

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

**RAMESHWAR
LAXMAN
DILWALE**

WRIT PETITION NO.15531 OF 2022

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by RAMESHWAR
LAXMAN
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Date: 2025.03.31
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1. Sanjeev Dnyandeo Bhor,
Age 52 years
Working as Deputy Regional Transport
Officer, Regional Transport Office, Pune
411 001
Residing at Flat No. D-302, Rohan
Tapovan, Gokhale Nagar, Pune 411 016
 2. Mr. Vijay Laxman Kathole,
Age 49 years
Working as Deputy Regional Transport
Officer, Dy. Regional Transport Office,
Jalana-431 203,
residing at 501, Merlot, Grape City,
behind Shri Guruji hospital,
Nashik-422 005
 3. Smt. Archana Shailendra Gaikwad,
Age-49 years
Working as Deputy Regional Transport
Officer at Deputy Regional Transport
Office, Akluj, District-Solapur, 413 118,
residing at 105, Pushp,
Antrolkar Nagar No.2, Hotgi Road,
Solapur 413 003
- .. Petitioners

Versus

1. State of Maharashtra,
Through Principal Secretary,
Transport Department,
Mantralaya Mumbai 400 032,
Presenting office at World Trade
Centre, Mumbai 400 005
2. The Transport Commissioner,
Government of Maharashtra,
MTNL Building, 5th Floor,
Fort Mumbai 400 001

3. Mr. Dnyaneshwar Eknath Hirde,
Age 54 years,
Working as Dy. Regional Transport
Officer,
Residing at:A-2/701, Happy Valley CHS,
Manpada, Tikujiniwadi Road,
Thane-400 607
4. Mr. Vishwambhar Nagorao Shinde
Age -58 Years
Retired Deputy Regional Transport Officers
Residing at B-1303, Laxminarayan
residency, Devdaya Nagar,
Thane (West)-400 606
5. Mr. Rupkumar Maruti Belsare,
Age-58 Years
Retired Deputy Regional Transport Officer
Residing at Flat No.2,
Cosmos Co-operative Housing Society,
Shivashrushti, Kurla (East),
Mumbai 400 024. .. Respondents

ALONG WITH
CONTEMPT PETITION NO.362 OF 2024
IN
WRIT PETITION NO.15531 OF 2022

Dnyaneshwar Eknath Hirde, Age:56 years,
Occu: Service, R/at:1-2/701,
Happy Valley CHS, Manpada,
Tikujiniwadi Road, Thane 400 607

.. Petitioner

Versus

1. Sanjay Sethi,
Additional Chief Secretary Home
(Transport Department) Government of
Maharashtra, Mantralaya, Mumbai
400032
2. Parag Jain Nainutiya
Erstwhile, Principal Secretary Home
(Transport Department) Government of
Maharashtra, Mantralaya, Mumbai
400032

3. Vivek Laxmikant Bhimanwar
Age: 57 years, Occ: Transport
Commissioner, having office at:
Transport Commissioner Office, 5th
Floor, MTNL Building No.1,
Hutatma Chowk, Fort, Mumbai 400 001 ..Respondents

ALONG WITH
WRIT PETITION NO.13411 OF 2023

1. The State of Maharashtra,
Through its Principal Secretary,
Transport Department Mantralaya,
Mumbai 400032.
2. The Transport Commissioner
Maharashtra State
5th Floor, MTNL Building No.2
Hutatma Chowk Fort.
Mumbai 400 001 .. Petitioners

Vesus

1. Mr. Dnyaneshwar Eknath Hirde
Age-46 Years Happy Valley CHS
Manpada. Tikunjwadi Road. Thane
2. Mr. Vinod V. Chavan,
A-9, Government Quarter, 17,
Queens Garden, Pune-1
3. Mr. Surendra P. Nikam,
Flat No.1004, Lily Building,
Regency Garden,
Kharghar-10
4. Mr. Atul R. Adey,
Flat No.201, Shiv Kamini Apt,
Gorakshan Road, Akola .. Respondents

