

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

CIVIL APPLICATION NO.486/2017

AND

ORIGINAL APPLICATION NO.646/2017.

(D.B.)

- 1) Tantrashikshan Magasvargiya Shikshak Wa Prashaskiya Seva Kalyankari Association, Kiran Nagar No.1, Last Lane, Amravati Through its President-Ravindra Kisanrao Parghane, Aged 52 years, Occ- Service, R/o Kiran Nagar No.1, Last Lane, Amravati-444606.
- 2) Mohan Pandurang Ganorkar, Aged 49 years, Occ- Service, R/o Shri M.P. Ganaorkar, Jai Ambe Aptt., 11, Flat No.33, In front of Rohini Park, Katora Road, Amravati.
- 3) Roshan Ramdas Gadpal, Aged 55 years, Occ- Service, R/o Opp. R.C. Imle's house, Chaprashipura Camp, Amravati.

Applicants.

-Versus-

- 1) The State of Maharashtra, Through its Secretary, Department of Higher and Technical Education, Mantralaya, Mumbai-32.
- 2) The State of Maharashtra, Through its Secretary, General Administration Department, Mantralaya, Mumbai-32.

- 3) The Director,
Higher and Technical Education,
State of Maharashtra, 3, Mahanagar Palika Road,
P.O. Box No.1967,
Near Cama Hospital, Mumbai.
- 4) The Maharashtra Public Service Commission,
Through its Chairman, 5 ½, 7th and 8th floor,
Cooperage Telephone Nigam Ltd. Building,
Cooperage, Mumbai-400 021.

Respondents

Shri S. Borkute, the Ld. Advocate for the applicants.
Shri A.M. Ghogre, the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni, Vice-Chairman (J)
and
Shri Shree Bhagwan, Member (A)

JUDGMENT

(Delivered on this 2nd day of August 2018.)

Per:-Vice-Chairman (J)

Heard Shri S. Borkute, the Ld. counsel for the applicants and Shri A.M. Ghogre, the learned P.O. for the respondents.

2 In the original application, the applicants have claimed following reliefs:-

“(i) To hold and declare that the impugned Recruitment Rules, 2012 dated 10.9.2012 (Annexure A-12) issued by respondent No.1 is contrary to the Constitutional Scheme and

therefore, illegal, improper and invalid and further declare that such an exercise of superseding the earlier rules is against the basic structure of the Constitution and, therefore, *ultra vires* to the Constitution of India.

- (ii) To quash and set aside the impugned Recruitment Rules, 2012 dated 10.9.2012 (Annexure A-12) issued by respondent No.1 by notification attached the G.R. dated 10.9.2012 passed by respondent No.1.
- (iii) Issue necessary directions to the respondents to cancel the appointments made as per new Recruitment Rules, 2012 by issuing advertisements at A-13 in the interest of justice.
- (iv) Issue necessary directions to the respondents to prepare and update the every year seniority of the employees, prepare roster point, get the same approved from the respondent No.2 and accordingly, promote the eligible employees to the posts of Head of the Department (Class-I) and Principal (Senior Class-I) in Govt. Polytechnics by following the Recruitment Rules, 1993, 2008, G.Rs and circulars time to time issued by the respondent No.1.”

3. C.A. No. 486/2017 has been filed whereby the applicants are claiming condonation of delay of 358 days in filing the O.A. From the facts on record, it seems that the applicants' Association earlier Writ Petition (C) No. 790/2015 before the Hon'ble Supreme Court of India and had challenged Rule 4 of New Recruitment Rules, 2012. Vide order dated 23.11.2015, the Hon'ble Supreme Court of India refused to entertain the petition holding that alternate remedy under Article 226 of the Constitution of India was not availed. Liberty was granted to file fresh petition before the Hon'ble High Court. Accordingly, the applicant No.1 Association file W.P.No.565/2012 before the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur and challenged the new Recruitment Rules, 2012. On 7.9.2016, the Hon'ble High Court passed an order that the alternate remedy was available for the applicants to approached this Tribunal and, therefore, the petition was dismissed. The applicants, instead of approaching this Tribunal, immediately have filed this O.A. on 28.8.2017 i.e. after 358 days and the applicants want that the delay shall be condoned. The reason for delay is mentioned in para 6 of the application which is as under:-

