

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

**999 WRIT PETITION NO.142 OF 2020
WITH
CIVIL APPLICATION NO.87 OF 2020
IN WP/142/2020**

. Babasaheb S/o. Prahalad Shinde ..Petitioner
Age: 45 years, Occ.: Nil,
R/o. Chaptgaon, Tal. Karjat,
Dist.Ahmednagar.

VERSUS

1. The State of Maharashtra
Through its Secretary,
Home Department, Mantralaya,
Mumbai - 32.
2. Maharashtra Public Service
Commission, Through its Secretary,
Bank of India Building, Mahatma
Gandhi Road, Hutatma Chowk,
Mumbai - 400 001.
3. Home Department,
6th Floor, Mantralaya,
Church Gate, Mumbai.
4. Maharashtra Police Head Quarters
Near Gate Way of India,
Fort, Mumbai - 1. ..Respondents.

...
Advocate for Petitioner : Shri Zia Ul Mustafa and
Shri T.R. Quadri
AGP for Respondent Nos.1 to 4: Shri A.R.Kale

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

DATE: 18th June, 2021

ORAL JUDGMENT:- (Per: M.G.Sewlikar, J.)

1. By this writ petition under Articles 226 and 227 of the Constitution of India, petitioner is challenging the order passed by the Maharashtra Administrative Tribunal (MAT), Aurangabad, dated 20th April 2016 in Miscellaneous Application No.220 of 2014 in Original Application Stamp No.532 of 2014 whereby application for condonation of delay came to be dismissed.

2. Facts leading to this application are that the petitioner had participated in the recruitment process for the post of PSI/STI/ASSISTANT pursuant to an advertisement dated 14th July 1999. Preliminary examination was held on 18th June 2000 and main examination was held on 18th March 2001. Respondent No.2 issued call letter dated 2nd November 2000 to the petitioner. Accordingly, petitioner became eligible for physical test, which was conducted on 21st November 2001. Petitioner scored 163 marks out of 200 marks. Petitioner appeared for viva-voce test on 5th January 2002. Final selection list was published on 31st May 2002. Since there were malpractices on mass scale, selection list was

published on 31st May 2002 with a rider that results of 133 candidates would be declared on the Website of respondent No.2 later. Name of petitioner did not figure in the selection list. In pursuance of directions of this Court, final list was published on 22nd September 2006 in which name of petitioner did not figure. Thereafter, petitioner made correspondence with respondent No.2 for getting the mark sheets. The petitioner was not provided with mark sheets and lastly on 27th February 2007, he was orally informed that he had scored 492 marks in PSI examination and mark sheet was delivered to the petitioner by post. Finally on 28th March 2008 Under Secretary gave a letter to the petitioner indicating therein that petitioner had scored 492 marks and merit list was closed at 499 marks. Thereafter, petitioner made application under Right to Information Act for getting mark sheet, answer key and other details. Petitioner was not provided with this information. He preferred appeal before the State Information Commissioner for non-supply of the information by respondent No.2. By order dated 6th February 2013, the Chief Information Commissioner directed to supply the copies of answer sheets and answer keys and accordingly, they were supplied to the petitioner. According

to the petitioner, some of the answers were not correctly assessed owing to which he is shown to have scored less marks. According to the petitioner, he has in fact scored 309 marks out of 400 marks in main examination. Therefore, petitioner approached the MAT for the declaration that petitioner be declared as eligible candidate for the post of PSI/STI/ASSISTANT in the recruitment process of 1999.

3. Respondent No.2 resisted the petition by filing affidavit in reply. It has contended that final recommendation list of 431 candidates was sent to the Government of Maharashtra vide letter dated 7th October 2006 pursuant to the order passed by this Court on 14th July 2006. Result was withheld on account of investigation into the malpractices committed by some of the candidates in the examination. It has further contended that in the year 2008 itself, information sought by the petitioner was furnished. He was provided with details of marks and colour photocopies of answer sheets vide letter dated 28th February 2013. It has, therefore, prayed for dismissal of the petition.

4. Learned MAT dismissed the application for condonation of delay by its order dated 20th April, 2016 holding that petitioner did not make out any sufficient cause for condonation of delay. This order is impugned in this writ petition.

5. Heard Shri Zia Ul Mustafa, learned counsel for the petitioner and Shri A.R.Kale, learned counsel for respondent Nos.1 to 4.

6. Shri Mustafa, learned counsel for the petitioner vehemently submitted that petitioner was not supplied with mark sheets. He had made applications to respondent No.2 for getting mark sheets. Respondent No.2 did not provide mark sheets to him. Therefore, he preferred appeal before the Chief Information Commissioner in which he was provided with mark sheets and other details. The learned counsel for the petitioner submitted that thereafter petitioner approached the MAT. All these aspects were not considered by the MAT and erroneously rejected his application. He submitted that petitioner was waiting for result of investigation of alleged malpractices. He further

submitted that some of his answers were not correctly assessed because of which he scored less marks. He submitted that time was spent in procuring the information and therefore, delay was committed in preferring application before the MAT.

7. Record produced by respondent No.2 shows that on 4th July 2008 itself petitioner was informed that he had secured 492 marks and the merit list was closed at 499 marks. On the same day, he was provided with mark sheet. Thus, the petitioner was provided with all the required information on 4th July 2008. He did not approach the MAT within the period of limitation thereafter. He maintained stoic silence for a period of six years. The reason he has assigned for not approaching the MAT is that the investigation was in progress in regard to the malpractices committed in the examination and that he had preferred appeal before the State Information Commissioner for directions to supply the information sought from respondent No.2. He had no concern with the said investigation. Learned Members of MAT, therefore, were right in observing that this cannot be a sufficient cause for the condonation of delay.

8. According to Shri Mustafa, learned counsel for the petitioner, some of the answers given by the petitioner were correct and they were incorrectly assessed. This cannot be a question which can be gone into at this stage. No satisfactory explanation is forthcoming for condonation of delay. The delay is inordinate. Because of delay committed by the petitioner, a right is created in favour of the candidates, who have been selected and appointed on the post of PSI/STI/ASSISTANT. Delay cannot be condoned in cases wherein because of the delay and latches right is created in favour of a party. In the case of University of Delhi v/s Union of India (2020) 13 SCC 745, it has been held that in the matter of condonation of delay and latches, the well accepted position is that the accrued right of the party cannot be lightly dealt with. In the case at hand, right accrued to the candidates who have been appointed cannot be ignored.

9. A conspectus of the entire discussion shows that no sufficient cause is made out for condonation of delay. Therefore, petition is bereft of any merit. Hence, the order.

ORDER

i) Writ Petition is dismissed.

ii) Pending Civil Application is disposed of.

(M.G.SEWLIKAR)
JUDGE

(S.V.GANGAPURWALA)
JUDGE

SPT