ALONG WITH
WRIT PETITION NO.15533 OF 2022

1. Vinod V. Chavan,
Age: 46 years
Working as Deputy Regional Transport
Officer, Satara

Residing at Rudraksha Residency,
R5, G2, Tamjai Nagar, Satara,
Dist-Satara -415 001

2. Mr. Atul R. Adey,
Age 49 years
Working as Deputy Regional Transport
Officer, Pimpri Chinchwad-410 506
residing at Flat No.D 1101,
Metro Jazz Society, near
Educon School, Mahalunge,
Pune-411 045

.Petitioners

Versus

1. State of Maharashtra
Through the Principal Secretary,
Transport Department,
Mantralaya, Mumbai 400 032
2. The Principal Secretary,
Home Department,
Government of Maharashtra,
Mantralaya,
Mumbai 400 032
3. The Principal Secretary,
Finance Department,
Government of Maharashtra,
Mantralaya,
Mumbai 400 032
4. Mr. Dnyaneshwar Eknath Hirde,
Age:54 years,
Working as Dy. Regional Transport
Officer, Residing at:A-2/701,
Happy Valley CHS,
Man panda, Tikujiniwadi Road,
Thane:400 607
5. Secretary,
General Administration Department,
Government of Maharashtra,
Mantralaya,
Mumbai:400 032

6. Mr. Surendra P. Nikam
Residing at plot no.28, Nisarg Society,
Near Ryan International School,
Bavdhan,
Pune-411 007 .. Respondents

Mr. S.C. Naidu with Mr. Vishal P. Shirke and Ms. Sruti Roy, Advocates for the Petitioner in WP No.15533/2022 and for Respondent Nos.2 and 4 in WP No.13411/2023.

Mr. Ravi R. Shetty, Senior Advocate, with Mr. Sidheshwar N. Biradar, Advocate for the Petitioner in WP No.15531/2022.

Mr. Abhijeet A. Desai with Mr. Digvijay Kachare, Mr. Vijay Singh, Mr. Karan Gajra, Ms. Mohini Rehpade, Ms. Daksha Pungera and Ms. Sanchita Sontakke, Advocates, i/by Desai Legal, for the Petitioner in CP No.362/2024 and for Respondent No.4 in WP No.15533/2022.

Mr. Mihir Desai, Senior Advocate, with Mr. N.C. Walimbe, Additional Government Pleader, Smt. R.A. Salunkhe, Assistant Government Pleader for the Respondent-State of Maharashtra in WP No.13411/2023 and for Respondent Nos.1 and 2 in WP No.15533/2022 and WP No.15531/2022.

Mr. Dinesh R. Shinde, Advocate for Respondent Nos.4 and 5 in WP No.15531/2022 and for Respondent No.6 in WP No.15533/2022.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL JJ**

Date on which the arguments concluded : 19th DECEMBER 2024.

Date on which the judgment is pronounced : 28th MARCH 2025.

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

1. Rule. In view of the order dated 15/05/2023 passed by the Supreme Court in SLP (Civil) Diary Nos.19297/23 and 19299/2023, the writ petitions are taken up for final disposal.

2. The petitioners in Writ Petition No.15531 of 2022 are aggrieved by the judgment of the Maharashtra Administrative Tribunal (for short, 'the Tribunal') dated 06/06/2022 passed in Original Application No.614 of 2014. By the said judgment, the Tribunal has held that the seniority of the respondent no.3 on the post of Assistant Regional Transport Officer shall be considered from the date of his initial appointment being 01/04/1991. Writ Petition No.15533 of 2022 also raises a challenge to the aforesaid judgment dated 06/06/2022 as Original Application No.938 of 2016 preferred by the petitioners raising a challenge to the seniority of respondent no.3 came to be dismissed.

