

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

MISC. APPLICATION ST. 262/2016
WITH
ORIGINAL APPLICATION ST. NO. 263 OF 2016

DIST. : AURANGABAD

1. Smt. Radhika w/o Parshuram Lokhande,
Age. 56 years, Occ. Service,
R/o H.I.G./2/22, Mhada Colony,
Near Baba Petrol Pump,
Aurangabad, Dist. Aurangabad.
2. Smt. Pratibha w/o Rajendra Kulkarni,
Age. 56 years, Occ. Service,
R/o B-1, 219, N-7,
High Court Colony, CIDCO,
Aurangabad.
3. Rehana w/o Abdul Raheman Shaikh,
Age. 57 years, Occ. Service,
R/o Rajdhani Residency,
1st Floor, Room No. 3, Jaisingpura,
Aurangabad.
4. Smt. Suryakanta w/o Suresh Salavi,
Age. 56 years, Occ. Service,
R/o H.No. 21, Near A.S. Club,
Mhada Colony, Waluj Road,
Aurangabad, Dist. Aurangabad.
5. Smt. Sunita w/o Haridas Roham,
Age. Major,, Occ. Service,
R/o Urmila Housing Society,
Near Azad Chowk, N-8,
CIDCO, Aurangabad.

-- APPLICANTS.

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Medical Education & Drugs Department,
Mantralaya, Mumbai.
2. The Director,
Medical Education & Research, (M.S.),
Aarogya Bhavan, St. Jorge's Hospital
Compound, Near CST Station,
Mumbai – 400 001.
3. The Dean,
Govt. Medical College & Hospital,
Aurangabad.

(Copy of respondents to be
Served on P.O., M.A.T.,
Aurangabad.)

-- RESPONDENTS

APPEARANCE : Shri V.P. Golewar, learned Advocate for
the Applicants.

: Shri V.R. Bhumkar, learned Presenting
Officer for the Respondents.

CORAM : Hon'ble Shri J.D. Kulkarni, Member (J)

JUDGEMENT

{Delivered on 10.10.2016}

1. The M.A. st. No. 262/2016 has been filed by the applicants
for condonation of delay caused in filing O.A. St. No. 263/2016.
In the said O.A., the applicants have claimed the relief for
declaration that in the light of the decision of Mumbai Bench of

this Tribunal in O.A. nos. 103 & 104 of 2013 dated 20.12.2013, the applicants are entitled for continuation of benefits of time bound promotion w. e. f. 1.1.1996 and also for the consequential benefit of second time bound promotion scheme as per G.R. dated 1.4.2010. The applicants are, therefore, claiming for quashing and setting aside of orders dated 29.11.2011, 21.11.2011, 29.11.2011, 21.1.2012 and 1.12.2011 issued by the res. no. 3, whereby the benefits of time bound promotion granted to them from 11.1.1996 were withdrawn.

The applicants are also claiming direction to the respondents to consider the applicants' cases for second time bound promotion / assured career progress scheme as per G.R. dated 1.4.2010 w. e. f. 1.1.2008 or in the alternative to decide their representations filed in this behalf.

2. The judgment delivered by the Principal Seat of this Tribunal at Mumbai in O.A. nos. 103 & 104 of 2013 dated 20.12.2013, whereby various orders withdrawing the benefits of time bound promotion are quashed & set aside, which were issued during the years 2011 – 2012, as already stated hereinabove.

3. According to the applicants, they were facing family problems in the years 2010 to 2012 and, therefore, they could not raise their grievances against the authorities nor could they approach this Hon'ble Tribunal against the orders of cancellation of benefits of Assured Career Progress Scheme / Time Bound Promotion Scheme granted to them. It is stated that, in the meanwhile on 31.8.2012 and 8.11.2012 the respondents issued another order thereby granting the benefits of Assured Career Progress Scheme and no recovery was made against them and, therefore, they did not approach the Tribunal.

4. It is the case of the applicants that, they learnt from their colleagues about the decision rendered by Hon'ble Mumbai Bench of this Tribunal in O.A. nos. 103 & 104/2013 on 20.12.2013 and immediately thereafter in the month of November, 2015, they made separate representation to the respondent authorities, but the concerned authorities did not consider their said representations and, therefore, the applicants are filing the accompanying O.A. st. No. 263/2016.

5. According to the applicants, there is delay of 1196 days in filing the O.A. for the reasons stated hereinabove and the said delay be condoned.

