastly it came to be rejected on 8.6.2015. He has argued that the applicant challenged the order dated 8.6.2015 by filing O.A. No. 245/2016 for setting aside the communication dated

8.6.2015. The O.A. was amended and he prayed to quash the termination order dated 14.06.2009. He has submitted that since, his various applications were pending with the respondent No. 4 and other respondents, he has not approached the Tribunal in time. Therefore, the delay has been caused in filing the O.A. He has submitted that in fact, there is no delay to approach this Tribunal and O.A. is filed within one year after receiving the communication dated 8.6.2015 by which his request has been rejected. Lastly, he has submitted that even it is presumed that there is no delay the same may be condoned as the valuable rights have been involved. He has submitted that at present the post of Gardner (Mali) has been created on the establishment of respondent No. 4, but it has not been filled as Recruitment Rules for the post of Gardner (Mali) are not available. In these circumstances, he prayed to allow the Application.

10. Learned Presenting Officer for respondent Nos. 1 to 4 and learned Advocate for respondent No. 5 have submitted that no post of Gardner (Mali) was available on the establishment of respondent No. 4, when the applicant was appointed on temporary basis in the year 1997. They have argued that the applicant was appointed under Police Welfare Funds for the maintenance of the garden situated in the office of respondent No. 4 and appointment of the applicant was

temporary. They have submitted that in the year 2011 the post of Gardner (Mali) has been created on the establishment of respondent No. 4. The applicant was terminated in the year 2009 as his work was not satisfactory. At that time, no post of Gardner (Mali) was created on the establishment of respondent No. 4. Therefore, the applicant has no right to claim appointment. His termination order has been issued on 14.7.2009. Thereafter, his another application for re-appointment has been rejected on 20.7.2009. In spite of knowledge of the said fact, the applicant had not filed the Original Application in this Tribunal within prescribed period of limitation and he filed the O.A. on 8.3.2016. There is delay of more than 6 years and 8 months in filing the O.A. The delay is inordinate and the applicant has not explained the delay properly. Therefore, they prayed to reject the application for condonation of delay. They have further submitted that as no post of Gardner (Mali) was available on the establishment of respondent No. 4 when the applicant was initially appointed and when he was terminated in the year 2009, no question of his appointment on the said post arises. He has submitted that the respondent No. 4 neither started recruitment process for filling the post of Gardner (Mali) nor appointed anybody as no Recruitment Rules have been

framed in that regard and, therefore, on that count also they prayed to reject the Original Application.

11. On going through the documents on record, it is crystal clear that the applicant was appointed on purely temporary basis in the year 1997 under the Police Welfare Funds for the maintenance of the garden situated in the office of respondent No. 4. No post of Gardner (Mali) was created on the establishment of respondent No. 4 at that time. The post has been created first time in the year 2011. Prior to that the applicant was terminated by impugned communication dated 14.07.2009 w.e.f. 15.07.2009, as he was irregular and his work was not satisfactory and thereafter respondent No. 5 was appointed on the said post on temporary basis. The applicant has filed application dated 20.6.2009 with the respondent No. 4 with a request to appoint him, but his application was decided on the very same day and the applicant was informed accordingly, but the applicant has not challenged the impugned communication/order dated 14.7.2009 till filing of the present Original Application i.e. 8.3.2016. There is delay of about 6 years and 8 months in filing the accompanying Original Application. No satisfactory reason has been mentioned by the applicant in the application, for condonation of delay. Only contention of the applicant is that his several applications were pending with

the respondent No. 4 and they have not been decided. But the fact is different. The application of the applicant dated 20.7.2009 has been rejected by the respondent No. 4 on the very day. The applicant was aware about it. In spite of that he had not challenged the impugned communication / order dated 14.7.2009. This shows that there is deliberate, willful and intentional delay on the part of the applicant in filing the accompanying Original Application. The applicant was fully aware about the fact that respondent No. 5 was appointed as Gardner (Mali) on temporary basis after his termination, even then he has not challenged the communication / order dated 14.7.2009 within stipulated time. This shows deliberate and intentional delay on his part. Therefore, in the absence of satisfactory and just reason explaining the delay caused in filing the accompanying O.A., the application for condonation of delay cannot be allowed.

12. On considering the fact in the present case it is crystal clear that the applicant has no right to claim his appointment on the post of Gardner (Mali) on the establishment of respondent No. 4, as no post was created when he was appointed on temporary basis under the Police Welfare Funds. Moreover, no Recruitment Rules have been framed for filling the post of Gardner (Mali) on the establishment of respondent No. 4 created in the year 2005. Respondent No. 5 approached

the Hon'ble High Court by filing W.P. No. 3193/2017 and sought relief in that regard and it is still pending. In the circumstances, in our view, there is no merit in the Original Application also.

13. As there is no merit in the Miscellaneous Application, as well as, Original Application, the same deserve to be dismissed. Hence, both M.A. & O.A. stand dismissed with no order as to costs.

MEMBER (J)

M.A.NO.11-17 IN O.A.245-16-HDD

VICE CHAIRMAN (A)