

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5248 OF 2018

Gajanan Rangnathrao Jawale,
Age : 25 Years, Occu. : Nil,
R/o Behind Government Hospital,
Parbhani, Tq. and Dist. Parbhani. .. Petitioner

Versus

1. The State of Maharashtra,
Through the Deputy Director,
Heath Services, Aurangabad.
2. The District Civil Surgeon,
District Government Hospital,
Parbhani, Tq. & Dist. Parbhani. .. Respondents

Shri Ganesh A. Gadhe, Advocate for the Petitioner.
Shri P. N. Kutti, A.G.P. for Respondent Nos. 1 and 2.

**CORAM : S. V. GANGAPURWALA AND
SUNIL K. KOTWAL, JJ.**

DATE : 06TH JUNE, 2018.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner had filed original application seeking appointment on compassionate ground. The original application

came to be dismissed in default. The application filed by the petitioner for restoration along with application for condonation of delay is rejected. Aggrieved thereby present writ petition.

2. Mr. Gadhe, the learned counsel for the petitioner submits that, the original application was filed in the year 2014. At that time the matter was required to be decided by the Division Bench. The Division Bench was not available. The petitioner was not aware that in the year 2016 circular was issued and the matters were empowered to be decided by the learned Single Judge. The matter could not be attended. In view of that, the matter was dismissed in default. The learned counsel submits that, as for two and half years the matter was not taken up because of non availability of Division Bench, the petitioner could not keep the track of the matter and did not have the knowledge that the matters are circulated before the learned Single Judge. The delay caused in filing the application is not intentional and deliberate one.

3. The learned Assistant Government Pleader supports the order.

4. The application is filed by the petitioner seeking appointment on compassionate ground. It is not disputed by the respondents also that, the matter was required to be decided by the Division Bench at the relevant time and for the first time in

the year 2016 the learned Single Judge was empowered to decide the matter. It was for the advocate of the petitioner to conduct the matter. A litigant may not be aware of the change in the powers of the learned Single Judge in view of the internal circular being issued.

5. The petitioner was seeking appointment on compassionate ground. The petitioner was not going to gain by the delay or by protracting the matter.

6. It is trite that, whenever technical considerations and cause for substantial justice are pitted against each others, the cause of substantial justice has to be sub served.

7. The delay on the part of the petitioner does not appear to be intentional or deliberate, but due to aforesaid reasons.

8. Considering aforesaid conspectus of the matter, we are inclined to exercise our discretion in favour of the petitioner. The impugned orders are quashed and set aside. The Original Application No. 340 of 2014 is restored to its original position.

9. Rule accordingly is made absolute in above terms.

Sd/-

[SUNIL K. KOTWAL, J.]

Sd/-

[S. V. GANGAPURWALA, J.]