

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2459 OF 2021

Suvidha Ashok Ambukar Petitioner
Vs.
The State of Maharashtra
through its Secretary, Department of
State Excise and ors. Respondents

Mr.V.N.Sagare, for the petitioner
Mr. B.V. Samant, AGP for Respondent - State.

**CORAM : DIPANKAR DATTA, CJ &
M.S. KARNIK, J.**

DATE : SEPTEMBER 8, 2021

P.C. :

1. Aggrieved by dismissal of his Original Application No. 804 of 2020 by the Maharashtra Administrative Tribunal, Mumbai (hereafter "the Tribunal" for short) as time barred, the original applicant has presented this writ petition dated March 8, 2021.

2. It is not in dispute that the original applicant/petitioner (hereafter 'the petitioner' for short) had participated in the selection process for recruitment on the post of 'Jawan' in the year 2011, but was not selected. For almost 9 years, the petitioner was in deep slumber. Without

approaching the Tribunal, he invoked the writ jurisdiction of this Court by presenting Writ Petition No. 1524 of 2020. A coordinate Bench by its order dated March 18, 2020 held that since the petitioner has not approached the Tribunal and directly instituted writ proceedings, the same was not maintainable. The writ petition was, accordingly, disposed of reserving the right of the petitioner to approach the appropriate forum keeping all contentions open.

3. It is thereafter that the petitioner approached the Tribunal with the original application. Learned advocate for the petitioner had contended before the Tribunal that the cause of action for invoking its jurisdiction arose on March 18, 2020, when Writ Petition No. 1524 of 2020 was disposed of. Such contention was not accepted by the Tribunal, and in our opinion, rightly on the ground that the writ petition was presented before this Court nearly 8 years after the selection list was published on December 30, 2011.

4. Appearing in support of the writ petition, Mr. Sagare learned advocate for the petitioner has contended that while

considering the aspect of condonation of delay in presentation of the original application, the Tribunal should have eschewed technicality and proceeded on the merits of the matter. According to him, the recruitment process was tainted by diverse vitiating factors which the petitioner sought to raise by pointing to specific instances and the said application deserved consideration on merits. The decision of the Supreme Court reported in (1996) 9 Supreme Court Cases 309 (**State of U.P. and ors. Vs. Harish Chandra and ors.**) has been referred to by Mr. Sagare in support of his contention that the delay in approaching the Tribunal ought to have been overlooked.

5. Opposing the writ petition, Mr. Samant, learned AGP for the State has placed before us the decision of the Supreme Court reported in (2013) 12 Supreme Court Cases 649 (**Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and ors.**) to contend that belated applications made before the Tribunal should not be lightly entertained without just cause. In his submission, the Tribunal was right in holding the approach of the

petitioner to be time-barred.

6. We have heard learned advocates appearing for the parties and perused the materials on record.

7. The decision in **Harish Chandra** (supra) has no application on facts and in the circumstances. There, the State of Uttar Pradesh was in appeal together with an application for condonation of delay. It is in such circumstances, the Supreme Court observed that delay in the bureaucratic process sometimes results in proceedings being brought before the court belatedly and that if the case deserves consideration on merits, the court should consider the question of condonation from that perspective. Here, the petitioner is an individual and, therefore, if he was seriously interested in appointment being offered to him which, ultimately, was not offered to him, he ought to have approached the Tribunal at the earliest opportune moment and also at the first instance without wasting any further time, instead of invoking the jurisdiction of this Court by presenting a writ petition which was clearly not maintainable.

8. The decision in **Esha Bhattacharjee** (supra) lays down the principles which ought to be borne in mind while considering a belated approach. The conduct, behaviour and attitude of the petitioner relating to his inaction and negligence are relevant factors, which have to be taken into consideration, apart from keeping in mind the fundamental principle that courts are required to weigh the scale of balance of justice in respect of both parties. Over and above this, the aspect of accrual of third-party interest cannot be brushed aside since appointments have been made in furtherance of the selection process that was conducted in 2011.

9. For the reasons aforesaid, we see no reason to hold that the Tribunal was in error in spurning the challenge of the petitioner on the ground that the original application was time-barred.

10. The impugned decision is unexceptionable and is, accordingly, upheld. The writ petition stands dismissed. No costs.

(M.S. KARNIK, J.)

(CHIEF JUSTICE)