

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

MISC. APPLICATION NO. 520 OF 2022
WITH
ORIGINAL APPLICATION ST. NO. 1919 OF 2022

DIST. : OSMANABAD

Khaja Ashfak Ahmed Abrar Ahmed)
 Age : 49 years, Occu. : Service)
 As drawing (MATH) Instructor,)
 At Government I.T.I. Osmanabad,))
 R/o C/o Shaikh Abrar,)
 Husain Pura, Ganesh Nagar,)
 Osmanabad,)
 Tq. & Dist. Osmanabad.)

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APPLICANT

V E R S U S

1. The State of Maharashtra,)
 Through its Secretary,)
 Vocational Education and)
 Training Department,)
 Mantralaya, Mumbai - 32.)
2. The Joint Director,)
 Vocational Education and)
 Training, Regional Office,)
 Near Bhadkal Gate,)
 Aurangabad, Dist. Aurangabad.)..

RESPONDENTS

 APPEARANCE :- Shri G.R. Jadhav, learned counsel
 holding for Shri A.S. Shelke, learned
 Advocate for the applicant.

: Shri B.S. Deokar, learned Presenting
 Officer for the respondent authorities.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman

DATE : **5th April, 2023**

ORAL - ORDER

1. Heard Shri G.R. Jadhav, learned counsel holding for Shri A.S. Shelke, learned counsel for the applicant and Shri B.S. Deokar, learned Presenting Officer for the respondent authorities.

2. In the present application the applicant is seeking condonation of delay, which has occasioned in filing the annexed Original Application by the applicant. The applicant has filed the annexed Original Application seeking the following reliefs :-

“(B) By appropriate order, direction, the respondent No. 1 and 2 may be directed to take decision on the Representation dated 20.06.2019 and 29.10.2022 submitted to the respondent no. 2 with regard to regularization of the services of the applicant w.e.f. 08.03.1999 with all consequential benefits, within a period of 4 months.”

3. It is the contention of the applicant in the present Misc. Application that the applicant was entitled for regularization of his services w.e.f. 8.3.1999, whereas the respondents have regularized the services of the applicant w.e.f. 13.12.1999. It is

the further contention of the applicant that he submitted representations to the respondent authorities on 20.6.2019 & 29.10.2022 praying for regularization of his services w.e.f. 8.3.1999. Since the respondents did not decide the said representations, it is the contention of the applicant that he has to approach this Tribunal.

4. In the application for condonation of delay the applicant has given references of earlier litigation on the similar issue wherein some orders are passed of regularization of services of the petitioners therein. The reference is also given of the Government Circular dated 28.2.2017 issued by the Chief Secretary of the State. It is the contention of the applicant that having regard to the decisions rendered by the various Courts and Tribunals, as well as, Circular issued on 28.2.2017 the respondents were under an obligation to pass the orders in favour of the present applicant. It is further contended that the applicant was under bona-fide belief that his representations would be positively considered as like the similarly situated employees, who had been conferred with regularization w.e.f. 8.3.1999.

5. It is further contended that in the meanwhile the COVID-19 pandemic started and the applicant could not approach the

Tribunal within the stipulated period. It is further contended that in the intervening period respondent no. 2 by order dated 23.2.2022 directed regularization of one Shri Vijay V. Mangiraj w.e.f. 8.3.1999 on the basis of the directions issued by the Tribunal in O.A. No. 87/2021 decided on 17.11.2021. The learned counsel for the applicant in the aforesaid circumstances has prayed for condonation of delay, which has occasioned in filing the Original Application annexed with the present Misc. Application. According to the applicant, the delay is of the period 01 year, 10 months and 19 days.

6. The contentions raised by the applicant are strongly opposed by the learned Presenting Officer appearing for the State authorities. The learned Presenting Officer submitted that the applicant has approached the Tribunal too belatedly and the delay is much more than stated by the applicant. The learned Presenting Officer further submitted that the services of the applicant were regularized w.e.f. 13.12.1999 vide order dated 27.1.2000. According to the learned Presenting Officer, if at all there is delay it has to be reckoned from the said date, which is more than 20 years. The learned Presenting Officer submitted that even the representation was made by the applicant after about 19 years. The learned Presenting Officer submitted that

such stale claim shall not be entertained. He, therefore, prayed for rejecting the application.

