

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

13 WRIT PETITION NO. 10504 OF 2018

SUDHAKAR MALBA DAVKARE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Nitin S. Choudhary, Advocate for the
Petitioner.

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

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

DATED : 18th SEPTEMBER, 2018.

PER COURT:-

1. The petitioner had filed Original Application before the Maharashtra Administrative Tribunal alongwith an application for condonation of delay. The application for condonation of delay is rejected. Aggrieved thereby, the present writ petition.

2. Mr. Choudhary, learned counsel for the petitioner strenuously contends that the length of delay is not relevant. The substantive right of the petitioner is negatived. The same is required to be considered substantively by the Tribunal. It is only after the petitioner got information under the Right to Information Act, the petitioner could get knowledge of the relevant state of affairs and

thereafter had immediately filed Original Application before the Tribunal.

3. The learned counsel submits that in the year 1991, the petitioner was appointed as an Assistant Engineer (Grade – II) (Group – B) with Maharashtra Jeevan Pradhikaran Circle, Nagpur. The learned counsel submits that in the year 1994, the petitioner was confirmed in the service. On or about 26.12.1996, the M.P.S.C. published advertisement for the post of Assistant Executive Engineer (Group – A) and Assistant Engineer (Grade – I) (Group – A). In the said advertisement no reservation was provided for the physically handicapped/disabled persons. Some of the similarly situated physically handicapped persons approached the Tribunal at Aurangabad as well as Mumbai. The Tribunal directed M.P.S.C. to provide the reservation as well as age relaxation to such physically handicapped candidates. Thereafter, on 09.11.1998, corrigendum was issued by the M.P.S.C. to the advertisement. The petitioner pursuant to the advertisement, participated in the selection process, but was declared not qualified. Again on 12.02.1999, advertisement was issued by the M.P.S.C. for the post of Assistant Executive Engineer (Group – A) and Assistant Engineer (Grade – I) (Group – A). The reservation was not provided to the candidates from locomotor disability category, but a vague note was given that

reservation is provided for physically disabled persons. The petitioner again appeared for the examination on 12.03.2001. The petitioner was declared qualified, but was not recommended due to non-availability of posts. At the time of interview the post through Public Works Department and Water Resource Department has been reduced randomly and in arbitrary manner. The physical disabled persons from locomotor disability category were not filled in. Thereafter, on 15.09.2004, a fresh advertisement was issued by M.P.S.C. for the same post. The petitioner appeared, but his name was not recommended. The backlog of vacancies from physically disabled category was not shown. Again in the year 2013, advertisement was issued, but however petitioner could not participate, as he was age barred.

4. The learned counsel submits that on or about 2.5.2016, the petitioner gave detailed representation to M.P.S.C. ventilating his grievance and contending that since 1996 though the petitioner was qualified, eligible and was within the age limit, no reservation was provided for physically handicapped persons in locomotor disability category. The petitioner in June 2016 sought information under Right to Information Act from the concerned department, the same was subsequently provided to the petitioner and it was brought on record. The case of the petitioner

ought to have been considered. The petitioner could have been appointed to the post of Assistant Executive Engineer (Group – A) and Assistant Engineer (Grade – I) (Group – A) had the reservation being provided for persons with locomotor disability in the year 1996. The learned counsel relies on the judgment of Apex Court in a case of Ramchandra Shankar Devdhar and Others Vs State and Others reported in AIR 1974 SCC 215 and submits that each case has to depend on its own facts. The length of delay is not relevant. The breach of fundamental right is a concern.

5. The learned A.G.P. supports the order and submits that the petitioner had approached the Court after much delay.

6. The petitioner had filed Original Application with a prayer to give appropriate directions to appoint the petitioner on the post of Assistant Executive Engineer (Group – A) and/or Assistant Engineer (Grade – I) (Group – A) from 1996 and further the applicant be given all consequential benefits to which he is legally entitled including merit, seniority, incidental benefits, monetary emolument and promotion for the past and future, as the candidate of reserved category of physically disabled person under category of locomotor disability pursuant to the advertisement dated 26.12.1996, 12.02.1999 and 15.09.2004.

7. There is a delay of 6741 days in filing Original Application.

8. There cannot be any dispute with the proposition that whenever the technical considerations and cause for substantial justice are pitted against each other, the cause for substantial justice has to be sub served, but at the same time the concept of sufficient cause cannot be interpreted in a manner that, the said phrase would loose its efficacy altogether. The delay in present case is an abnormal delay of almost 18 years.

9. The similarly situated candidates, as the petitioner from physically handicapped/disabled category upon advertisement been issued on 26.12.1996 had approached the Maharashtra Administrative Tribunal at Aurangabad and Mumbai by filing Original Application. The Tribunal directed the M.P.S.C. to provide reservation as well as age relaxation to physically handicap/disabled person. Thereby corrigendum was issued on 9.11.1998 by M.P.S.C. providing reservation for physically disabled candidates. The petitioner had appeared in the selection process, but was declared not qualified. Thereafter, fresh advertisement was issued by M.P.S.C. on 12.02.1999 for the same post of Assistant Executive Engineer (Group – A) and Assistant Engineer (Grade – I) (Group – A). The reservation for physically handicapped persons was

provided, but it was not specifically mentioned that reservation for locomotor disabled persons was also provided. The petitioner appeared in the said selection process and was declared as qualified but was not recommended due to non-availability of posts. In the year 2004, again advertisement was issued by M.P.S.C. for the same post. The petitioner appeared, but his name was not recommended. It would be seen that the M.P.S.C. had provided reservation for physically challenged candidates and in the year 1996, it was upon the direction of the Tribunal, the M.P.S.C. issued corrigendum and provided reservation for physically disabled persons. Earlier the petitioner's name was not recommended by the selection committee pursuant to the selection process.

10. The petitioner now after long slumber of 18 years is assailing and making a grievance about his right of the year 1996. The grievance put forth by the petitioner after such a long slumber cannot be considered. The appointment to the post would depend upon the performance of the petitioner in the selection process and the same cannot be given as of right. Even if, the case of the petitioner is considered that reservation was not provided in the year 1996 and 1999 for physically disabled persons, still the Tribunal could not have directed appointment to be given to the petitioner. In view of the fact that, the appointment has to be

made by M.P.S.C. from the candidate who had participated in the selection process and through competition. There is no concept of making direct appointment. No plausible explanation is given for not assailing the right as claimed by the petitioner earlier.

11. The delay being inordinate one, the Tribunal has not committed any error in passing order.

12. Writ Petition is disposed of. No costs.

(S. M. GAVHANE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/September-18

Devendra
Nandkumar
Kale

Digitally signed
by Devendra
Nandkumar Kale
Date: 2018.09.26
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