

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

MISCELLANEOUS APPLICATION NO.481 OF 2023

WITH

ORIGINAL APPLICATION NO.923 OF 2023

DISTRICT : KOLHAPUR

Mr. Sikandar Allahbaksha Attar,)
Age Adult, Occ. Nil,)
R/at 486/8/21, Jaibhavani Apartment, Jadole Colony,))
Pratibha Nagar, District Kolhapur 416008)..Applicant

Versus

1. The State of Maharashtra,)
Through Principal Secretary,)
Public Health Department, Mantralaya, Mumbai)
2. District Medical Superintendent,)
Chatrapati Pramila Raje Hospital, Kolhapur)
3. The Deputy Director of Health Services,)
Kolhapur Division, Central Building,)
Bawada, Karveer, Kolhapur)..Respondents

Shri M.G. Bagkar – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 29th November, 2023

PRONOUNCED ON: 5th December, 2023

J U D G M E N T

1. This MA is filed for condoning the delay in filing the OA.

2. Ld. Advocate for the applicant submits that this MA is filed for condoning the delay of 3 years 4 months and 29 days in filing the OA. Ld. Advocate submits that applicant was appointed on 10.7.1985 as Medical Officer, Class-II by respondent no.3. Ld. Advocate submits that respondent no.3 issued show cause notice to the applicant on 21.7.2005 for absence. Thereafter the applicant submitted his resignation letter dated 30.8.2005. Ld. Advocate submits that the said resignation was accepted by Govt. order dated 10.1.2008. Ld. Advocate submits that applicant was not given the post retirement benefits for which he made a number of representations and the last representation was made on 31.1.2019. He states that the delay is on account of COVID-19 Pandemic and lockdown imposed. Ld. Advocate submits that the applicant was working with one Shrutika Diagnostic Centre and as a result of which he was completely occupied due to tremendous surge of COVID-19 Pandemic in Kolhapur and therefore prayed that delay may be condoned.

3. Ld. PO opposes the submissions made by the Ld. Advocate for the applicant and relies on the affidavit in reply dated 28.11.2023 filed by Namdev Govind More, Chief Administrative Officer in the office of Deputy Director of Health Services, Kolhapur. Ld. PO pointed out that MA is filed for condoning the delay which is of more than 16 years and the same has not been explained by the applicant. She pointed out that after perusal of the record available with the respondents it is seen that the resignation of the applicant was accepted on 10.1.2008 w.e.f. 30.8.2005. Ld. PO stated that the applicant was not supposed to get the benefit of the period which was lapsed between 30.8.2005 to 10.1.2008 in said acceptance of

resignation order. Ld. PO stated that the said period will not be considered for pension, other benefits etc.

4. Ld. PO stated that reason of COVID-19 Pandemic and Lockdown cannot explain such a long delay.

5. In this case it is seen that the applicant has been unable to explain the long delay of over 16 years. Mere filing of representations is not a sufficient ground for condoning the delay. I refer to the judgment and order of the Hon'ble Supreme Court in **(2007) 10 SCC 137 State of T.N. Vs. Seshachalam**. Para 16 of the said judgment reads as under:

“16. Some of the respondents might have filed representations but filing of representations alone would not save the period of limitation. Delay or latches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or latches on the part of a Government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant. Opinion of the High Court that GOMs No.126 dated 29.5.1998 gave a fresh lease of life having regard to the legitimate expectation, in our opinion, is based on a wrong premise. Legitimate expectation is a part of the principles of natural justice. No fresh right can be created by invoking the doctrine of legitimate expectation. By reason thereof only the existing right is saved subject, of course, to the provisions of the statute. {See State of Himachal Pradesh & Anr. v. Kailash Chand Mahajan & Ors. [1992 Supp.(2) SCC 351]}.”

6. Considering all these factors it is seen that applicant has not given any satisfactory reason for condoning the delay of 16 years in filing this OA. Mere representations are not enough and the reason of COVID-19 Pandemic is not sufficient to condone the delay of 16 years. I, therefore, hold that the OA is not filed within limitation and same is time barred. Hence, the MA is liable to be dismissed.

7. Miscellaneous Application is dismissed.

8. As the MA is dismissed, the OA does not survive and the same is also dismissed. No order as to costs.

Sd/-

(Medha Gadgil)
Member (A)
5.12.2023

Dictation taken by: S.G. Jawalkar.