3. Facts relevant for adjudicating the writ petitions are that one Mr. Hirde came to be appointed on the post of Deputy Engineer, Rural Broadcasting Department on 01/04/1991. The said Department was proposed to be closed from 31/08/2001. Hence on 20/08/2001, a Government Resolution was issued proposing to absorb the employees who were rendered surplus in the said Department. Accordingly, the services of Mr. Hirde came to be absorbed at the State Human Rights Commission on a non-technical post. Subsequently on 05/06/2007, the Home Department issued an order on the basis of which Mr. Hirde came

to be appointed on a temporary basis on the post of Assistant Regional Transport Officer (for short, ARTO) subject to terms and conditions stated therein. As per Condition nos.1 and 2, the appointment of Mr. Hirde with the Motor Transport Department was to be treated as a fresh appointment and the seniority was to be reckoned from the date when the charge of the said post was taken. Mr. Hirde raised a protest to the aforesaid conditions imposed in the order dated 05/06/2007. Ultimately on 12/07/2013, the seniority list in the cadre of ARTO came to be published. Mr. Hirde was shown at serial no.100 and his date of appointment was shown as 04/07/2007. After raising an objection on 16/11/2013 and 04/01/2014, the seniority list was finalised on 08/01/2014. Mr. Hirde not being satisfied with his placement at serial no.98 approached the Tribunal by filing Original Application No.614 of 2014. Prayer Clauses (a) and (b) of the said Original Application read as under:-

a) Hon. Tribunal be pleased to call the record and proceedings of the order dated 08.01.2014 and after examining its legality and validity the Hon. Tribunal be pleased to hold and declares that the Applicant is entitled to count his seniority in the cadre of ARTO from 01.04.1991 in the light of the provisions of the relevant Rules and GRs stated in O.A. and direct the Respondents to grant him the proper placement as

per that date with all consequential service benefit including promotion, deemed date of promotion, notional promotion, retrospective promotion, pay stepping at par with immediate juniors, etc.

b) Hon. Tribunal further be pleased to hold and declare the condition No. 2 incorporated in the order dated 05.06. 2007 appointing the Applicant as a ARTO as a illegal and bad as the same is being contrarary to the provisions of GR 10.11.1982, 9.3.1989, 1.11.1999, 10.09.2001 and Rule 4(2)(c) of the MCS seniority Rule 1982 and by suitable order the said condition No. 2 be ordered to be struck down.

4. The petitioners in Writ Petition No.15531 of 2022, namely Mr. Sanjeev Dyandeo Bhor and two others- (hereinafter referred to as 'Mr. Bhor and others') filed their affidavit in reply raising a plea that the challenge raised by Mr. Hirde to Condition no.2 in the order of appointment dated 05/06/2007 was barred by limitation. Other grounds for opposing the prayers made in the Original Application were also raised.

The petitioners in Writ Petition No.15533 of 2020, namely Mr. Vinod V. Chavan and two others (hereinafter referred to as 'Mr. Chavan and others') filed Original Application No.938 of 2016 before the Tribunal raising a challenge to the order dated 26/05/2016 by which it was stated that the appointment of Mr.

Hirde be treated as made on 08/10/2001 with the State Human Rights Commission on regular basis. A declaration was sought that the seniority of Mr. Hirde had been incorrectly fixed.

5. The learned Members of the Tribunal by the judgment dated 06/06/2022 decided both the Original Applications together. It was observed that there was delay on the part of Mr. Hirde in approaching the Tribunal. However, since Mr. Hirde had made various representations to the concerned authorities and such representations had been pursued, the proceedings were liable to be entertained on merits. It was held that the seniority of Mr. Hirde ought to be considered from the date of his initial appointment on the post of ARTO from 01/04/1991. While Original Application No.614 of 2014 preferred by Mr. Hirde was allowed, Original Application No.938 of 2016 preferred by Mr. Chavan and others came to be dismissed. It is this common judgment of the Tribunal dated 06/06/2022 that is impugned in these writ petitions.

