

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.588 OF 2024

Smt. Sneha Sanjay Thakur

.. Petitioner

Versus

The Deputy Director, Health Services,
Mumbai Circle, Thane & Ors.

.. Respondents

Ms. Smita T. Suryawanshi, Advocate for the Petitioner.

Mr. A. I. Patel, Additional Government Pleader a/w. Mr. S. H. Kankal,
Assistant Government Pleader for Respondent Nos.1 to 3-State.

**CORAM : A. S. CHANDURKAR &
M. M. SATHAYE, JJ.**

DATED : 3rd MARCH, 2025

P.C.:

1. Heard the learned Counsel for the Petitioner and the learned Additional Government Pleader for the Respondent Nos. 1 to 3 (State).
2. The Petitioner is challenging the order dated 22/11/2022 passed by the Maharashtra Administrative Tribunal, Mumbai in Misc. Application No. 228 of 2022 in Original Application (OA) No. 310 of 2022. By the said impugned order, the Petitioner's Application for delay condonation is dismissed and consequently the said OA is also dismissed, being barred by limitation. By the said OA, the Petitioner had challenged the order dated 06/11/2017 issued by the Respondent No. 3 (Director, Health Services Commissionerate, Mumbai) under which the Petitioner's leave for a period of 297 days was treated as extraordinary leave without pay. The Petitioner

had also sought directions to the Respondents to treat the said period of absence as Commuted Leave and pay the Petitioner allowances for the said period together with interest on delayed payment as well as grant of all subsequent service benefits.

3. Few facts necessary for disposal of this Petition are as under. The Petitioner was serving as a staff nurse. During the period from 30/06/2012 to 22/04/2013, she was absent for total 297 days. This was treated as extraordinary leave without pay by an order dated 06/11/2017. The Applicant filed the said OA belatedly after a delay of 3 years, 4 months and 24 days alongwith delay condonation application. The Tribunal dismissed this Application by the impugned order, by finding that there is no sufficient explanation given for the condonation of delay.

4. Learned Counsel for the Petitioner submitted that that delay was caused on account of her mother-in-law's continuous ill health as well as lack of sufficient funds. That Covid-19 pandemic situation has added to the difficulties of the Petitioner. It is submitted that because of the order dated 06/11/2017, treating the period of absence as extraordinary leave without pay, the Petitioner's chances of promotion are delayed/hampered. It is submitted that this is a recurring loss making it continuous cause of action and therefore the delay should have been condoned.

5. The learned Additional Government Pleader, on the other hand, has supported the impugned order.

6. We have considered the submissions. It is settled law that it is not the extent of delay but the explanation offered therefor is the material consideration. Perusal of the impugned order shows that the order

challenged before the Tribunal was dated 06/11/2017 and limitation to challenge the same expired on 06/11/2018 i.e. after the period of one year. The OA has been filed on 01/04/2022. Therefore, the period that the Petitioner must explain is from 06/11/2018 to 01/04/2022. The Tribunal has also considered when the limitation of one year expired on 06/11/2018, there was no Covid-19 pandemic and the same started in March, 2020. Therefore, the period between November, 2018 till March, 2020, which is for about 1 year and 4 months, is not explained at all.

7. The Tribunal has held that the extension of limitation given by the order of the Hon'ble Supreme Court during Covid-19 pandemic was available to cases where limitation expired during the period between 15/03/2020 to 28/02/2022. As already explained, the period of limitation in the present case expired in November 2018, which is much prior to start of extension granted for Covid-19 pandemic.

8. In the facts of the present case, we find that there is no question of continuous cause of action, in as much as, the case of the Petitioner is that the period of absence has affected the Petitioner's chances of promotion and therefore it is recurring loss based and continuous cause of action. We find that continuous cause of action cannot be based on the possibility of happening of an event as sought to be contended by the Petitioner.

9. The learned Counsel for the Petitioner during hearing of the Petition, sought to rely upon certain medical records of the Petitioner across the bar without any supporting affidavit. Nonetheless, we have considered the said medical record. We find that the medical records relate to the period from August 2015 to September 2016, which is much prior to the order impugned

before Tribunal, which was dated 06/11/2017. One ultrasound report of 13/08/2020 relied upon by the Petitioner indicates normal report. One of the report relied upon bears no date.

10. In the aforesaid facts and circumstances, no fault can be found with the impugned order. The conclusion drawn by the Tribunal is based on material available on record and there is no perversity or jurisdictional error committed. In that view of the matter, we are not inclined to interfere in the impugned order.

11. The Petition is accordingly dismissed with no order as to the costs.

12. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)

(A. S. CHANDURKAR, J)