

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

MISC. APPLICATION 194/2016
WITH
ORIGINAL APPLICATION ST. NO. 659 OF 2016

DIST. : AURANGABAD

Rajendra s/o Raosaheb Pathade,
Age. 54 years, Occu. : Lab. Technician,
R/o Pimpalwadi, Tq. Pathan,
Dist. Aurangabad.

-- APPLICANTS.

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Public Health Department,
Mantralaya, Mumbai -32.

(copy to be served on C.P.O.,
M.A.T., Bench at Aurangabad)

2. The Joint Director,
Health Services (Malaria & Falaria),
Pune – 06.
3. The Assistant Director Health Services,
(M & F) Region, Aurangabad.
4. District Malaria Officer,
Aurangabad.

-- RESPONDENTS

APPEARANCE : Shri Vivek Pingle, learned Advocate for
the Applicant.

: Smt. Resha S. Deshmukh, learned
Presenting Officer for the Respondents.

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

JUDGEMENT

{Delivered on 10-10-2016}

1. This M.A. has been filed by the applicant for condonation of 5 years & 3 months delay caused in filing the accompanying O.A. St. No. 659/2016.

2. In the accompanying O.A. the applicant has claimed a relief of issuance of direction to the respondents to continue the services of the applicant w. e. f. 17.6.1996 on the post of Laboratory Technician and that the period from 16.7.1996 to 13.12.1999 be regularized.

3. It seems that earlier the applicant has filed O.A. no. 789/1998 for absorption in the services and in the said O.A. interim relief was granted in favour of the applicant and the applicant was absorbed as Laboratory Assistant. Unfortunately the said O.A. came to be dismissed in default by this Tribunal vide order dated 23.7.2009.

4. The applicant thereafter filed representations for getting regularization on the said post of Laboratory Assistant from 17.6.1996 to 13.12.1999. Such representations were filed in the year 2002 and thereafter in the year 2010. The applicant was

approaching the respondent authorities from time to time but no response was received from the respondents and even today the said matter is under consideration.

5. In the affidavit in reply the respondents have denied the applicant's claim, however, it is admitted that the applicant has filed representations in the year 2002 and thereafter in the year 2010 and a proposal to that effect was sent by the res. no. 4 to res. no. 2. On 1.3.2016, the applicant again filed representation referring to G.R. dated 21.1.1980 to consider his representation. The applicant belongs to Project Affected Persons Category. In the affidavit in reply the respondents admitted that the proposals for regularization of services of the applicant came to be forwarded to the competent authority in the years 2002 and 2010 itself and the same are under consideration.

6. From the affidavit in reply filed by the respondents, it seems that though the proposals are of the year 2002 & 2010, and thereafter of the year 2016, no decision has been taken on the representations of the applicant and they are still under consideration.

7. The learned Advocate for the applicant has relied on the following citations :-

- (i) Judgment of Hon'ble Supreme Court reported at **AIR 2008 SC 2723 {ASHOK KUMAR VS. STATE OF BIHAR & ORS.}**.
- (ii) Judgment delivered by the Tribunal in M.A. no. 361/2014 in **O.A. St. no. 996/2014 {SHRI JAYSINGH S. MEHER VS. THE STATE OF MAHARASHTRA & ORS.}**.
- (iii) Judgment delivered by Hon'ble Bombay High Court in the **W.P. No. 2901/2002 {DHAN LAXMI FABRICS LTD., VS. UNION OF INDIA (UOI) AND ORS.}** on 10.12.2002.

8. I have gone through all these three citations. I have also gone through the judgment delivered by Hon'ble Supreme Court in the case of **ASHOK KUMAR** (supra). In the said case the, the writ petition was filed after 4 years after passing of the impugned order and the Hon'ble Supreme Court observed that, the delay due to pendency of review / representation before the competent authority against the order passed by the respondents, is sufficient ground to condone the delay caused in filing writ petition before the High Court.

9. It is material to note that in the Administrative Tribunals Act, 1985 there is specific provision of limitation. As per sec. 21

(1) of the Administrative Tribunals Act, 1985, the Tribunal shall not admit the application, if the grievance is not made within one year from the date of which final order has been passed. Sec. 21 of the Administrative Tribunals Act, 1985 is as under :-

"21. Limitation.- (1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any

order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause(b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub- section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

10. It is settled law that mere filing of the representation after representation cannot give rise to fresh cause of action. This

view has also been taken by the Hon'ble Supreme Court in the appeal by Special Leave {**STATE OF HARYANA & ORS. VS. MISS AJAY WALIA**} (from the judgment of the Punjab & Haryana High Court, made on October 15, 1996 in CWP No. 12474/95). The Hon'ble Apex Court has observed that, 'representations repeatedly given to the various authorities will not give fresh cause of action'. In view of this prima-facie, the O.A. St. No. 659/2016 seems to be barred by limitation.

11. However, the delay of 5 years and 3 months caused in filing O.A. st. No. 659/2016 before this Tribunal can be condoned in view of the affidavit in reply filed by the respondent no. 2 in which it is stated that the representations filed by the applicant are under consideration of the competent authority. In view thereof, I pass following order :-

ORDER

- (i) M.A. 194/2016 stands allowed and the delay of 5 years & 3 months caused in filing O.A. st. 659/2016 is condoned.
- (ii) O.A. st. No. 659/2016 be registered.

There shall be no order as to costs.

MEMBER (J)

ORIGINAL APPLICATION ST. NO. 659 OF 2016
(Shri R.R. Pathade Vs. the State of Mah. & Ors.)

CORAM : Hon'Ble Shri J.D. Kulkarni, Member (J)
DATE : 10.10.2016.

ORAL ORDER :-

Heard Shri Vivek Pingle, learned Advocate for the Applicant and Smt. Resha S. Deshmukh, learned Presenting Officer for the Respondents.

2. Issue notices to the respondents, returnable after four weeks.
3. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.
4. Applicant is authorized and directed to serve on respondents intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondent is put to notice that the case would be taken up for final disposal at the stage of admission hearing.
5. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the question such as limitation and alternate remedy are kept open.
6. The service may be done by hand delivery, speed post, courier and acknowledgment be obtained and produced along with affidavit of compliance in the Registry before due date. Applicant is directed to file affidavit of compliance and notice.
7. S.O. after four weeks.
8. Steno copy & hamdust allowed to both the parties.

MEMBER (J)