6. The res. nos. 2 & 3 have strongly objected for condonation of delay caused in filing O.A. According to the respondents, as per G.R. it was mandatory on the applicants to accept the promotion in due course of time. It was specifically stated that in case the employees refused to accept the regular promotion, the benefit of time bound promotion scheme granted to them will be withdrawn and accordingly the same was withdrawn. It is stated that there are no convincing reasons for the delay. The respondents have also placed reliance on the judgment on 24.3.2014 by the Hon'ble Supreme Court in the case of **BASAWARAJ & ANR. VS. THE SPL. LAND ACQUISITION OFFICER in CIVIL APPEAL NO. 6974/2013.**

7. Heard Shri V.P. Golewar, learned Advocate for the Applicants and Shri V.R. Bhumkar, learned Presenting Officer for the Respondents. I have also perused affidavit, affidavit in reply and various documents placed on record.

8. The learned Advocate for the applicants has invited my attention to one judgment of the Hon'ble Supreme Court in the case of **STATE OF KARNATAKA & ORS. VS. C. LALITHA {2006 (1) SUPREME 640}**. In the said judgment the point considered by the Hon'ble Supreme Court was that the service

jurisprudence evolved from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the Court that would not mean that persons similarly situated should be treated differently.

9. The learned Advocate for the applicants placed reliance on the judgment delivered by Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 3778/1998 with Civil Application no. 1492/2006 in W.P. No. 3778/1998 (POPAT SITARAM GODGE VS. THE REGISTRAR, AMRUTWAHINI UDYOG SHETI & ORS.) on 1.10.2015. In the said case it was observed by Hon'ble High Court that the petitioner had not acted intentionally or deliberately and the delay caused is neither wilful nor with oblique motives and, therefore, the said delay caused in the said case was condoned by Hon'ble High Court.

10. I have carefully gone through the citations on which the learned Advocate for the applicants have placed reliance. In my opinion, whether the litigant has made out a sufficient cause for condonation of delay or not will always depend on facts & circumstances of the said litigation and, therefore, it is necessary to consider whether the applicants in the present M.A. have

made out a case for condonation of delay or in other words whether there are sufficient grounds to condone the delay caused in filing the accompanying O.A. St. No. 263/2016.

11. From the pleadings in the M.A., it seems that the applicants are claiming that the impugned orders of cancellation of benefits of time bound promotion scheme were passed on various dates i. e. on 29.11.2011, 21.11.2011, 29.11.2011, 21.1.2012 and 1.12.2011 in respect of various applicants. These orders were issued by the res. no. 3 withdrawing the benefit of time bound promotion scheme granted to the applicants and the same have been challenged in the accompanying O.A. st. 263/2016. Thus, all these orders are passed at the fag-end of 2011 or in the month of January, 2012. According to the applicants, they could not challenge these orders immediately. The reason for not challenging these orders within the prescribed time is that, they were facing family problems in the years 2011 and 2012. This is very vague statement made by the applicants. All the applicants in this case are from different families i. e. the applicant no. 1 is Smt. Radhika w/o Parshuram Lokhande, applicant no. 2 is Smt. Pratibha w/o Rajendra Kulkarni, applicant no. 3 is Smt. Rehana w/o Abdul Raheman Shaikh, applicant no. 4 is Smt. Suryakanta w/o Suresh Salavi and

applicant no. 5 is Smt. Sunita w/o Haridas Roham. Though all these applicants are resident of Aurangabad, it is highly improbable and thus unbelievable that there were family problems with all the applicants in the year 2011 – 2012. Except such statement i. e. they have family problems, no other reason is shown as to why the orders of the years 2011 / 2012 were not challenged in time. The M.A. for condonation of delay has been filed in the year 2016 i. e. on 1.3.2016. It is, therefore, hard to digest that all the applicants were facing family problems from the years 2011 / 2012 to 2016 and, therefore, the applicants could not place on record convincing reasons of course evidence to prove sufficient cause for delay.

12. The applicants are relying on the judgment delivered by this Tribunal at Mumbai in O.A. nos. 103 & 104 of 2013 (supra). According to the applicants, their cases are covered by the judgment delivered in the said O.As.

13. The learned Advocate for the applicants also relied on the judgment in the case of STATE OF KARNATAKA & ORS. VS. C. LALITHA (supra), wherein it has been observed that, only because one person has approached the Court that would not

mean that persons similarly situated should be treated differently.