6. For the record, it may be stated that on 19/12/2022 while considering both the writ petitions, this Court observed that it was not inclined to stall any proceedings of the Departmental

Promotional Committee and that any decision that would be taken by the said Committee would be subject to outcome of the writ petitions. The present petitioners challenged this order before the Supreme Court. By an order dated 15/05/2023, the Special Leave Petitions were permitted to be withdrawn with liberty to approach this Court for early hearing of these writ petitions. The said prayer as made was accordingly granted on 03/08/2023.

7. The State of Maharashtra through its Secretary, Transport Department has preferred Writ Petition No.13411 of 2023 also raising a challenge to the common judgment dated 06/06/2022 passed by the Tribunal. It seeks to rely upon order of appointment dated 05/06/2007 issued to Mr. Hirde and it is aggrieved by the finding recorded by the Tribunal that the seniority of Mr. Hirde ought to be considered from 01/04/1991 by treating that date as his initial date of appointment in the Transport Department. Accordingly, all these writ petitions have been taken up together for consideration.

8. At the outset, we may state that the common judgment of the Tribunal is assailed broadly on two counts. Firstly, on the jurisdictional aspect, it is urged that the reliefs claimed by Mr.

Hirde in his Original Application were barred by limitation. Without the delay being condoned, the Tribunal decided the proceedings on merit. Secondly, the challenge was to the adjudication on merits. It is urged that the Tribunal wrongly held that the seniority of Mr. Hirde ought to be reckoned from 01/04/1991 instead of 04/07/2007.

We would first consider the jurisdictional aspect. In case the challenge succeeds on this count, it would not be necessary to consider the challenge on merits. We accordingly proceed to consider the jurisdictional challenge.

9. Mr. S. C. Naidu, learned counsel appearing on behalf of Mr. Chavan and others at the outset submitted that Original Application No.614 of 2014 filed by Mr. Hirde on 09/07/2014 initially raising a challenge to Condition no.2 incorporated in the appointment order dated 05/06/2007 had been filed beyond the prescribed period of limitation. No prayer for seeking condonation of delay was made by Mr. Hirde in his Original Application. On the contrary, it was pleaded by Mr. Hirde in paragraph 5 that the Original Application had been filed within limitation. The Tribunal had no jurisdiction whatsoever to consider the prayers made in

the Original Application on merits without the delay in filing the same being condoned. He referred to the provisions of Section 21 of the Administrative Tribunals Act, 1985 (hereinafter referred to as "Act of 1985") and submitted that the Original Application was liable to be dismissed summarily on the ground of delay. It was further submitted that the contention of Mr. Hirde that in view of the order passed in Miscellaneous Application No.10 of 2019, the delay in filing the Original Application had been condoned was misconceived. That Miscellaneous Application had been filed for seeking amendment to the Original Application and raising a challenge to Condition no.1 in the appointment order dated 05/06/2007. The order dated 06/01/2019 passed on the Miscellaneous Application made it clear that the Tribunal had merely allowed the amendment as prayed for. On the basis of said order, it could not be contended that the delay in filing the Original Application had been condoned. It was further pointed out that the Tribunal in the impugned order noted that there was in fact delay in filing the Original Application. Merely by observing that Mr. Hirde had made various representations earlier, the Tribunal proceeded to adjudicate the prayers made in the Original Application on merits. In absence of any prayer seeking condonation of delay and an opportunity to Mr. Bhor and others

to meet such contention, the Tribunal was not justified in entertaining the Original Application on merits.

