

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

17 WRIT PETITION NO. 8161 OF 2018

SAINATH BABASAHEB TURAKANE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Darshan D. Pokharkar, Advocate for the
Petitioner.

Mr. K. N. Lokhande, AGP for Respondent-State.

...

**CORAM : S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.**

DATED : 29th AUGUST, 2018.

PER COURT:-

1. Though respondent nos.4 and 5 are served, none appears for respondent nos.4 and 5.
2. We have heard Mr. Pokharkar, learned counsel for the petitioner and learned A.G.P. for respondents.
3. The Original Application filed by the petitioner is dismissed on the ground of limitation. The same was dismissed, even without issuing notice to the respondents and in absence of the advocate for the applicant.
4. Mr. Pokharkar, learned counsel for the petitioner submits that the Tribunal has dismissed

the Original Application on the ground that it is barred by the limitation. The learned counsel submits that the appointment order of respondent no.4 dated 18.08.2016 was assailed by the present petitioner by filing Original Application No.734 of 2016. The said Original Application was disposed of by the Tribunal by directing the petitioner to raise objection before the appropriate authority. The objection raised by the petitioner was eventually rejected by the authority on 18.11.2017 and from the date of said order rejecting application of the petitioner the Original Application is filed within the prescribed period of limitation.

5. The learned A.G.P. submits that the petitioner even did not file an application for condonation of delay, so as to explain the reason for not filing application within limitation of one year.

6. The petitioner was challenging the order dated 18.08.2016 appointing respondent no.4 Adinath as a Police Patil.

7. We have considered the submissions canvassed by the learned counsel for the respective parties.

8. The petitioner initially had filed Original Application No.734 of 2016 challenging the

appointment of respondent no.4 as Police Patil dated 18.08.2016. The petitioner made a submission that he does not wish to proceed with the said Original Application and sought liberty to file fresh application raising objection to the appointment of respondent no.4 as a Police Patil. The order dated 11.08.2017 in Original Application No.734 of 2016 filed by the petitioner reads thus:

"Learned Advocate for the applicant has submitted that the applicant has not raised the objection regarding the grounds raised in the present Original Application, but his brother has filed an application. He has submitted that the applicant intends to approach Sub-Divisional Officer for raising objection, so far grounds raised in the present Original Application. Therefore, he prayed to dispose of the Original Application with liberty to the applicant to approach the Sub-Divisional Officer to raise the same grounds.

Since the applicant does not want to proceed with the present Original Application and he intends to file fresh application raising objection regarding appointment of respondent no.4 as a Police Patil fo village Lakhganga, Tq. Vaijapur, Dist. Aurangabad, the present Original Application is disposed of accordingly with a liberty as prayed for by the applicant.

There shall be no order as to costs."

9. Pursuant to the liberty granted, the petitioner filed an objection and the objection came to be rejected on 18.11.2017 and thereafter the instant Original Application No.165 of 2018 was

filed, which was within the prescribed period of limitation from the date of rejection of objection. While dismissing the Original Application filed by the petitioner on the ground of delay, the Tribunal failed to consider the aforesaid facts about the filing of the earlier Original Application and the order passed therein granting liberty to the petitioner to raise objection before the Authority.

10. In light of the above, the impugned order is quashed and set aside. The Tribunal shall decide the Original Application No.165 of 2018 afresh on its own merits and in accordance with law.

11. Writ Petition accordingly stands allowed.
No costs.

(S. M. GAVHANE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/August-18

Devendra
Nandkumar
Kale

Digitally signed
by Devendra
Nandkumar
Kale
Date:
2018.08.31
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