

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14065 OF 2022
WITH
INTERIM APPLICATION (STAMP) NO.20088 OF 2022
IN
WRIT PETITION NO.14065 OF 2022

Anandrao o. Vithoba Kisave
V/S

....Petitioner/Applicant

Maharashtra Public Service Commission,
Through Secretary & Ors.

....Respondents

...

Mr. Girish Shukla for the Petitioner/Applicant.

Mrs. Nisha M. Mehra, AGP for Respondent No.1-State.

Mr. Sanjay T. Sherkar, Under Secretary, MPSC present in Court.

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**CORAM: S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATE : 9TH FEBRUARY 2023.

P.C.:

1 The Petitioner challenges the order passed by the Tribunal rejecting the Application of the Petitioner for condonation of delay of two years and nine months in filing the Original Application.

2 The selection process was conducted for the post of Assistant Commissioner (Food), General State Services, Group 'A' in Food and Drugs Administration in the year 2009. The Application of the present Petitioner was rejected. The Petitioner filed Original Application bearing No.1492 of 2009. The same was arise under order dated 1 March 2013 thereby given directions to the Respondent-MPSC to consider the Petitioner's candidature

for the post and further directed to take necessary action within three months. It appears that the interview was not conducted, the Petitioner has filed Contempt Petition.

3 In the meantime, call letter was issued by the Respondent-MPSC, the interview of the Petitioner was conducted and Respondent-MPSC declared the Petitioner unsuccessful under communication dated 5 December 2015. The Petitioner thereafter in the year 2019 filed an Application under RTI and subsequently the Original Application alongwith the Application for condonation of delay filed before the Tribunal in the year 2019. The delay was of two years and nine months. The Tribunal rejected the Application for condonation of delay.

4 The learned Advocate for the Petitioner submits that the Tribunal has not considered the merits of the contentions of the Petitioner. The Tribunal ought to have considered the merits of the contentions. The written examination of the Petitioner was not conducted, only oral interview was conducted.

5 Whereas in respect of other candidates written examination was also conducted. It is further submitted that the selection process has not been properly conducted by the Respondent-MPSC. The learned Advocate submits that while entertaining the Application for condonation of delay

liberal approach has to be taken and on the merits of the case also should be looked into. In the present case, the Tribunal has not considered the merits of the contentions. The learned Advocate relies upon the judgment of the Supreme Court in case of ***State of Bihar & Ors. vs. Kameshwar Prasad Singh & Anr.*** reported in **(2000) 9 SCC 94**. The learned Advocate for the Petitioner further submits that it is the case of the institutional bias against the Petitioner.

5 The learned AGP submits that it is only if there are large number of candidates then only written examination is conducted. In the present case, no written examination was conducted. The Petitioner would secured only 32 marks in the interviews whereas the benchmark is 40 marks.

6 We have considered the submissions. Admittedly the delay is of two years and nine months. The selection process is of the year 2009. After the communication dated 5 December 2015, the Petitioner did not take any steps, the only reason given was financial constraint and illness of the mother.

7 Even otherwise it is stated that the Petitioner had secured only 32 marks in the interview. Under the policy of the Respondent-MPSC dated 20 March 2002 if in interviews a candidate gets 40 marks his recommendation is not made.

8 As the Petitioner could not clear the benchmark of 40 marks the candidature of the Petitioner not considered.

9 Even otherwise the Tribunal has considered the grounds raised by the Petitioner for delay.

10 In the case of ***State of Bihar & Ors.*** (supra) relied by the learned Advocate for the Petitioner, it was observed that the Apex Court was considering the delay caused in filing the SLP before the Supreme Court. It has been observed that the power to condone the delay in approaching the Court has to be conferred upon the Court to enable them to do substantial justice to the parties by disposing of matters on merits.

11 In the present matter we have considered that the selection process is of the year 2009. The candidature of the Petitioner was considered pursuant to the order of the Tribunal in the earlier Original Application filed by the Petitioner pursuant thereto the interviews were conducted and the Petitioner could not clear benchmark said aspect also has been considered by us.

12 In light of that no interference is called for. The Writ Petition is disposed of. No costs. The Interim Application also stands disposed of.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

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