

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

WRIT PETITION NO. 1397 OF 2019

Walmik Daulatrao Nikam & Anr. ... Petitioners

Versus

The State of Maharashtra & Ors. ... Respondents

.....
Shri. Prakash S. Paranjape, Advocate for the petitioners
Shri. S. G. Karlekar, AGP for respondent/State
.....

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**
DATE : 21ST FEBRUARY, 2019

ORAL ORDER:

. The application for condonation of delay of 130 days filed by the petitioner before the Maharashtra Administrative Tribunal is rejected. Aggrieved thereby, the present petition.

2. We have heard the learned counsel for the petitioner.

3. The learned Assistant Government Pleader submits that, the delay is an inordinate one. The petitioner is challenging the transfer order after a period of one year and 130 days. The petitioner has acquiesced in the transfer as he has already joined the transferred

place. The learned AGP submits that, the petitioner can be dubbed as a fence sitter. After others are granted relief the petitioner has approached the court. The learned AGP relies on the judgment of the Supreme Court in case of *State of Uttar Pradesh and others Versus Arvind Kumr Srivastava an others* reported in (2015) 1 SCC 347.

4. Whether the petitioner has acquiesced would be consideration before the Tribunal on merits. At this stage, we are only required to consider the application for condonation of delay in filing Original Application. The petitioner has relied on the order passed by the Tribunal in case of two similarly situated employees who were transferred under the same order.

5. The petitioner is challenging the order of transfer after a period of more than one year. The concept of acquiescence will be required to be consider by the Tribunal at the time of deciding the Original Application on its own merits. However, while considering the application for condonation of delay, it has not considered the grounds stated.

6. It is trite that when the technical considerations and cause for substantial justice are pitted against each other, the cause for

substantial justice has to be subserved. The delay is not an inordinate one. Considering the reasons mentioned, we are inclined to grant one opportunity to the petitioner to contest the matter on merits.

7. In light of the above, the impugned order is quashed and set aside. The application filed by the petitioner for condonation of delay is allowed. In case there is no other impediment, the Original Application shall be registered in accordance with law.

8. The Writ Petition is accordingly disposed of. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde