



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3787 OF 2020

Vilas S/o Venkatrao Mudgale,
Age : 41 years, Occu : Private Service,
R/o. Nanwandi, Tq. Naigaon (Khairgaon),
Dist. Nanded

.. Petitioner

Versus

1] The Maharashtra Public Service Commission,
3rd Floor, Bank of India Building,
M.G. Road, Hutatma Chowk,
Mumbai – 400 001
Through its Secretary

2] The State of Maharashtra,
Through its Secretary,
Medical Education & Drugs Department,
G.T. Hospital, 9th Floor, Mantralaya,
Mumbai

3] The Commissioner,
Food and Drugs Administration,
Survey No. 341, Bandra Kurla Complex,
Bandra (E), Mumbai – 51.

.. Respondents

...
Advocate for petitioner : Mr. Suhas P. Urgunde
AGP for the respondent – State : Mr. M.M. Nerlikar
...

**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

DATE : 5 DECEMBER 2024

ORDER (MANGESH S. PATIL, J.) :

Rule. Rule made returnable forthwith. Learned AGP
waives service for the respondents. At the joint request of the parties,
the matter is heard finally at the stage of admission.

2. The petitioner is challenging the order passed by Maharashtra Administrative Tribunal on Miscellaneous Application no. 120 of 2020 in Original Application (St.) No. 189 of 2020 dated 03-03-2020, thereby rejecting his application by refusing to condone the delay in filing the original application.

3. Learned advocate Mr. Urgunde for the petitioner would submit that there is checkered history. It was a matter of recruitment for the post of Assistant Commissioner (Drugs) pursuant to the advertisement dated 04-01-2012 published by the respondent no. 1 - Maharashtra Public Service Commission. The petitioner had applied for the post from open category. He had secured good marks in written as well as oral examination but was not selected and his name did not find place in the select list. He sought to challenge it by preferring the original application but it was delayed by two years 11 months and 3 days. In the impugned order, the learned acting chairman of the tribunal has incorrectly assessed the delay of more than 3 years. He submits that he had assigned cogent reasons but instead of considering those, the impugned order has been passed in a slipshod manner on the ground that the petitioner had failed to assign even a single reason for the delay and had failed to demonstrate sufficient cause.

4. Mr. Urgunde would submit that the select list was challenged by some other candidates by filing Original Application no. 820 of 2013. The tribunal had allowed that petition and quashed and set aside the select list. Some candidates challenged the decision by filing writ petition no. 6637 of 2014 before this Court. However, in the meantime, during pendency of the petition, a fresh select list was declared on 18-03-2016. By the judgment and order dated 04-05-2017, the writ petition was allowed. The order passed by the tribunal was quashed and set aside. Directions were issued for giving appointments to the candidates according to the first select list. The order of the High Court was challenged before the Supreme Court in Civil Appeal No(s). 4597 of 2019 with connected Appeals. By the judgment and order dated 03-05-2019, the order of the High Court in writ petition no. 6637 of 2014 was quashed and set aside.

5. Mr. Urgunde would, therefore, submit that the select list prepared by the Maharashtra Public Service Commission, pursuant to the order of the tribunal on the original application, on 18-03-2016 received the stamp of approval when the Supreme Court allowed the appeals on 03-05-2019. Therefore, that would be the date from where the period of one year stipulated under section 21 of the Administrative Tribunals Act, 1985 (**'the Act'**) should be reckoned with. Since the original application together with the application for condonation of

delay was filed on 20-01-2020, in fact, there was no delay. Since the office of the tribunal had raised objection, Miscellaneous application for condoning the delay was moved which has been rejected by the impugned order.

6. Independently, Mr. Urgunde would submit that the petitioner had assigned cogent and sufficient reasons for the delay in filing the original application. He was abroad for the intervening years in connection with his employment, in Saudi Arabia, Qatar and China, which resulted in causing the delay, but the tribunal has perfunctorily overlooked such cause and has rejected the application by taking a hyper-technical view. The order be quashed and set aside and the petitioner may be allowed to agitate his cause before the tribunal on merits.

7. Per contra, Mr. Nerlikar, learned AGP submits that while exercising the powers under Article 226 of the Constitution of India, this Court does not sit in appeal against the order impugned in the petition. The tribunal has assigned plausible and cogent reasons. The application for condonation of delay was devoid of any explanation much less sufficient one.

8. He would submit that though there is checkered history, the publication of the fresh select list on 18-03-2016, pursuant to the

order of the tribunal, would be the starting point of limitation. Even if the order of the tribunal was under challenge before this Court and later on was even the matter had reached the Supreme Court, that would not abate the period of limitation which started to run on the date of publication of the select list. Even if some concession is granted to the petitioner in respect of the period when the petitions were before the High Court and the Supreme Court *interregnum*, the starting point of the limitation would be 18-03-2016. The Supreme Court had decided the appeals on 03-05-2019 and the petitioner ought to have filed the original application within 1-1/2 month of the pronouncement of the order by the Supreme Court. It was filed after a lapse of more than 8 months thereafter. He would, therefore, submit that though the petitioner ought to have filed the original application within one year of publication of the select list on 18-03-2016, he having preferred the original application on 20-01-2020, there was a delay of more than 2 years and 11 months.

9. Mr. Nerlikar would submit that though the petitioner is trying to demonstrate as to how he was serving abroad, that does not explain the delay and would not constitute sufficient cause and the petition be dismissed.

10. We have considered the rival submissions and perused the papers.

11. Admittedly, fresh select list pursuant to the first order of the tribunal was published on 18-03-2016. Petitioner's name was not finding place therein and he ought to have challenged it, as required by section 21 of the Act within one year. Admittedly, he did not do so.

12. Even if it is a matter of fact that the order of the tribunal was challenged by some candidates by filing writ petition no. 6637 of 2014 and even if we grant some leeway to the petitioner in the light of the fact that this Court had quashed and set aside the first order of the tribunal which, as a legal and logical corollary, would have put the select list prepared *interregnum* and published on 18-03-2016 at naught and it could get revived on the Supreme Court, by its order dated 03-05-2019, reversing the order of the High Court, still, since these episodes were of the duration when the period of limitation had already begun to run with the publication of select list on 18-03-2016, the submission of learned advocate Mr. Urgunde that the cause of action for the petitioner had accrued on the date of pronouncement of the order by the Supreme Court, and consequently, there was no delay since the original application together with the application for condonation of delay was filed on 20-01-2020, is not legally sustainable and we discard it.

13. So far as the reasoning assigned by the tribunal in refusing to condone the delay is concerned, we find the observations of the

tribunal plausible and reasonable. Even if some pragmatic approach is to be adopted by the Courts as is the trite principle, that does not dispense with the responsibility of a litigant to make attempts to explain the delay. If nothing is being pleaded and pointed out for demonstrating that there was some cause which had prevented him from resorting to the legal remedy, no exception can be taken to the observations of the tribunal that there was not even a single reason assigned by the petitioner for not filing the original application in time.

14. The explanation being given by the petitioner in the writ petition would be of no consequence. It is the explanation that was given in the Miscellaneous Application before the tribunal that would be decisive. Merely because he had mentioned that he was out of India in connection with his job for years together, would be too vague an explanation to countenance his stand. Not to challenge the select list due to pendency of the legal proceeding at someone else's instance, cannot be considered as an explanation for the delay. We, therefore find no sufficient and cogent reason for reversing the order of the tribunal under challenge.

15. The writ petition is dismissed.

16. Rule is discharged.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/