Without prejudice to the aforesaid, it was urged that the observations made by the Tribunal that as various representations had been made by Mr. Hirde, the proceedings were liable to be considered on merits was also contrary to law. It was well settled that merely by making various representations, the statutory period of limitation as prescribed would not get extended. Making of representations without pursuing the same would be of no avail. Even on this count, the Tribunal committed an jurisdictional error in entertaining the Original Application on merits. In that regard, the learned counsel placed reliance on the decisions in *Secretary to Government of India and others Vs. Shivram Mahadu Gaikwad*, (1995) Supp (3) SCC 231 and *Ramesh Chand Sharma Vs. Udham Singh Kamal and others*, (1999) 8 SCC 304. It was thus submitted that the impugned judgment was liable to be set aside.

10. Mr. Ravi Shetty, learned Senior Advocate on behalf of Mr. Bhor and others too submitted that the Original Application filed by Mr. Hirde sought to raise a challenge to the conditions imposed in the order of appointment issued to him on 05/06/2007. The

Original Application as filed initially sought to raise a challenge only to Condition no.2 in the said order. Subsequently, an amendment was sought to the Original Application for raising a challenge to Condition no.1 in the said order. Merely because the amendment was allowed, the same would not mean that the delay in raising such challenge had been condoned. To substantiate this plea, the learned Senior Advocate placed reliance on the judgment in *State of Maharashtra and another Vs. Ramesh Krushrao Yewale and another* (Writ Petition No.3056 of 2022 decided on 05/08/2022 at the Nagpur Bench). He also referred to the decisions in *S. S. Rathore Vs. State of M. P.*, (1989) 4 SCC 582, *Shivram Mahadu Gaikwad* and *Ramesh Chand Sharma* (supra) in that regard. He therefore submitted that the Tribunal committed an error in entertaining the Original Application on merits without the delay being condoned. The impugned judgment therefore was liable to be set aside.

11. Mr. Mihir Desai, learned Senior Advocate appearing on behalf of the State reiterated these grounds of challenge. He further submitted that additionally, Mr. Hirde did not join all parties who were likely to be affected if his claim of seniority was to be accepted. The effect of the impugned judgment of the

Tribunal was that the appointments made prior to Mr. Hirde being appointed in the Transport Department from 05/06/2007 were affected as such appointees would become junior to Mr. Hirde. In absence of such necessary parties, the Tribunal could not have granted this relief as prayed for by Mr. Hirde. It was further submitted that Mr. Hirde was aware about his placement in the seniority list from 05/06/2007 itself and he had accepted the appointment order as a fresh appointment. He sought to challenge the order dated 05/06/2007 only when the final seniority list in the cadre of ARTO came to be published on 08/01/2014. He therefore submitted that the Tribunal committed a jurisdictional error in entertaining the Original Application on merits without the delay in filing the same being condoned. Since the seniority of various ARTO's was affected due to the impugned judgment, the State had also challenged the same.

12. Mr. Abhijeet Desai, learned Advocate appearing for Mr. Hirde opposed aforesaid submissions. According to him, the cause of action for filing the Original Application accrued to Mr. Hirde only when the seniority list of ARTO was finally published on 08/01/2014. It was then that Mr. Hirde was informed that his past service since 1991 would not be considered for the purposes

of seniority. The conditions as contained in the appointment order dated 05/06/2007 had been challenged by seeking an amendment in the Original Application by filing Miscellaneous Application No.10 of 2019. The order dated 16/01/2019 passed on the Miscellaneous Application had the effect of allowing the amendment and also condoning the delay in filing the Original Application. On the amendment being allowed, the doctrine of “relation back” applied and it had the effect of the delay in challenging the appointment order dated 05/06/2007 being condoned. Since the publication of the final seniority list gave a cause of action to Mr. Hirde, it was clear that the Original Application was filed within limitation. The Tribunal was justified in considering the prayers made by Mr. Hirde on merits after being satisfied that the making of various representations in his regard was sufficient. It was thus submitted that since the proceedings were filed within limitation, there was no jurisdictional error committed by the Tribunal. Relying upon the decision in *Sub-Inspector Rooplal and another vs. Lt. Governor through Chief Secretary and others*, (2000) 1 SCC 644 it was submitted that the State was not justified in challenging the judgment of the Tribunal.

