IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PRACHI PRANESH NANDIWADEKAR
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WRIT PETITION NO.5358 OF 2023

Anuja Ashok Walvekar & Anr. .. Petitioners
Versus
The State of Maharashtra,
through the Additional Principal
Secretary, Water Resource Dept. & Ors. .. Respondents

Mr. Abhijeet Desai a/w. Mr. Arjun Pawar, Mr. Srikant Patil, Smt. Daksha Punghera and Mr. Digvijay Kachare for the Petitioners.
Mr. B. V. Samant, Addl. G. P. a/w. Mr. R. P. Kadam, AGP for Respondent (State).

CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ.
DATE : 8th January 2024

P.C.:-

. Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. Challenge raised in this writ petition is to the order passed by the Maharashtra Administrative Tribunal dated 31st March 2023 by which the Original Applications preferred by both the petitioners came to be dismissed on the ground that the same were filed belatedly and hence no relief could be granted to the petitioners.

3. It is the case of the petitioners that they had participated in the process of recruitment that was initiated by the Maharashtra Public

Service Commission pursuant to advertisement No.62 of 2013. Though the petitioners find themselves included in the select list dated 24th September 2015 and are working as Assistant Engineer (Civil), Grade-I, Group-A in the Water Resources Department, it is their contention that they ought to have been appointed on the post of Assistant Executive Engineer (Civil), Grade-I, Group-A. This is on the premise that as per the select list, the cut off marks were 248 while the petitioner no.1 secured 260 marks and the petitioner no.2 secured 258 marks. On this basis, both these petitioners filed separate Original Applications before the Tribunal on 8th March 2018.

4. The Tribunal in the impugned judgment found that the grievance raised by the petitioners as regards to their placement was justified especially in the light of the judgment of a Co-ordinate Bench at Nagpur in ***Sarla D/o Madhukar Dhoke Vs. The State of Maharashtra Public Service Commission & Ors.***[1]. However, by relying upon paragraph 22.2 of the decision in case of ***State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors.***[2]**,** it was held that the petitioners were not entitled for any relief whatsoever. Being aggrieved, the said judgment is under challenge.

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1 Writ Petition No.5721 of 2019 dated 25th August 2021
2 (2015) 1 SCC 347

5. Having heard the learned counsel for the parties and having perused the impugned judgment, we find that the reliance placed by the Tribunal on paragraph 22.2 of the decision in ***State of Uttar Pradesh & Ors. Vs. Arvind Kumar Srivastava & Ors. (supra)*** is misplaced for the reason that the judgment in case of ***Sarla D/o Madhukar Dhoke (supra)*** was rendered on 25th August 2021 which is much after the Original Applications were filed on 8th March 2018. It, therefore, cannot be said that the petitioners were fence sitters awaiting adjudication of some other proceedings so as to non-suit them on the aspect of delay.

6. It is to be noted that the Tribunal has in paragraph 11 of the impugned judgment found that the petitioners were entitled to be placed in the select list for the post of Assistant Executive Engineer (Civil), Group-A. They have however been non-suited on the ground of delay. We, however, find that an opportunity to seek condonation of delay ought to have been granted to the petitioners in the light of Section 21(3) of the Administrative Tribunals Act, 1985. By proceeding to non-suit the petitioners on that count without giving them an opportunity to seek condonation of delay has caused prejudice to the petitioners, especially when it is found by the Tribunal

itself that they were similarly placed as the petitioners in ***Sarla D/o/ Madhukar Dhoke (supra).***

7. We have arrived at this conclusion in the light of the law laid down by the Hon'ble Supreme Court in State of ***Madhya Pradesh & Anr. Vs. Pradeep Kumar and Anr.***[3] as well as the judgment of the learned Single Judge (B.R. Gavai, J. as his Lordship then was) in ***Madhao Somaji Sarode Vs. Jyotiba Dnyan Upasak Shikshan Prasarak Mandal***[4].

8. For the aforesaid reasons, in our view, the following order would serve the ends of justice :-

(i) The judgment dated 31st March 2023 passed in the Original Application Nos.213 of 2018 and 214 of 2018 is set aside.

(ii) The proceedings in the Original Applications are remanded to the Tribunal for enabling the petitioners to seek condonation of delay by moving appropriate applications in that regard. The petitioners are permitted to file applications for condonation of delay within a period of four weeks of receiving copy of this judgment. Reply, if any, shall be filed within further period of four weeks. The Tribunal shall, thereafter, expeditiously consider the proceedings

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3 (2000) 7 SCC 372
4 2004 (3) Mh.L.J. 1078

on their merits and in accordance with law.

(iii) It is noted that the findings recorded in paragraph 11 of the impugned judgment have not been subjected to the further challenge by the respondents.

10. The writ petition is accordingly allowed in aforesaid terms. Rule is made absolute with no order as to costs.

JITENDRA JAIN, J. *A.S. CHANDURKAR, J.*