

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1115 OF 2021

Tulshiram s/o. Dhansingh Bakle,
 Age 38 years, Occu. Labour,
 R/o. Dhangar Galli, Near Mahadeo Mandir,
 Ward No. 1, Harsool, Aurangabad. .. Petitioner

Versus

1. State of Maharashtra
 Through Principal Secretary of Public
 Health Department, G. T. Hospital
 "B" Wing, 10th Floor Complex Building,
 New Mantralaya, Mumbai.
2. The Dean,
 Government Dental College and Hospital,
 Aurangabad. .. Respondents

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Mr. Kachru A. Ingle, Advocate for Petitioner
 Mr. K. B. Jadhvar, AGP for Respondents No.1 and 2

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**CORAM : S.V. GANGAPURWALA AND
 M. G. SEWLIKAR, JJ.**

DATE : 16th JUNE, 2021

ORAL JUDGMENT (PER : S. V. GANGAPURWALA, J.) :-

Rule. Rule made returnable forthwith. Heard finally with consent of both the parties.

2. The petitioner had filed Original Application with Miscellaneous Application for condonation of delay before the Maharashtra Administrative Tribunal, Aurangabad. The petitioner sought to rely upon

Government Resolution dated 11-03-2016 for stay to the appointment on the post of Plumber. The father of petitioner was serving as Sweeper with the respondent. The petitioner was claiming appointment on hereditary basis. The Tribunal on merits observed that the petitioner is not entitled to get the benefit of Government Resolution and dismissed the Original Application and Miscellaneous Application for condonation of delay.

3. We have heard the learned counsel for the petitioner and the learned AGP for respondents.

4. It is settled proposition of law that the original application could not have been dismissed without condoning the delay. The Tribunal has not assigned any reason for not condoning the delay. The Tribunal ought to have considered the grounds raised by the petitioner for condonation of delay. If the Tribunal would not have been satisfied about the sufficient cause, then may have rejected the application for condonation of delay. The Tribunal ought to have heard original application on merit and passed the order only if the delay was condoned.

5. It appears that the present petitioner made representation immediately, however, filed Original Application after making subsequent representation and issuing three reminders.

6. The petitioner, it appears, is working as a labour and financially weak. The petitioner has not gained anything by approaching the Tribunal late. The representation was filed by the petitioner on 25-01-2017 even

before retirement of his father. The father retired from service on 30-06-2017. The petitioner subsequently gave three reminders and, thereafter, filed Original Application. It is settled law that liberal and pragmatic approach is essential to be adopted by avoiding pedantic approach while dealing with the application for condonation of delay. When technical consideration and cause for substantial justice are pitted against each other, the cause for substantial justice shall be sub-served.

7. In the light of above, the order dated 23rd June, 2020 passed by Maharashtra Administrative Tribunal, Aurangabad, in Miscellaneous Application No. 161 of 2020 in Original Application Stamp No. 473 of 2020 is quashed and set-aside. Miscellaneous Application No. 161 of 2020 is allowed. The delay caused in filing Original Application Stamp No. 473 of 2020 is condoned. Original Application is restored to its original stage. Rule, accordingly, made absolute. No costs.

(M. G. SEWLIKAR)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

rrd