13. We have heard the learned counsel for the parties at length and with their assistance we have also perused the documentary material on record. After giving thoughtful consideration to the rival submissions based on the jurisdictional challenge, in our view said challenge deserves to be upheld as the Tribunal adjudicated the Original Application which was filed beyond the period of limitation, without the delay being condoned.

14. It is not in dispute that on 05/06/2007, the Home Department issued an order appointing Mr. Hirde on the post of ARTO, Group-B through nomination. Condition no.1 of the appointment order states that the appointment of Mr. Hirde in the Motor Vehicle Department would be a fresh appointment. Condition No.2 of the said appointment order states that the seniority of Mr. Hirde would be reckoned from the date he would take charge of the said post. It is further not in dispute that the petitioner joined the post of ARTO pursuant to the order dated 05/06/2007. The record further indicates that in the seniority list of ARTO's dated 01/01/2013, Mr. Hirde was placed at serial no.100 while Mr. Bhor and others as well as Mr. Chavan and others were placed above him. Mr. Hirde raised an objection to his placement in the seniority list through his grievance dated

05/10/2013. This was followed by reminders dated 16/11/2013 and 04/01/2014. The objections raised to the aforesaid seniority list were thereafter considered by the Home (Transport) Department and the final seniority list came to be published on 08/01/2014. Mr. Bhor and others were placed at serial nos.38 to 41 while Mr. Chavan and others were placed at serial nos.48 and 49. Mr. Hirde was placed at serial no.98 in the said seniority list. Mr. Hirde being aggrieved by his placement in the said seniority list as on 01/01/2013 filed Original Application No.614 of 2014 on 09/07/2014. The prayers made in the said Original Application as filed reads as under:

- a) Hon. Tribunal be pleased to call the record and proceedings of the order dated 08.01.2014 and after examining its legality and validity the Hon. Tribunal be pleased to hold and declares that the Applicant is entitled to count his seniority in the cadre of ARTO from 01.04.1991 in the light of the provisions of the relevant Rules and GRs stated in O.A. and direct the Respondents to grant him the proper placement as per that date with all consequential service benefit including promotion, deemed date of promotion, notional promotion, retrospective promotion, pay stepping at par with immediate juniors, etc.*
- b) Hon. Tribunal further be pleased to hold and declare the condition No. 2 incorporated in the order dated 05.06.2007 appointing the Applicant as a ARTO as a illegal and bad as the*

same is being contrarary to the provisions of GR 10.11.1982, 9.3.1989, 1.11.1999, 10.09.2001 and Rule 4(2)(c) of the MCS seniority Rule 1982 and by suitable order the said condition No. 2 be ordered to be struck down.

In paragraph 5 of the Original Application, it was stated that the same had been preferred within limitation.

15. Mr. Bhor and others filed their reply and raised an objection to the belated challenge as raised by Mr. Hirde. Mr. Chavan and others were aggrieved by the order dated 26/05/2016 as a result of which the seniority of Mr. Hirde came to be fixed from 08/10/2001. They therefore challenged the said order by filing Original Application No.938 of 2016. It is common ground that both the Original Applications were heard and decided together.

16. It would be necessary to note that during pendency of the aforesaid proceedings, Mr. Hirde filed Miscellaneous Application No.10 of 2019 seeking to amend his Original Application and raised a challenge to Condition no.1 in the appointment order dated 05/06/2007. In the said Miscellaneous Application , it was stated that Condition no.1 in the order of appointment dated 05/06/2007 was sought to be challenged and hence a prayer for

amendment was made. The prayer sought to be incorporated in the Original Application reads as under:--

“(e) : That this Honourable Tribunal be pleased to hold and declare that Condition No.1 incorporated in the Order dated 5.6.2007 while appointing the Applicant as A.R.T.O. as illegal and bad in law as the same is being contrary to G.R. dated 10.9.2001 as well as G.R. dated 1.11.1999 and the Affidavit in reply dated 4.12.2017 filed in O.A.No.938 of 2016 and as such, the said condition No. 1 be ordered to be struck down.

