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

WRIT PETITION NO.10850 OF 2009

Vasant Kashinath Patil ...Petitioner

Versus

The State of Maharashtra and Ors. ...Respondents

Mr. Shankar P. Thorat i/b Mr. Gurunath B.
Walawalkar, for the petitioner.

Mr. B.V. Samant, AGP for respondent nos.1 and
2/State.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.
DATE: OCTOBER 18, 2022**

P.C.:

1. This writ petition is directed against an order dated 27th January 2009 passed by the Maharashtra Administrative Tribunal, Mumbai (hereafter "Tribunal" for short) dismissing Original Application No.597 of 2007 as well as an order dated 6th October 2009 of the said Tribunal dismissing Review Application No.39 of 2009.

2. The petitioner, as the original applicant, had approached the Tribunal challenging orders of promotion dated 15th July 2004 issued in favour of the respondents 3 and 4. The original application was filed on 15th October 2007. Apart from the Tribunal dismissing the original application as time-barred, the same was on merits as well. The Tribunal was of the view that the orders of promotion having been issued on 15th July 2004, the petitioner had not filed the original application within the time limit prescribed in section 21 read with section 20 of the Administrative Tribunals Act, 1985. Insofar as rejection of the

petitioner's plea on merits is concerned, the Tribunal held that there was no illegality in promoting the respondents 3 and 4 ahead of the petitioner.

3. In the review application that was filed by the petitioner after dismissal of his original application, new materials were placed on record which the petitioner by exercise of due diligence could not produce at the time the original application was heard. The Tribunal noted that such fresh materials did have a bearing on the petitioner's claim on merits, but it refused to review its order dated 27th January 2009 on the ground that the original application was time-barred.

4. We have heard Mr. Thorat, learned advocate appearing for the original applicant/petitioner. According to him, the official respondents owed a duty to the Tribunal to place all relevant materials and it was absolutely unjust on their part in not pleading that the respondent no.4 had succeeded in the qualifying examination only at the 4th attempt which was beyond the permissible second attempt and instead, pleaded in the reply affidavit to the original application that such respondent had succeeded in the qualifying examination at the 2nd attempt. It is also submitted by Mr. Thorat that since the petitioner as well as the respondents 3 and 4 have already retired on superannuation, the petitioner is confining his claim only to release of financial benefits if he were promoted ahead of the respondents 3 and 4, and the Court may exercise its discretionary power and issue direction to the official respondents to release the financial benefits to which the petitioner would have otherwise been entitled.

5. The petitioner might have set up a strong case on

merits, but we cannot grant him relief because of the delay caused by him in approaching the Tribunal. We have not been shown that the finding returned by the Tribunal of the original application being time barred suffers from any legal infirmity.

6. Even otherwise, we find from the decision of the Supreme Court in **P.S. Sadasivaswamy vs. State of Tamil Nadu** reported in **(1975) 1 SCC 152** that:

"2. ... a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

7. The present case is not one where the writ petition is instituted before this Court as an original proceeding in the true sense of the term. It is a proceeding that has been instituted in view of the law laid down by the Supreme Court in its decision in **L. Chandrakumar vs. Union of India and Ors.** reported in **(1997) 3 SCC 261**. In proceedings for judicial review of orders passed by the Administrative Tribunals under the 1985 Act, we are required to examine the

correctness or otherwise of the order passed by the Tribunal. True it is, the laws of limitation are inapplicable to writ proceedings. However, if the approach to the writ court is delayed, the delay and laches have to be explained. But even if the approach to the Court is not delayed, Article 226 does not confer power on the writ court to make any order notwithstanding the delay in approaching the Administrative Tribunals. The Tribunal here was bound by the provisions of section 21 read with section 20 of the 1985 Act. If an original application is belatedly filed, the Tribunal may in its discretion condone the delay provided, of course, sufficient cause is shown in an application for condonation of delay. However, despite the orders of promotion being issued on 15th July 2004, the petitioner delayed his approach to the Tribunal and filed the original application three years later, i.e., on 15th October 2007 to be precise. The original application was, therefore, clearly barred by limitation. There being no application for condonation of delay, the Tribunal did not have the occasion to consider whether sufficient cause prevented the petitioner from approaching it earlier; hence, no error was committed in holding the original application to be so barred. Once no infirmity in such finding returned by the Tribunal is shown to us, the question of exercise of discretion by the High Court, upon consideration of the writ petition on merits in the exercise of its extra-ordinary writ jurisdiction, does not arise.

8. For the reasons aforesaid, we dismiss the writ petition. There shall be no order as to costs.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)