

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.268 OF 2024

Pratap Rupala Koli

...Petitioner

V/s.

State of Maharashtra and Ors.

...Respondents

Ms. Sanskruti Yagnik *for the Petitioner.*

Mr. Sanjay D. Rayrikar, *AGP for Respondent Nos.1 to 3.*

Mr. Neel Girish Helekar *for Respondent Nos.5 and 6.*

CORAM: SANDEEP V. MARNE, J.

DATED: 23 JUNE 2025.

Oral Order:

1) ***Rule.*** Rule is made returnable forthwith. With the consent of the learned counsel appearing for the parties, Petition is taken up for final disposal.

2) Petition challenges order dated 11 January 2023 passed by the Presiding Officer, Mumbai University and College Tribunal at Mumbai (**College Tribunal**) dismissing Miscellaneous Application No.16 of 2022 preferred by the Petitioner seeking condonation of delay of 148 days in filing the appeal.

3) Brief facts leading to the filing of the present Petition are that Petitioner was appointed on 11 June 1993 on the post of 'Peon' in Respondent Nos.5 and 6- College. It is the case of the management that the appointment of the Petitioner was made against the post reserved for Scheduled Tribe (ST) category as he had submitted a caste certificate claiming that he belongs to 'Tokare Koli' tribe. Petitioner was promoted on the post of Library Attendant on 24 March 1998 and was confirmed on the said position on 27 April 2000. Respondent Nos.5 and 6-College made a reference to the Scrutiny Committee for verification of caste claim by the Petitioner. By order dated 9 February 2022, the Scrutiny Committee invalidated the caste claim of the Petitioner and confiscated his certificate of caste- 'Tokare Koli'. After the caste claim invalidated, Respondent No.6 proceeded to terminate the services of Petitioner on 9 May 2022. Petitioner filed Writ Petition No.5597 of 2022 before Aurangabad Bench of this Court challenging order of Scrutiny Committee as well as the termination order. Later, he realized that termination needs to be challenged by filing appeal before the College Tribunal. Accordingly, Petitioner preferred an appeal before the College Tribunal on 9 November 2022 and sought condonation of delay of 148 days in filing the appeal. By the impugned order, the learned Tribunal has refused to condone the delay. Additionally, learned Tribunal has also held that appeal preferred by the Petitioner was not maintainable. Aggrieved by order dated 11 January 2023, Petitioner has filed the present Petition.

4) I have heard Ms. Yagnik, the learned counsel appearing for the Petitioner, Mr. Rayrikar, the learned AGP for Respondent Nos.1 to 3-State and Mr. Helekar, the learned counsel appearing for Respondent Nos.5 and 6.

5) Perusal of the impugned order dated 11 January 2023 would indicate that the Tribunal has refused to condone the delay but has still proceeded to enter into the merits of the appeal and has arrived at a conclusion that same is not maintainable.

6) So far as the delay of 148 days in filing the appeal is concerned, in my view the delay is properly explained on account of the fact that Petitioner erroneously mixed up the issue of validity of termination order with the issue of correctness of the order passed by the Scrutiny Committee invalidating the caste claim. Ordinarily, therefore Petitioner could not have raised the issue of correctness of termination order in Writ Petition No.5597 of 2022. The Petition was filed by the Petitioner on 26 May 2022 i.e. within few days of passing of termination order dated 9 May 2022. Petitioner realised that correct remedy for him to question the correctness of termination is to file appeal under Section 81 of the Maharashtra Public University Act, 2016 before the College Tribunal. It is stated by the learned counsel appearing for Petitioner that the issue of validity of termination order shall not be pressed before this Court in petition challenging the order of the scrutiny committee. In my view therefore, Petitioner was *bonafide* prosecuting his remedy in respect of the termination

before this Court. In that view of the matter, delay of 148 days in filing the appeal ought to have been condoned by the learned Tribunal.

7) So far as the issue of maintainability of appeal is concerned, the Tribunal has recorded a finding that once the tribe claim of Petitioner is invalidated, termination of service is automatic. It is held that the only remedy available to the Petitioner to challenge the order of the Scrutiny Committee is to file a Petition before this Court and that the said issue cannot be raised in an appeal filed before the Tribunal. While Tribunal is not entirely wrong in holding so, what is missed out by the learned Tribunal is the position that Petitioner may claim retention in service even after invalidation of caste claim. It appears that Petitioner has pleaded in his appeal that he was never appointed against reserved category post. This issue needs to be examined at the time of consideration of the appeal on merits and could not have been dealt with while deciding the Misc. Application for condonation of delay.

8) It is seen that while deciding the application for condonation of delay, Tribunal has gone into the issue of nature of post against which the appointment was made. The Tribunal has thus entered into merits of the appeal while refusing to condone the delay, which course of action is unknown to law. Even otherwise, the Petitioner can set up claim for retention in service even after invalidation of his caste claim by relying on various Government Resolutions issued by the State

Government protecting the services of the appointees, whose caste claims are invalidated. This is not to suggest that such a protection would be available in the case of the Petitioner. However, if Petitioner raises such claim, same needs to be adjudicated on merit.

9) In my view therefore, the Tribunal has committed an error in entering into merits of the appeal after refusing to condone the delay. Order passed by the Tribunal is unsustainable and liable to be set aside. Petition accordingly succeeds. Impugned order dated 11 January 2023 passed by the learned Tribunal is set aside. Delay in preferring appeal by the Petitioner is condoned. Appeal shall be heard and decided on merits. The appeal shall be decided uninfluenced by any observations made in the Order.

10) With the above directions, Petition is **allowed**. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]