

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1215 OF 2024

Ashish Namdeo Sonkamble,

Age : 36 years, Occupation : Service,
R/at. 12/1284, Kapade Hospital,
Road Infront of Mahaveer Society,
Kaman, Nanded.

...Petitioner

Versus

1. **State of Maharashtra,**

through the Secretary,
Home Department, Mantralaya Annex,
Mumbai – 400 032.

2. **The President,**

Recruitment Committee and
Police Superintendent Wireless,
Head Quarters, Additional Director
General of Police and Director,
Police Wireless,
State of Maharashtra, Pune.

...Respondents

Ms. Vrushali L. Maindad a/w. Ms. Shrushti S. Tupe for the Petitioner.

Ms. Reena A. Salunkhe, AGP for the Respondent (State).

CORAM : A. S. CHANDURKAR,
JITENDRA JAIN, J.J.

DATE : 12th FEBRUARY 2024.

JUDGMENT :- (Per Jitendra Jain, J.)

1. Rule. Rule made returnable forthwith. By consent of the parties heard finally.

2. By this petition under Article 227 of the Constitution of India, the Petitioner seeks to challenge the order dated 30th November 2023, passed by the Maharashtra Administrative Tribunal (for short “Tribunal”), whereby the Petitioner’s Miscellaneous Application Nos.617 of 2023 and 616 of 2023 seeking condonation of delay in filing the restoration application to restore dismissal of Original Application (O.A.) No.1039 of 2016 was dismissed.

3. Brief facts are as under:-

- (i) On 16th December 2015, the Respondents issued an advertisement for filling up various vacancies in the Police Department. Pursuant to the said advertisement, the Petitioner applied for the post of Assistant Police Sub-Inspector (Radio Mechanic) as well as for the post of Police Constable (Wireless Operator). The Petitioner cleared his written examination but his height was measured as 162.5 cm., which was below the prescribed height of 163 cm. and, therefore, his application came to be rejected. The Petitioner, thereafter, made a representation but did not succeed and hence on 21st August 2016, he filed the O.A. No. 1039 of 2016 with the Tribunal. The said application was filed through an Advocate.
- (ii) On 7th September 2017, the said O.A. was admitted ex-parte by the Tribunal and final hearing was directed to come up in due course. The pleadings were completed by the parties.

- (iii) On 25th June 2021, the aforesaid O.A. was listed for final hearing but since the Petitioner and/or his Advocate were not present, the Tribunal came to a conclusion that the Petitioner and his Advocate seems not to be interested in the matter and, therefore, the O.A. was dismissed in default.
- (iv) On 16th September 2023, the Petitioner filed a Miscellaneous Application No.617 of 2023 for restoration of the O.A. which was dismissed for default. Since the filing of the said restoration application was delayed by a period of two years and two months, the Petitioner also filed a Miscellaneous Application No.616 of 2019 seeking condonation of delay in filing the restoration application. In the said applications, the Petitioner inter alia stated that he was under the impression that the Advocate would attend the hearing and because of his reliance on the Advocate who did not attend the matter, the O.A. came to be dismissed.
- (v) On 30th November 2023, the Tribunal disposed of both the Miscellaneous Application Nos.616 of 2023 and 617 of 2023. The Tribunal dismissed the Miscellaneous Applications since they were not satisfied with the explanation and the ground to condone the delay. It is on this backdrop that the present petition is filed.

4. The Petitioner submitted that he, as a bonafide litigant depended upon the Advocate through whom the O.A. was filed and was

under a bonafide belief that the Advocate would attend the hearing. The Petitioner submitted that on account of this belief, he did not attend the hearing on 25th June 2021 nor his Advocate informed about the same. Later on, when he realised that his O.A. was dismissed on account of non-appearance by his Advocate, he decided to change his Advocate and filed these applications for restoration and condonation. The Petitioner further submitted that he has good case on merits and he should not be non-suited on account of the aforesaid reason. The Petitioner, therefore, prayed for quashing of the impugned order and prayed for restoration of the O.A. to be decided on the merits by the Tribunal.

5. Per contra, the Respondent supported the order of the Tribunal and submitted that the Petitioner has not been diligent in pursuing his matter and, therefore, no cause is shown for condoning the delay and, therefore, prayed for dismissal of the Petition.