“6. In view of the above facts and circumstances of the case, that the applicants had filed Writ Petition before the Hon'ble Supreme Court and thereafter,

as per the directions of the Hon'ble Supreme Court against filed Writ Petition before the Hon'ble High Court within time. The applicants' Association was legitimately litigating their grievance before the Hon'ble Supreme Court and the Hon'ble High Court by filing Writ Petition, however, the Hon'ble Supreme Court and the Hon'ble High Court, despite having jurisdiction, refused to entertain the same because of directly filing of petition before them, did not find favour due to the primary jurisdiction lies with the Administrative Tribunal. In the humble submission of the applicants that the time spent in bonafide proceedings before the Hon'ble Supreme Court and the Hon'ble High Court is required to be excluded while computing the period of limitation."

4. We have perused the order passed by the Hon'ble High Court in W.P. No.565/2016 dated 7.9.2016. The Hon'ble High Court has considered the scope of Section 15 (1) of the Administrative Tribunals Act, 1995 and observed that undisputedly the present case clearly falls in sub-clause (a) Clause-1 of Section 15 of the Administrative Tribunals Act. Relevant order in this regard passed by the Hon'ble High Court is as under:-

(i) "Undisputedly, the present case clearly falls in

sub- clause (a) Clause-1 of Section 15 of the Administrative Tribunals Act.

- (ii) In that view of the matter, even challenge to a Regulation at the first instance cannot be entertained by this Court directly and we do so, we will be acting contrary to the mandate given by the Constitutional Bench in case of L. Chandrakumar (supra).
- (iii) We, therefore, find that the petition directly filed before this Court is not tenable. Apart from that, we have serious doubt as to whether an association would be in a position to challenge validity of the Rules.
- (iv) In view of the above, the writ petition is dismissed. No order as to costs.”

5. Thus, the Hon’ble High Court has categorically observed that it is the Administrative Tribunal which have jurisdiction to entertain the petition. This order was passed on 7.9.2016. However, the applicants did not approach this Tribunal immediately and they have approached this Tribunal on 24.8.2017, i.e. after 358

days. The applicants have not given details as to which Advocate of the Supreme Court they have approached and whether the said Advocate has given any opinion in writing and for how much period the matter was with the said Advocate. No affidavit has been filed in this regard of the concerned Advocate. In view of this, it is very difficult to accept that the applicants' Association acted bonafidely. No sufficient cause has been shown for such delay in filing this O.A. The order passed by the Hon'ble High Court is very elaborate and specific as regards jurisdiction of this Tribunal and, therefore, in such circumstances; it is highly improbable to accept that the applicants have approached the Advocate of the Hon'ble Supreme Court. All the reasons given for delay are vague in nature and no specific averments are made as already stated. The Hon'ble High Court has already observed in its order dated 7.9.2016 as cited (supra) that there are serious doubts as to whether an Association would be in a position to challenge the validity of Rules and specifically directed the applicants to approach the Tribunal. In spite of such order, petition is filed after 358 days of passing of such order. The applicants have challenged the Recruitment Rules of 2012 and advertisement in pursuance of such Rules in 2012. The said recruitment already done as per these Rules in 2012 and, therefore, challenge to the said

Rules at this belated stage, will not serve the purpose. As already stated, no convincing and satisfactory reasons have been made out for condonation of delay. The applicants have failed to give any convincing reason for such delay and, therefore, we are of the opinion that it is not a fit case to entertain this C.A. Hence, we proceed to pass the following order:-

ORDER

- (i) The C.A. No. 486/2017 stands dismissed.
- (ii) Consequently, the O.A. No.646/2017 also stands dismissed with no order as to costs.

(Shree Bhagwan)
Member (A)

(J.D.Kulkarni)
Vice-Chairman(J)

Dt. 2.8.2018.

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