

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

WRIT PETITION NO. 10276 OF 2021

Namdeo Mahadevrao Wakude .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 10285 OF 2021**

Yadav Tukaram Suryawanshi .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Shriniwas S. Wagh, Advocate for the Petitioner in both matters.

Shri A. S. Shinde, A.G.P. for the Respondents/State in both matters.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

DATE : 21.09.2022.

FINAL ORDER (Per Sandeep V. Marne, J.) :

. By present petitions, petitioners challenge judgment and order dated 21.06.2021 passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad in Misc. Application No. 510 of 2018 (Original Application No. 940 of 2018) and Misc. Application No. 509 of 2018 (Original Application No. 939 of 2018). By the impugned orders, the

Tribunal has refused to condone the delay in filing original applications and dismissed the same.

2. In Writ Petition No. 10276 of 2021, the petitioner was appointed on the post of Senior Laboratory Assistant Class III on 14.06.1979. He was granted temporary promotion on the post of Scientific Assistant on 02.11.1982. On 31.07.1986, he was granted regular appointment on the post of scientific assistant. He was granted time bound promotion by counting twelve years of service from 31.07.1986. It is his case that said twelve years of service is required to be counted from 02.11.1982 making him eligible for the time bound promotion with effect from 01.12.1994 and thereafter assured career progression scheme with effect from 01.12.2006.

3. The petitioner in Writ Petition No. 10285 of 2021 was initially appointed on the post of Senior Laboratory Assistant Class III on 01.09.1977. He was granted temporary promotion to the post of Scientific Assistant with effect from 01.10.1983 and was granted regular promotion as Scientific Assistant on 10.03.1986. He also desires counting of twelve years of service for grant of time bound promotion from 31.10.1983 and not from 10.03.1986.

4. With these grievances, the petitioners filed their respective original applications before the Tribunal in the year 2018. Undoubtedly, the original applications were hopelessly time barred. However, applications for condonation of delay were

filed. The delay was sought to be condoned essentially relying upon the judgment and order of the Tribunal in the case of **Dr. Shankar B. Kasabe Vs. The Secretary, Public Health Department, Mantralaya, Mumbai (Original Application No. 732 of 2011) decided on 08.06.2016**. The petitioners contended that, their case is similar to that of **Dr. Shankar B. Kasabe** on that ground the delay was sought to be condoned.

5. Relying on the judgment of the Apex Court in the case of **State of Karnataka and others Vs. S. M. Kotarayya and others** reported in **(1996) 6 SCC 267**, the Tribunal declined to condone the delay and accordingly dismissed the original applications.

6. Appearing for the petitioners, Mr. Wagh, learned counsel has relied on the judgment of the Constitution Bench in the case of **K. C. Sharma and others Vs. Union of India** reported in **(1997) 6 SCC 721** and contended that since the case of the petitioners is similar to the earlier batch of original applications decided by the Tribunal, the Tribunal ought to have condoned the delay. He therefore, prays for setting aside the orders passed by the Tribunal and to remand the original applications for consideration of the same on merits.

7. We have carefully gone through the judgment of the Tribunal in the case of **Dr. Shankar B. Kasabe** (supra) and find that same has no remote application to the present case. The issue before the Tribunal in the case of **Dr. Shankar B. Kasabe** (supra) was counting of service of twelve years/twenty four years

from the date of initial adhoc appointments. As against this, the petitioners have been permanently appointed on the post of Senior Laboratory Assistants Class III. They claim to count the services from the date of their adhoc promotions to the post of Scientific Assistants. Thus, the issue involved in the case of **Dr. Shankar B. Kasabe** (supra) was entirely different than the one that was raised by the petitioners before the Tribunal. Therefore, reliance of Mr. Wagh on the judgment of the Constitution Bench of the Apex Court in the case of **K. C. Sharma** (supra) is totally misplaced. The Tribunal has rightly relied on the judgment of the Apex Court in the case of **S. M. Kotarayya** (supra) for refusing to condone the delay.

8. We therefore do not find that any case is made out by the petitioners for our interference in the order passed by the Tribunal. The petitions are devoid of any merits. Same are dismissed, however, without any orders as to costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Sept. 22