

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 WRIT PETITION NO.1164 OF 2022

SARIKA BABULAL PATOLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Santosh S. Jadhavar
AGP for Respondents: Mr. V. M. Kagne
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**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 4th JANUARY, 2023.**

PER COURT :-

1. The petitioner seeks to challenge the order dated 16.11.2021, passed by the learned Maharashtra Administrative Tribunal, in Misc. Application No. 69 of 2019. The delay of 11 years and 5 months caused in approaching the Tribunal, was not condoned by the impugned order dated 16.11.2021 and the application seeking condonation of delay has been rejected.

2. The dates and events, germane in this case, are as under:-

- a) On 23.5.2007, an advertisement was published by respondent No.3, Deputy Director of Health Services, Nashik, for filling in the posts of Pharmacists in the health department.
- b) The petitioner applied for the said posts and had participated in the said selection process.

- c) By a call letter dated 22.06.2007, the petitioner was informed that the interviews were scheduled on 9.7.2007.
- d) The petitioner received one more communication dated 27.6.2007, by which she was conveyed that the interviews scheduled on 09.07.2007, have been postponed. The next date was not communicated.
- e) After 9 years, on 7.1.2016, respondent No.3 issued another advertisement to fill in the posts of Pharmacists.
- f) The petitioner inquired about the earlier advertisement dated 23.5.2007 and she was informed that the selection process was duly conducted, completed, the candidates were selected and appointed.
- g) The petitioner applied under the Right to Information Act, 2005 and has received the documents indicating that 168 candidates were called for the interview held on 10th, 11th and 12th August, 2007.
- h) The petitioner approached this Court by preferring writ petition No. 3848 of 2018. The said writ petition was disposed off by order dated 17.4.2018 permitting the petitioner to avail the statutory remedy before the Maharashtra Administrative Tribunal.
- i) The petitioner approached the Maharashtra Administrative Tribunal on 13.2.2019 by preferring Original Application No.323 of 2019 alongwith Misc. application No. 69 of 2019 for condonation of delay in preferring the said Original Application.

- j) By the impugned order dated 16.11.2021, the application seeking condonation of delay was rejected.

3. The learned advocate for the petitioner submits that the petitioner was appointed as a Pharmacist on contractual basis in the same department from 5.7.2008. Even today, she works in the same capacity on contractual basis. She was completely unaware as to when the interviews were held, after they were postponed.

4. From the documents received under the Right to Information Act, 2005, the petitioner noticed that there were 164 candidates who were short listed for the interview. She was at Sr. No. 59. The proforma interview letter indicating the batches as per the serial numbers and the dates allotted for the interviews, was purportedly forwarded by the post department through ordinary post. Some of the candidates were issued personal interview call letters which indicate nepotism. The petitioner was placed in the second batch comprising from Sr. No. 56 to 110, for whom the interviews were scheduled on 11.8.2007. She did not receive any communication from the Postal department and, therefore, she was unaware about the said selection process. As she joined in July, 2008, on contractual basis, she did not notice the selected candidates working in the department and she could not identify them to be those who were selected pursuant to the advertisement dated 23.5.2007.

Hence, delay of 11 years and 5 months occurred in approaching this court.

5. Having heard the learned advocates for the respective sides, we find that the petitioner today prays for a call letter so as to be interviewed pursuant to the advertisement dated 23.5.2007, after 15 years. This seems to be an impossible situation, due to the passage of practically 15 years and 7 months. What is relevant is that it was not proved before the Tribunal that the department indulged in nepotism to pick and choose a particulate candidate for sending individual call letters. Unless the delay is condoned, we would not be able to consider the reliefs sought by the Petitioner. We find from the documents placed before us, that the Health department prepared a proforma call letter. The intimation of the dates of the interviews, listing out the serial numbers in batches, was posted to each of the candidates, is writ large from the record before us. The presumption, therefore, is that the petitioner has also received such call letter from the Postal department.

6. The petitioner's contention is that one candidate at Sr. No. 56 viz. Vishal Shamrao Shingade, was delivered a call letter on his individual name and this smacks of nepotism. She alleges that several candidates were delivered such personal letters. We are of the view that one solitary letter sent by ordinary post, would not indicate that the Health Department had decided to pick and choose

few candidates. So also, none of the selected candidates were arrayed as respondents before the Tribunal and even not before us, by the petitioner.

7. In the light of the above, since all candidates were issued common interview call letters through a common mode (through the postal department), the presumption would be that the petitioner has received such a call letter. Moreover, if there is any mistake or lapse on the part of the postal department, such lapse cannot be investigated after a passage of 15 years and 7 months. Had the petitioner been vigilant and diligent, she would have soon noticed after joining the same department in July 2008, that there were candidates working as Pharmacists in the same department, who had been selected vide the selection process, initiated pursuant to the advertisement dated 23.05.2007. It is not palatable that the petitioner began inquiring into the selection process of 2007 only after the new advertisement was published on 7.1.2016. Nevertheless, the Petitioner could have applied pursuant to this advertisement since she was already working as a Pharmacist in the same department.

8. The law on condonation of delay is now well settled in the light of the verdict of the Hon'ble Supreme Court in ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others, 2013 (12) SCC 649***. In the face of a long delay, very strong and justifiable reasons have to emerge from the

record in order to condone the delay. It is equally trite that the delay cannot be condoned by showing misplaced sympathy. As like in the instant case, the petitioner who joined the same department as a Pharmacist, on contractual basis in July, 2008, could have very well noticed that there were several appointees selected pursuant to the advertisement dated 23.5.2007, who were working around her. In these circumstances, the delay of 11 years and 5 months cannot be condoned and the Maharashtra Administrative Tribunal has, therefore, rightly concluded vide the impugned order that it was not a fit case to condone the delay of 11 years and 5 months.

9. In view of the above, this petition is dismissed.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)

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