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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.347 OF 2023

Shri. Kamlesh Shankar Gaikwad,	}	
Age :54 years, Occupation : Service	}	
Working as Asstt.. (Standard/Planning)	}	
With R-3.	}	
R/o. B-302/6, Govt. Colony,	}	
New English School, bandra (East)	}	
Mumbai-400 051.	}	
Mobile No-9870879447	}	
Mail ID-Nill	}	.. Petitioner
Vs.		
1. The State of Maharashtra,	}	
Through The Secretary,	}	
Industries, Energy and Labour Department,	}	
Mantralaya, Mumbai-400 032.	}	
2. The Director,	}	
The Directorate of Printing, Stationary and	}	
Publication, Govt. of Maharashtra,	}	
Churney Road, Mumbai-400 004.	}	
3. The Manager,	}	
Govt. Central Printing Press,	}	
Churney Road, Mumbai-400 004.	}	
4. Shri. D. R. Dhamankan	}	
5. Shri. N. G. Parab	}	
6. Shri. D. B. Avhad	}	
7. Smt. V. S. Lingayat	}	
8. Shri. Y. P. Tayde	}	
Asst. (Standard/Planning)	}	
Govt. Central Printing Press,	}	
Churney Road, Mumbai-400 004.	}	
9. Nandkumar Gajanan Chowdhari	}	..Respondents

...

Mr. Chandrakant T. Chandratre for the Petitioner.

Mr. N. C. Walimbe, Addl.GP a/w Mr. A. R. Metkari, AGP for Respondent Nos.1 to 3-State.

...

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

DATE : 31th JANUARY, 2024.

ORAL JUDGMENT : (PER : A. S. CHANDURKAR, J)

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

2. The challenge raised in this writ petition is to the order dated 14/02/2022 passed by the Maharashtra Administrative Tribunal refusing to condone the delay that was caused in filing the Original Application under Section 19 of the Administrative Tribunals Act, 1986.

3. Brief facts relevant for considering the challenge as raised by the petitioner is that the petitioner came to be appointed on the post of Mono Cast Attendant in the Printing, Stationary and Publication Department of the State Government. According to the petitioner, when the post of Junior Assistant (Standard/Planning) was to be filled in, persons who were junior to him in the feeder cadre were shown above his name. Being aggrieved by his placement in the seniority list of 2015 the petitioner

made a representation in that regard. The Respondent No.3 on 26/05/2016 informed the petitioner that his placement in the seniority list was correct and no change therein could be made. Against the said communication the petitioner made a representation on 06/06/2016. This was followed by various other reminders. On 12/04/2018, a communication was issued by the Respondent No.2 to the Respondent No.3 stating therein that the petitioner's Representation dated 12/03/2018 alongwith communication dated 14/03/2018 issued by the Respondent No.1 was being forwarded. A report in that regard was called. In response, the Respondent No.3 informed the Respondent No.2 on 13/12/2018 that the relevant information was being sent and necessary guidance in that regard be given. In February 2020, the petitioner was informed by the Respondent No.3 that after receiving such guidance from the Respondent No.2 the petitioner would be informed and further steps would be taken. In the meanwhile on 26/10/2021, a promotion order came to be issued in favour of Respondent No.4. In these facts, the petitioner approached the Maharashtra Administrative Tribunal by filing an Original Application in December 2021 alongwith an application for condonation of delay.

4. The Tribunal considered the said application and proceeded to hold that the cause for approaching the Tribunal was crystallized on

26/05/2016 when the seniority list was published. Since there was unreasonable delay of 4 years and 7 months and there was no explanation for the same, the Miscellaneous Application was dismissed. It is against this order dated 14/02/2022 that the present writ petition has been filed.

5. Having heard the learned counsel for the parties and having perused the Original Application alongwith the documents filed therein we find that in the Original Application, the petitioner had raised challenge not only to the order dated 26/05/2016 but had also challenged the order of Promotion dated 26/10/2021 that was issued in favour of Respondent No.4. It is further found that in the application for condonation of delay, the petitioner had made a specific reference to the communications dated 12/04/2018, 13/12/2018 as well as February 2022 that came to be issued by Respondent Nos. 1 to 3 *inter se* pursuant to the representation made by the petitioner. This would indicate that in response to the representation made by the petitioner on 06/06/2016, the matter was being considered by Respondent Nos. 1 to 3. The Respondent No.2 on 12/04/2018 had sought report from the Respondent No.3 in that regard. Similarly, reference was also made to the communication dated 14/03/2018 that was issued by the Respondent No.1. Even in February 2020, the matter was under consideration and the Respondent No.3 informed the petitioner that as and when directions were received from

the Respondent No.2, the petitioner would be informed. Before any information was given to the petitioner, the promotion order dated 26/10/2021 in favour of Respondent No.4 was issued.

6. From the aforesaid documents on record which are required to be considered alongwith the averments made by the petitioner in the Miscellaneous Application seeking condonation of delay, it is clear that in Paragraph Nos.7 to 10, the petitioner has clearly pleaded these events. The learned Members of the Tribunal have considered the matter only in the context of challenge to the communication dated 26/05/2016 when in fact, there was a further challenge raised by the petitioner in the Original Application. In our view, considering the relief sought in the Original Application as well as the averments made in the Miscellaneous Application that were supported by communications issued by the Respondent Nos.1 to 3, it cannot be said that the petitioner was liable to be non-suited on the ground of delay. The petitioner had been pursuing the matter after issuance of communication dated 26/05/2016 and the petitioner was assured that as and when an appropriate decision would be taken, he would be informed of the same. We, therefore, find that in terms of the provisions of Section 21 (2) of the Maharashtra Administrative Tribunals Act, 1986, sufficient cause for condoning the delay in filing the Original Application has been made out. In addition,

support of the order passed by the Hon'ble Supreme Court dated 23/09/2021 in Miscellaneous Application No.665 of 2021 (*In Re: Cognizance for Extension of Limitation*) as well as the further order dated 23/09/2021 can also be taken.

7. For aforesaid reasons, we are satisfied that the delay caused in preferring the Original Application for challenging the order dated 26/05/2016 has been made out. Accordingly, the order passed by the Maharashtra Administrative Tribunal on 14/02/2022 refuse to condone delay in filing the Original Application is set aside. Miscellaneous Application No.587 of 2021 is allowed and the delay is condoned. The Original Application No.1035 of 2021 is restored for being decided on merits.

8. Rule is made absolute in aforesaid terms with no order as to costs.

[JITENDRA JAIN, J]

[A.S. CHANDURKAR, J.]