The Miscellaneous Application was accordingly considered by the Tribunal. On 16/01/2019 it passed the following order:-

“MA for amendment allowed”.

From a reading of the Miscellaneous Application and the prayer made therein, it becomes clear that what was sought in the Miscellaneous Application was only a prayer for amendment. There was no prayer for condoning the delay in filing the Original Application nor was such delay condoned. The submission made on behalf of Mr. Hirde that since the prayer made in the Miscellaneous Application had been allowed, the amendment stood granted and on the principle “relation back” the delay also stood condoned cannot be accepted. The order passed by the

Tribunal is clear and it merely allows the amendment as a result of which Condition no.1 came to be challenged.

17. On the aspect of delay in raising a challenge to the order dated 05/06/2007, it would be necessary to refer to the provisions of Section 21 of the Act of 1985. Section 21 prescribes the period of limitation within which an aggrieved applicant is required to approach the Tribunal. It is well settled that firstly, making of repeated representations would not result in furnishing a fresh cause for such applicant to avail the remedy of approaching the Tribunal on the basis of the last representation. On the making of a representation, if no response is received within a period of six months of making such representation, the right to approach the Tribunal would accrue on the expiry a period of six months. Thereafter the aggrieved applicant ought to approach the Tribunal with expedition. The law is laid down by the Constitution Bench in *S. S. Rathore* (supra) has been consistently followed and the legal position in that regard is well settled. A reference to various other judgments in that context has been made in the judgment of the Co-ordinate Bench in *Ramesh Krushrao Yewale and another* (supra).

18. If the amended prayers made by Mr. Hirde in the Original Application are perused it becomes clear that Mr. Hirde sought a declaration that he was entitled to reckon his service in the cadre of ARTO from 01/04/1991 and sought all consequential benefits. Initially challenge was raised to Condition No.2 in the order of appointment dated 05/06/2007. By amending the Original Application on 30/01/2019 challenge was raised to Condition no.1 in the said appointment order.

It becomes clear that Mr. Hirde was aggrieved by Condition nos.1 and 2 contained in his order of appointment dated 05/06/2007 and same were challenged only in 2014 by filing the Original Application. The Tribunal in paragraph 22 of the impugned judgment has noted that there was delay in approaching the Tribunal but the same was explained by Mr. Hirde by stating that he had been continuously making various representations to the authorities seeking appropriate appointment after his absorption. On this basis, the Tribunal has proceeded to adjudicate the challenge on merits.

19. In our view, the cause of action for challenging the conditions in the order of appointment dated 05/06/2007 arose immediately after the said appointment order was issued to Mr.

Hirde. He however chose not to challenge the same immediately. He was placed in the seniority list dated 01/01/2013 in accordance with the said order of appointment. This was after considering his objection to the seniority list as published. Mere filing of representations after 05/06/2007 till publication of the final seniority list dated 01/01/2013 on 08/01/2014 cannot be the basis to hold that the challenge raised to condition nos.1 and 2 of the order of appointment dated 05/06/2007 was within limitation. We therefore find that the Original Application as filed was barred by limitation and no prayer was made to seek any condonation of delay by Mr. Hirde.

20. Yet another aspect that was not noticed by the Tribunal was that Mr. Hirde was seeking to reckon his seniority in the cadre of ARTO from 01/04/1991. By virtue of the order of appointment dated 05/06/2007 in the Transport Department, grant of benefit of service to Mr. Hirde in the cadre of ARTO from 01/04/1991 would have the effect of affecting members of the said cadre who were appointed from 01/04/1991 to 05/06/2007. Such appointees were not parties to the Original Application filed by Mr. Hirde. They were liable to be heard before accepting the prayers made by Mr. Hirde. The Tribunal has in fact granted such

relief to Mr. Hirde by directing his appointment to be considered from 01/04/1991 on the post of ARTO without hearing the parties who were affected by such declaration. This aspect has been glossed over by the Tribunal.