7. I have duly considered the submissions advanced by the learned counsel for the applicant, as well as, the learned Presenting Officer. I have also gone through the documents filed on record. According to the applicant the delay caused in filing O.A. is of the period of 1 year, 10 months and 19 days. After having gone through the documents filed on record it is apparently revealed that the delay caused in filing the O.A. is much more than claimed by the applicant. In the O.A. it is the grievance of the applicant that the respondents must have regularized his services and given all consequential benefits w.e.f. 8.3.1999 instead of 13.12.1999.

8. It is undisputed that the services of the applicant came to be regularized vide order dated 27.1.2000. In the O.A. the applicant is in fact raising challenge to the said order. In the circumstances, the delay which has occasioned in filing the O.A. appears to be of more than 19 years. The applicant, however, has computed the delay from the date of representation dated 19.6.2019 submitted by him to respondent no. 2 praying for regularization of his services w.e.f. 8.3.1999 with all consequential benefits. It is not the case of the applicant that

prior to representation dated 20.6.2019 earlier also he had submitted such representations. It is thus evident that against the order dated 27.1.2000 the applicant for the first time made the representation on 20.6.2019 i.e. after about 19 years. From the pleadings it is quite evident that the cause of action for filing the present O.A. had arisen on 27.1.2000. The applicant, therefore, must have approached this Tribunal at the earliest opportunity or within the reasonable time thereafter. The applicant has neither approached this Tribunal within the reasonable time nor preferred any representation before 20.6.2019. Mere filing of representation in the year 2019 will not save the limitation in approaching this Tribunal against the order dated 27.1.2000. In the circumstances, the delay occasioned in filing the O.A. cannot be of 1 year, 10 months and 19 days as has been contended by the applicant, but is of more than 20 years.

9. Now it has to be seen the reasons as are assigned by the applicant to justify the delay which has occasioned on his part in approaching this Tribunal. The applicant has given references of the earlier litigations on the similar issue, wherein some orders are passed of regularization of the services of the petitioners therein. As contended in paragraphs 5 & 6 of the

present application, Shri Sanjaykumar B. Pawar and other had approached this Tribunal by filing O.A. praying for regularization of their services w.e.f. 8.3.1999 and the Hon'ble Division Bench of this Tribunal is stated to have allowed the said O.A. The applicant has, however, not provided the O.A. number of the application filed by said Sanjaykumar B. Pawar. The applicant has further given reference of O.A. Nos. 678/1999 and O.A. No. 5/2000, wherein the applicants had sought the benefit of regularization of their services w.e.f. 8.3.1999. It appears that the Tribunal had not granted the required relief in favour of the said applicants and the applicants therein were therefore required to approach the Hon'ble High Court by filing W.P. No. 4519/2016. It is contended that the Hon'ble High Court allowed the said Writ Petition on 29.6.2017. The applicant has also given reference of the G.R. dated 28.2.2017 whereby all the concerned departments were directed by the learned Chief Secretary to adhere to the general judicial directions as per the directions given by Tribunal in O.A. Nos. 59, 61 and 90 of 2016 decided on 14.12.2016. It is the further contention of the applicant that based on the decisions rendered in the matters referred hereinabove and the Circular dated 28.2.2017 he submitted representations on 20.6.2019 & 29.10.2022 requesting the authorities to regularize his services

w.e.f. 8.3.1999 and since as contended by the applicant the said representations have not been decided by the respondents, the applicant has approached this Tribunal.