14. According to the learned Advocate for the applicants, the case of the applicants is covered by the judgment delivered by this Tribunal on 20.12.2013 in O.A. nos. 103 & 104 of 2013. Even for the sake of argument it is accepted that the case of the applicants herein is covered by the judgment delivered by this Tribunal at Mumbai in O.A. nos. 103 & 104/2016, it is a fact that the applicants herein are not party to that litigation and it is also not known as to why the applicants have kept silence from the date of passing of the orders i.e. from the year 2011 till 2016 i.e. till filing of the present application.

15. In the M.A. the applicants have tried to give explanation for the delay by making a vague statement that it is learnt from the colleague employees working at Mumbai and Pune on the post of In-charge Sister that, Hon'ble Tribunal at its Mumbai seat is pleased to hold and declare that the respondents cannot unilaterally decide to treat the earlier representations from the applicants for change of posting, as refusal to accept regular promotion. It is stated that the applicants after great efforts could get the copy of the judgment dated 20.12.2013 delivered

by the Tribunal in O.A. nos. 103 & 104/2013 and immediately after receiving the copy of the said judgment, they have filed this M.A. st. No. 262/2016 along with O.A. st. No. 262/2016.

16. It is again material to note that the applicants have not disclosed the date on which they came to know about the judgment of this Tribunal in O.A. nos. 103 & 104/2013 dated 20.12.2013 and, therefore, the so-called fact as regards knowledge to the applicants in respect of judgement of this Tribunal in O.A. nos. 103 & 104/2013 is also vague. The Xerox copy of the judgment in O.A. nos. 103 & 104/2013 has been placed on record at paper book pages 62 to 74 (both pages inclusive) and it seems that uncertified copy might have been received by the applicants on 18.1.2014. The name of the person who received the copy is not disclosed on that copy, but since the applicants have placed it on record, it may be presumed that the applicants might have received it. It is not a certified copy and, therefore, the applicants have failed to place on record any documentary evidence to show that on what exact date they have received the said uncertified copy of the judgment of this Tribunal.

17. From the endorsement thereon, it seems that, the said copy must have been received to the applicants on 18.1.2014 or on 23.1.2014 as seems from the endorsement at paper book page 74 and 62 respectively. As already stated, present M.A. has been filed in the year 2016. Thus, no sufficient and convincing ground has been made out for condonation of delay caused in filing O.A.

18. The learned P.O. has invited my attention to one judgment delivered by the Hon'ble Supreme Court in the case of **BASAWARAJ & ANR. VS. THE SPL. LAND ACQUISITION OFFICER (CIVIL APPEAL NO. 6974 OF 2013)** dated 22.4.2013. In the said judgment Hon'ble Supreme Court has interpreted the sufficient cause and the entire aspect regarding condonation of delay. In the said judgment it has been observed by the Hon'ble Supreme Court in para 8 as under :-

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not

confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide: Chandigarh Administration & Anr. v. Jagjit Singh & Anr., AIR 1995 SC 705, M/s. Anand Button Ltd. v. State of Haryana & Ors., AIR 2005 SC 565; K.K. Bhalla v. State of M.P. & Ors., AIR 2006 SC 898; and Fuljit Kaur v. State of Punjab, AIR 2010 SC 1937)."

The meaning of the word 'sufficient' is also interpreted by the Hon'ble Supreme Court. It is observed by the Hon'ble Supreme Court in para nos. 11 & 12 as under :-

"11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: Madanlal v. Shyamlal, AIR 2002 SC 100; and Ram Nath Sao @ Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors., AIR 2002 SC 1201.)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."

19. On going to the merits of the present case, I am satisfied that the applicants could not made out sufficient cause for condonation of delay. On the contrary, the applicants are most negligent, as though the benefit of time bound promotion granted to them was cancelled in the year 2011 itself, they did not challenge the said orders and now on the basis of some judgment delivered by this Tribunal in the case of similarly situated colleagues of the applicants, they have approached this Tribunal. For the reasons already discussed in the foregoing paragraphs, I am of the opinion that, this is not a fit case to condone the delay caused in filing O.A. st. No. 263/2016. Hence, I pass the following order :-

ORDER

- (i) The M.A. st. 262/2016 for condonation of delay caused in filing O.A. st. No. 263/2016 stands dismissed.
- (ii) In view of dismissal of M.A. St. 262/2016, the O.A. st. No. 263/2016 also stands dismissed.

There shall be no order as to costs.

MEMBER (J)