21. For these reasons, we are of the view that the Tribunal committed a jurisdictional error in entertaining a challenge to condition nos.1 and 2 in the order of appointment dated 05/06/2007 as raised by Mr. Hirde in the Original Application that was filed in the year 2014. The Original Application had been filed beyond the period of limitation as prescribed under Section 21(1) of the Act of 1985. Without the delay being condoned, the challenge has been adjudicated on merits. The ratio of the decision in *Ramesh Chand Sharma* (supra) is squarely attracted. Further, the relief of reckoning the seniority of Mr. Hirde from his initial appointment being treated as 01/04/1991 in the absence of parties likely to be affected by the same has also resulted in a jurisdictional error. On these counts, the impugned judgment of the Tribunal is found to be unsustainable and is therefore liable to be quashed.

22. In the Original Application filed by Mr. Hirde, he has stated

in paragraph 5 that the same had been filed within the prescribed period of limitation. The Tribunal thus proceeded to adjudicate the same on merits by observing that though there was delay in filing the Original Application, the same was explained by Mr. Hirde on the basis of various representations made by him. We have however found that the Original Application was in fact filed beyond the period of limitation and the Tribunal erred in entertaining the same without the delay being condoned. In such situation, in our view, Mr. Hirde cannot be left remediless. An opportunity to make a prayer for condonation of delay before the Tribunal deserves to be granted to him. For adopting such course, we place reliance on the judgment of learned Single Judge (B.R. Gavai, J. as His Lordship was) in *Madhao S/o Somaji Sarode Vs. Jotiba Dhyan Upasak Shikshan Sanstha*, (2004) 3 Mh.L.J. 1078. It has been held therein that if during the course of proceedings that are stated to be filed within limitation, the concerned Tribunal finds that the proceedings were filed beyond limitation, it is the duty of that Tribunal to bring to the notice of the party the said aspect and also grant such party an opportunity to make an application for condonation of delay. Hence, as we have found that the Original Application preferred by Mr. Hirde though stated to be filed within limitation has been filed beyond the period of

limitation, an opportunity to seek condonation of delay deserves to be granted.

23. Since we are inclined to permit Mr. Hirde to move the Tribunal with a prayer for seeking condonation of delay, we do not deem it necessary to go into the merits of the reasons assigned by the Tribunal while allowing the Original Application. In our view, this exercise undertaken on merits was without jurisdiction. Unless the delay was condoned, the Tribunal did not have jurisdiction to go into the merits of the Original Application. For these reasons, we have not dealt with the submissions made by the learned counsel on merits. In our view, the impugned judgment deserves to be quashed and the following directions that would serve the ends of justice ought to be issued :-

(i) The common judgment of the Maharashtra Administrative Tribunal in Original Application No.614 of 2014 and Original Application No.938 of 2016 dated 06/06/2022 is quashed and set aside

ii) An opportunity is granted to Mr. Hirde to seek condonation of delay in filing Original Application No.614 of 2014 by moving a separate application in that regard. If such

application is moved, the same shall be considered in accordance with law after giving due opportunity to all parties.

iii) It is made clear that this Court has not examined the submissions of the rival parties on merits. In case the delay in filing Original Application No.614 of 2014 is condoned, the said Original Application shall be heard with Original Application No.938 of 2016 and decided on its own merits in accordance with law. Any observations made in this judgment shall not be construed as expression of any opinion on the merits of the matter.

iv) Rule is made absolute in Writ Petition Nos.15531, 13411 and 15533 of 2022 in above terms. Consequently, Contemp Petition No.362 of 2024 does not survive and it stands disposed of.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]