10. From the pleadings as aforesaid it is quite evident that the applicant has based his claim on the strength of certain decisions rendered by the Tribunal, as well as, the Hon'ble Bombay High Court to which I have referred hereinabove. The question is whether on such ground the delay occasioned on part of the applicant in approaching this Tribunal seeking the relief as claimed in the O.A. can be condoned. In my opinion, the applicant cannot take the support of such orders for the reason that though the applicant was also having the same grievance he did not approach any Court/Tribunal after passing of the order dated 27.1.2000 or within the reasonable time thereafter. It is also not the case of the applicant that he accepted the order dated 27.1.2000 by reserving his right to challenge the said order. It is thus evident that at the relevant time the applicant accepted the said order as it is without raising any objection against the said order and has challenged the said order now after the long lapse of 22 years. As I noted hereinabove the applicant cannot take benefit of the orders passed in the cases of some other similarly situated employees

for the reason that said employees were diligent in prosecuting their complaint and approached the Tribunal at the earliest and when the Tribunal did not accept their prayers fully, they had even approached the Hon'ble High Court, whereas the present applicant slept over his right for long 22 years.

11. The contention of the applicant that only after decision in the aforesaid matters and after the issuance of Circular by the Government dated 28.2.2017 the cause of action had arisen in his favour is totally unacceptable. The Hon'ble Supreme Court in the case of **M/s Roop Diamonds & Ors. Vs. Union of India & Ors, AIR 1989 SC 674** considered a case, where the petitioners wanted to get the relief on the basis of the judgment of the Hon'ble Supreme court wherein a particular law had been declared ultra vires. The Hon'ble Supreme Court rejected the petition on the ground of delay and laches observing as under :-

“There is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they have not pursued for several years. Petitioners were not vigilant but were content to be dormant and close to sit on the fence till somebody's else case came to be decided.”

12. The Hon'ble Apex Court has reiterated the aforesaid view in the case of **Jagdish Lal & Ors. Vs. State of Haryana & Ors., AIR 1997 SC 2366**, observing as under:-

“Suffice it to state that appellants may be sleeping over their rights for long and elected to wake-up when they had impetus from Veerpal Chauhan and Ajit Singh’s ratio... desperate attempts of the appellants to re-do the seniority, held by them in various cadre Are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay, as well.”

13. In **State of Karnataka & Ors. Vs. S.M. Kotrayya & Ors., (1996) 6 SCC 267** the Hon’ble Supreme Court rejected the contention that the petition should be considered ignoring the delay and laches on the ground that the petitioner filed petition just after coming to know of the relief granted by the Court in a similar case observing that the same cannot furnish proper explanation for delay and laches. The Hon’ble Supreme Court has further observed that such plea is wholly unjustified and cannot provide any ground for such delay and laches.

14. In the instant matter the applicant has come out with the similar contentions that after having come to know about the relief granted by this Tribunal and the Hon’ble High Court to the similarly situated persons that the applicant submitted a representation. In view of the law laid down by the Hon’ble Supreme Court reproduced hereinabove, the applicant cannot take any benefit of the decisions rendered in the matters of some other employees at such a belated stage and the applicant

cannot be permitted to take the impetus of the order passed at the behest of some diligent persons.

15. The Hon'ble Supreme Court in the case of **Chairman, U.P. Jal Nigam Vs. Jaswant Singh, JT 2006(10) 500** has observed that, who sit on the fence and wait for the favourable order in the petition of others and thereafter wake up to take up the matter, are not entitled to any relief.

16. In the case of **Nadia District Primary School Council & Anr. Vs. Sristidhar Biswas & Ors, 2007 AIR SC 2640**, the Hon'ble Supreme Court ruled that the Courts cannot come to the rescue of the persons who are not vigilant of their rights.

17. Considering the law laid down by the Hon'ble Supreme Court, it is quite clear that, 'waiting for a favourable order in the case of some other petitioner' cannot be a justification for approaching the Courts or Tribunals belatedly. In the present matter the said is the foremost ground taken by the applicant to justify the delay caused by him in filing the O.A. before this Tribunal. In the result the following order is passed: -

ORDER

- (i) Misc. Application is rejected.

(ii) In view of rejection of the Misc. Application the Original Application on stamp number also stands disposed of.

(iii) There shall be no order as to costs.

VICE CHAIRMAN

Place : Aurangabad

Date : 5.4.2023