

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15123 OF 2023

Shri. Subramaniyan Kanakkan,
Age : 69 years, Occupation – Retired,
R/at.: Unit No.7, Hutments,
Aarey Milk Colony, Goregaon – (E),
Mumbai – 400 065.

..Petitioner

Vs.

1. The State of Maharashtra,
Through the Principal Secretary,
Agriculture, Animal Husbandry,
Dairy Development and Fisheries Dept.
Mantralaya, Mumbai – 400 032.
2. Chief Executive Officer,
Aarey Milk Colony, Goregaon (E),
Mumbai – 400 065.
3. The Commissioner,
Dairy Development, M. S.
Abdul Gafarkhan Marg,
Worli, Mumbai – 400 018.

..Respondents

Mr. Yashodeep Deshmukh a/w. Ms. Vaidehi Pradeep and Mr. Amey
Tawade i/by Mr. Vinod P. Sangvikar for the Petitioner.

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

CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.

DATE : 22nd JANUARY 2024.

JUDGMENT: (Per Jitendra Jain, J.)

1. Rule. Rule made returnable forthwith. Heard finally by
consent of the parties.

2. This petition under Article 226 and 227 of the Constitution of India has been filed challenging the order passed by the Maharashtra Administrative Tribunal, Mumbai (for short “Tribunal”) in Miscellaneous Application No.381 of 2022 in Original Application (O.A.) No.623 of 2022, whereby the Tribunal has refused to condone the delay in filing O.A. on the ground that no sufficient cause is shown for condoning the delay.

3. In the year 1975, the Petitioner was appointed as a Daily Farm Assistant at Aarey Milk Colony, Mumbai. By virtue of promotion in the year 1987, an order was issued whereby the services of the Petitioner were treated as permanent service for the post of “Field Supervisor”, which post he held since 1985.

4. On completion of 12 years of service as Field Supervisor, the Petitioner made an representations on 17th October 1997, 17 December 2004, 16th September 2007 and 16th April 2010 seeking benefits of Time Bound Promotion.

5. On 30th June 2010, the Petitioner retired from Government Service. Thereafter, on 27th December 2012 and 12th October 2015, further representations were made by the Petitioner seeking benefit of Time Bound Promotion. On 30th March 2016, the Respondent No.2

rejected the request for Time Bound Promotion on the ground that the qualification for the post of “Assistant Live Stock Supervisor” was not fulfilled by the Petitioner as certificate produced by the Petitioner was not from Live Stock Group and hence, he was not entitled to the benefit.

6. The Petitioner, thereafter, on 20th June 2022, approached the Tribunal in O.A. No.623 of 2022 seeking benefits of Time Bound Promotion. Since the O. A. was beyond the time limit prescribed under Section 21 of the Administrative Tribunal Act, 1985, a Miscellaneous Application was filed being Miscellaneous Application No.381 of 2022 praying for condonation of delay of 5 years from the period 30th March 2017 to 30th March 2020 in filing the Original Application primarily on the medical ground and post 30th March 2020 on account of Covid Pandemic.

7. The aforesaid Miscellaneous Application was heard and an order dated 20th April 2023, came to be passed by the Tribunal dismissing the said Miscellaneous Application and consequently, the O. A. on the ground that the delay in filing O.A. has not been explained sufficiently. It is on this backdrop that the present Writ Petition is filed challenging the order dated 20th April 2023 passed by the Tribunal refusing to condone the delay in filing the Original Application.

Submissions of the Parties:-

8. The Petitioner submitted that the order of the Tribunal is perverse and in support thereof took us through the index of the Original Application filed with the Tribunal. The Petitioner submitted that he had made various representations repeatedly, last being 12th October 2015 and since the benefit to which he was entitled to was continuous cause, the delay should be condoned. The Petitioner also reiterated the medical ground of his wife for the period from 2005 to 2022 and pandemic as reason for the delay. The Petitioner relied upon the decision in the case of *Union of India & Ors. Vs. Tarsem Singh*¹ and submitted that the impugned order be quashed and set aside and the delay in filing the Original Application be condoned.

9. Per contra, the Respondents supported the order of the Tribunal and submitted that no sufficient cause is shown by the Petitioner before the Tribunal and, therefore, this Court should not interfere in the order declining to condone the delay.

Analysis and Conclusion:-

10. We have heard learned counsel for the Petitioner and the Respondents and with their assistance have perused the documents annexed to the petition and the pleadings.

