

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

955 WRIT PETITION NO.7368 OF 2020

DR. PRATAP HARIBHAU SALVE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Petitioners : Mr. A. V. Sakolkar
AGP for Respondent nos. 1 & 2: Mr. S. K. Tambe
...

**CORAM : S. V. GANGAPURWALA &
R. N. LADDHA, JJ.**

DATED : 6th OCTOBER, 2021.

...

PER COURT :

1. The petitioner had filed Original Application Stamp No. 623 of 2020. The original application has been rejected on two grounds : i) the petitioners have challenged the validity of the Maharashtra Medical and Health Services (Class-I) Recruitment Rules, 1981. It is observed that the same is not challenged within the period of limitation prescribed under Section 21 of the Administrative Tribunals Act and ii) the petitioners have given representation on 16/06/2020 and the same is pending. Six months period had not lapsed and only upon the expiry of lapse of six months the petitioner can approach the Tribunal under Section 20(2)(b) of the Administrative Tribunals Act.

2. We have heard the learned counsel for the petitioners and the learned AGP.

3. While issuing notice on 26th October, 2020, we had asked the learned AGP to clarify as to how the period of limitation would apply, in case, rules that are part of the subordinate legislation are challenged. We could not get any positive response in that regard.

4. Section 21 of the Administrative Tribunals Act, 1985 reads thus :

“21. Limitation.— (1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period”.

5. Section 21 as referred to above prescribes the period of limitation in a case where a final order as mentioned in clause (a) of sub-section (2) of Section 20 is passed or where an appeal or representation is made and six months had expired.

6. In the present case, the petitioners were challenging the validity of Rules 1981. Rules 1981 are enacted exercising powers conferred by the proviso to Article 309 of the Constitution of India. It is trite that the rules are framed in exercise of powers of delegated legislation. We do not find any provision under the Administrative Tribunals Act prescribing a period of limitation to challenge the validity of legislative rules.

7. Six months from the date of filing representation is also over, the same is not yet decided.

8. In light of the above, the impugned order is quashed and set aside. Parties are relegated before the Tribunal. The Tribunal shall register original application filed by the petitioners and decide it on its own merit.

9. Rule accordingly made absolute. No costs.

(R. N. LADDHA, J.)

(S. V. GANGAPURWALA, J.)

vsm/-