

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

WRIT PETITION NO.617 OF 2019

**AJAY GAJANAN SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. A.B.Dhongade, Advocate for the petitioner
Mrs. R.P.Gour, AGP for the respondent/State.

**CORAM : PRASANNA B. VARALE &
S.M.GAVHANE, JJ.**

DATED : 17.01.2019

P.C. :-

1. Heard learned counsel for the petitioner.
2. The learned counsel for the petitioner orally prays for amendment to petition by adding party-respondent and prayer clause.
3. The learned counsel for the petitioner submits that inadvertently only two prayers are made in the petition, whereas the petitioner is also praying for directions to refer the claim to the appellate authority for decision. Oral prayer is allowed. Amendment be carried out forthwith.
4. The learned counsel for the petitioner submitted that the petitioner who was possessing certain documents to show that the petitioner and his family members belong to 'Koli Mahadev' (Scheduled Tribe). Accordingly the petitioner submitted an application on 06.10.2015 before respondent No.2-Sub Divisional

Magistrate, Hadgaon, Dist. Nanded for issuance of the necessary certificate. The learned counsel for the petitioner invited our attention to the documents place on record, namely, the resident certificate issued by the Talathi and Sarpanch of village Nimgaon, Tq. Hadgaon, Dist. Nanded as well the school leaving certificate issued under the signatures of Headmaster, the class teacher and the caste certificate issued in favour of father of the petitioner and also a caste certificate issued in favour of cousin sister of the petitioner.

5. The learned counsel for the petitioner also invited our attention to an affidavit submitted before the Committee by the father of petitioner. The learned counsel then submitted that in spite of more than sufficient material supporting the claim of the petitioner was submitted before the Sub Divisional Magistrate, the Sub Divisional Magistrate only on mechanical appreciation, rejected the application. The learned counsel then submitted that the Sub Divisional Magistrate in the order dated 02.02.2016 informed the petitioner that the petitioner is having a remedy of an appeal to the appellate forum, namely, the Divisional Caste Scrutiny Committee, Aurangabad/Latur under Rule 5(1).

6. The learned counsel for the petitioner then submitted that after submitting his claim to respondent No.2-Sub Divisional Magistrate the petitioner was unable to prosecute his academic career regularly due to very

weak financial condition of the family. It was submitted by learned counsel for the petitioner before us by invited our attention to the copy of the Ration card placed on record that the family of the petitioner consists of five members, namely, the father, mother of the petitioner, one sister of the petitioner, the petitioner himself and the brother of the petitioner. He then submitted that the brother of the petitioner was not prosecuting any academic course and was supporting the family by doing labour work and as the petitioner's family was having very weak financial condition, the petitioner thought it fit to support his family alongwith his brother by doing some paltry job or engaging himself in labour work. The learned counsel then submitted that though the order was passed by the Sub Divisional Magistrate in year 2016, at that relevant time, the priority for the petitioner was to support the family, so that the members of the family are in a position to make both ends. This peculiar facts prevented the petitioner from taking any immediate action so as to go before the appellate forum by filing an appeal. The learned counsel for the petitioner then submits that though it is not stated in the petition as per the instructions provided to the learned counsel that on assurance of the brother of the petitioner that the petitioner to take education and his brother would take responsibility to support the family. The petitioner then only could take further steps such as approaching the counsel and filing the petition before this Court.

7. The learned counsel for the petitioner submitted that though the relevant Rules, namely, Rule 8 specifies the period for filing appeal before appellate authority, namely, 30 days, the petitioner for the reasons which were beyond his control was unable to approach the appellate authority within the stipulated period. The learned counsel further submits that as the Rules in general and the Rule 8 in particular is not providing any scope for the appellate authority to consider the aspect of delay caused in filing the appeal. If the appeal is filed by the petitioner before the appellate forum, now the appellate forum may turn down the appeal on this very technical ground and the same would result in a serious prejudice to the petitioner. As the petitioner would be deprived of challenging the order of the Magistrate on merits and the petitioner is hopeful that the appellate authority may consider the relevant material and may by setting aside the order of the Sub Divisional Magistrate issue certificate in favour of the petitioner so that the petitioner can pursue his academic career. Thus, the learned counsel submits that the petitioner is before this Court with the added prayer that the appellate authority be directed to consider the appeal on its own merits without rejecting the same at the threshold on a technical ground of delay.

8. The learned counsel then submits that the petitioner undertakes to this Court that he would file the necessary appeal immediately before the Committee i.e. the appellate authority within two weeks. The

learned counsel also submitted that this Court may entertain the petition by exercising the extra ordinary powers of this Court.

9. The learned AGP opposes the petition on the ground that as the Committee is not vested with the powers to condone the delay and as the appeal which would be filed by the petitioner at a very belated stage the petition may not be allowed.

10. Considering the above rival submissions, we are of the opinion that though the Rules specified the period of limitation to approach the appellate authority of 30 days and an appeal which would be filed by the petitioner certainly as at a belated stage, considering the facts that the petitioner before this Court is a student and is desirous of prosecuting his academic career and stake his claim in the academic courses as a candidate belonging to Scheduled Tribe Community, namely, Mahadev Koli and the learned counsel for the petitioner was justified in submitting before this Court that if the appeal is turned down by the appellate forum only on technical grounds without the assessment of merits of the claim of the petitioner the same would cause a serious prejudice to the petitioner and the loss which the petitioner would suffer certainly would be an irreparable loss and such a loss cannot be compensated by any terms including any monetary terms.

11. Considering these very facts of the matter, we entertain the petition and dispose the petition at the

admission stage, permitting the petitioner to approach respondent No.3 by filing an appeal challenging the order of respondent No.2 within two weeks from today alongwith all the necessary documents. If such an appeal is filed within two weeks by the petitioner before respondent No.3, the respondent No.3 to decide the appeal on merits without raising technical hurdle of delay as expeditiously as possible.

12. As above observations the writ petition is disposed of.

[S.M.GAVHANE,J.]

[PRASANNA B. VARALE,J.]