1 2008 (8) SCC 648

11. Section 21(1)(a) of the Administrative Tribunal Act, 1985 provides that the Tribunal shall not admit an application where a final order is passed rejecting the representation made in connection with the grievance unless the application is made within one year from the date on which such final order has been made. In the instant case, the representation of the Petitioner was rejected by order dated 30th March 2016 and, therefore, the period of one year comes to an end on 30th March 2017. The Original Application is filed on 20th June 2022 which is beyond a period of one year thereby delay of more than 5 years and 2 months.

12. Section 21(3) of the Administrative Tribunal Act, 1985 provides that an application may be admitted by the Tribunal after the period of one year, if the application satisfies the Tribunal that he had “sufficient cause” for not making the application within such period. In the instant case before us, the Petitioner has submitted that since 2005 his wife was unwell and, therefore, he was unable to file the application on or before 30th March 2017. The Petitioner has split the period of delay in 2 parts; first part, being 30th March 2017 to 30th March 2020 on the ground of medical ailment of his wife which lasted till 2022 and post 30th March 2020 on account of Covid Pandemic and the order passed by the Supreme Court extending the limitation period during Covid-19.

13. In our view, the “sufficient cause” required to be explained under Section 21(3) of the Administrative Tribunal Act, 1985 should be a cause which arises/rose post the order which is post communication of the order which is challenged and which cause should continue thereafter, post the expiry of the limitation period and till the date of application being filed with the Tribunal. Any cause which existed much prior to the date of the order by which the Petitioner is aggrieved cannot come to the rescue of the Petitioner to justify the delay since that cause was already pre-existing much before the order of 30th March 2016 which communicated to the Petitioner. It is also important to note that the Petitioner in his application has stated that his wife was under continuous medical treatment from 2005 onwards. If that be the cause, then the same is self-contradictory because the Petitioner attended his services up to 30th June 2010 i.e. even during the period post 2005 when he claims that his wife was under medical treatment. It is also important to note that pre and post retirement, the Petitioner made further representation to his employer seeking redressal of his grievance. Therefore, if he could make several representations during the years 2007, 2010, 2012 and 2015 when according to him, his wife was unwell, then the sufficient cause sought to be explained of his wife’s illness cannot be accepted. Therefore, in our view, no fault or perversity can be found in the order of the Tribunal dismissing the Miscellaneous

Application refusing to condone the delay on the ground of his wife's illness.

14. It is also important to note that the limitation period under section 21 of the Administrative Tribunal Act, 1985 expired on 30th March 2017 and the Original Application is filed in June 2022. The Petitioner can certainly not take the benefit of the order passed by the Supreme Court extending the time limit on account of pandemic since in the Petitioner's case, the time limit had expired much before the pandemic period i.e. 3 years prior to March 2020, therefore, even on this count, the Petitioner's explanation to condone the delay fails. The reliance placed by the Petitioner to explain delay post-March 2020 on account of pandemic to explain the delay in filing the Original Application is misconceived. What was extended by the Supreme Court in Cognizance of Extension of Limitation was only "the period of limitation" and not the period up to which the delay can be condoned in exercise of discretion conferred by the statute. Therefore, the Petitioner's contention on this count with respect to delay post March 2020 till June 2022 on account of pandemic is also to be rejected. The view taken by us is fortified by the decision of the Supreme Court in **Sagufa Ahmed & Ors. Vs. Upper Assam Polywood Products Pvt. Ltd. & Ors.**²

² (2021) 2 SCC 317

15. The Petitioner's reliance in the case of **Tarsem Singh (supra)** would not take the case any further, since the facts before the Supreme Court were different from the facts before us. In the case before the Supreme Court, there was no rejection of the representation, whereas in the instant case, there is a rejection by the employer of the representation. Secondly, in the facts before the Supreme Court in the original proceedings, the High Court was exercising original jurisdiction under Article 226 of the Constitution of India, whereas in the case of the Petitioner, what is being challenged is the order of the Tribunal refusing to condone the delay and, therefore, the scope of interference is limited to the extent of examining the reasoning given by the Tribunal. In the case of the Petitioner, it cannot be said that there was a continuing wrong because of the fact that the representation came to be refused and, therefore, the cause of action triggering limitation period started from the day of refusal i.e. 30th March 2016. Therefore, in our view, the decision of the Supreme Court does not come to the assistance of the Petitioner.

16. In view of above, the petition is dismissed with no order as to costs.

(JITENDRA JAIN, J.)

(A. S. CHANDURKAR, J.)