6. We have heard learned counsel for the Petitioner and Respondent and with their assistance have perused the documents annexed to the present petition.

7. The Tribunal in paragraph 6 of the impugned order has only observed that the Petitioner was required to be diligent and has not moved any application from June 2021 till September 2023 and,

therefore, refused to condone the delay on the ground that they do not find any satisfactory explanation. In our view, in paragraph 4 of the impugned order and in the Miscellaneous Applications filed by the Petitioner, the Petitioner has given reasons for his absence by stating that he had engaged an Advocate who remained absent and did not communicate the order of dismissal to the Petitioner. The Petitioner further stated that on account of financial difficulties, he could not engage another Advocate and thereafter, he approached new Advocate who immediately filed the Miscellaneous Application for restoration of O.A. In our view, the Tribunal ought to have given reasons for rejection of this explanation. The Tribunal has come to a conclusion that they do not find any satisfactory explanation and good ground to condone the delay but has not given any reason as to why the reasons stated by the Petitioner and reproduced by the Tribunal in paragraph 4, could not be accepted as sufficient cause for condoning the delay. There is no finding to that effect. The Tribunal after reproducing the reasons for the delay as submitted by the Petitioner did not give any finding and, therefore the order of the Tribunal is vitiated.

8. We may also observe that a litigant when he entrust his case to a particular Advocate would be under a bonafide belief that the said Advocate would attend to the case whenever it is listed for hearing in the Court. We do not see any reason why a litigant should not have had

such a bonafide belief. It was the duty of the Advocate to have attended the hearing. If an Advocate does not appear and the case get dismissed, then in our view, fault cannot be found with the litigant who was justified in relying upon his Advocate to conduct the case. It is important to note that in the instant case when the O.A. was listed for admission on 7th September 2017, the Advocate did not appear but the Tribunal admitted the matter and directed to be placed for final hearing in due course. The conduct of the Advocate in not attending the admission hearing also clearly shows that the Advocate after having filed the application with the Tribunal was not diligent in attending the admission hearing. The litigant/Petitioner cannot be faulted for this. We do not know the reasons for non-appearance of the Advocate at the time of the admission and the final hearing but we are of the view that if an Advocate has filed the proceedings along with his Vakalatnama then it is the duty of the Advocate to ensure that he attends to the matter and if for any reason he is unable to do so then he should be fair to his client to return the papers so that the litigant can engage any other Advocate.

9. In our view, an Advocate not attending to the matter after having accepted the brief would be failing in his duty, not only to the client who has engaged him but also to the Court of which he is the officer. An Advocate is not expected to take up the matters which he is

not in a position to attend. If he takes up a matter, he should ensure that the litigant does not suffer on account of his non-appearance.

10. In our view, the Tribunal also should have noted that the Advocate did not appear at the time of the admission nor at the time of the final hearing. The nature of proceedings before the Tribunal revolves around the livelihood of the litigant and, therefore, considerations to be exercised by the Tribunal in such type of matters should be more compassionate than the commercial Tribunals.

11. It is also important to note that the O.A. came to be dismissed on 25th June 2021, which was the period when the second wave of Covid was in force. In our view, the Tribunal ought to have considered even this aspect for non-appearance of the parties before them. There is no reason for us to disbelieve that the Advocate did not inform the Petitioner about the dismissal although the litigant also should have been vigilant in enquiring about his matter with the Advocate. However, looking at overall circumstances, we are of the opinion that the Petitioner should be given one more opportunity to plead his case on merits before the Tribunal and, therefore, we pass the following order:-

ORDER

- (a) The order dated 25th June 2021 passed by the Tribunal dismissing the Miscellaneous Application Nos.616 of

2023 and 617 of 2023 is quashed and set aside.

- (b) The Original Application No.1039 of 2016 is restored to the file of the Tribunal.
- (c) The Tribunal is requested to dispose of the Original Application No.10396 of 2016 on merits, expeditiously.
- (d) Rule is made absolute in aforesaid terms.
- (e) The Writ Petition is allowed with no order as to costs.

[JITENDRA JAIN, J.]

[A. S. CHANDURKAR, J.]