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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1748 OF 2015

Rajendra Daulat Patil,
Age : 50 years, Occ : Service,
R/o 23, Professor Colony,
Near Conark Apartment, Deopur,
Dhule.

...PETITIONER

-VERSUS-

- 1 The Chairman,
Abhay Yuvak Kalyan Kendra
Sanchalit (Family Trust),
Abhay Accident Hospital,
Badgujar Plot, 80 ft. Road,
Dhule, Tq. & Dist.Dhule.
- 2 The Secretary,
Abhay Yuvak Kalyan Kendra
Sanchalit (Family Trust),
Abhay Accident Hospital,
Badgujar Plot, 80 ft. Road,
Dhule, Tq. & Dist.Dhule.
- 3 The Principal,
Abhay Adhyapak Vidyalaya (Girls),
Mumbai Agra Highway, Dhule,
Tq. & Dist.Dhule.
- 4 The Deputy Director of Education,
Nashik Division, Nashik.
- 5 The Education Officer (Secondary),
Zilla Parishad, Dhule.

...RESPONDENTS

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Shri Pawar Ajay D., Advocate for the Petitioner.

Shri Sachin S. Deshmukh, Advocate for Respondent Nos.1 to 3.

Shri P.G.Borade, AGP, for Respondent Nos.4 and 5.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th December, 2015

Oral Judgment:

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

2 The Petitioner is aggrieved by the order dated 29.12.2014 delivered by the School Tribunal, Nashik by which Miscellaneous Application No.6/2013 filed by the Petitioner has been rejected.

3 The Petitioner submits that he was orally terminated on 03.07.2013. He filed the appeal along with Miscellaneous Application for condonation of delay under Section 9 of the MEPS Act, 1977 on 26.08.2013. Considering that the appeal was filed on 26.08.2013, the delay caused in filing the appeal was only 23 days.

4 Shri Pawar, learned Advocate for the Petitioner, submits that the Petitioner moved an application for condonation of 23 days' delay setting out the reasons that since he was orally prevented from signing the

muster roll from 03.07.2013, it amounted to “otherwise termination”. Delay is neither deliberate, nor unreasonable. He would be prevented from challenging his termination at the threshold of litigation on the ground of delay. He does not gain any advantage by delaying his matter.

5 He further points out from the impugned judgment that the Tribunal has concluded that proper reasons are not cited for condonation of delay. The Tribunal is not satisfied with the reasons stated. Because of the delay caused, the Respondent/ Management would suffer hardship. Shri Pawar, therefore, submits that these conclusions of the Tribunal are unsustainable.

6 Shri Deshmukh, learned Advocate for the Respondents/ Management, has strenuously supported the impugned judgment. He states that if the reasons are not properly assigned, delay caused in filing an appeal cannot be condoned. The application for condonation of delay can be allowed only if proper reasons are assigned and the Tribunal is convinced that the Applicant was not precluded by circumstances in filing the appeal. He, therefore, submits that this petition is devoid of merit and deserves to be dismissed with costs.

7 I have considered the submissions of the learned Advocates as

recorded herein above.

8 It is undisputed that delay is of 23 days. Limitation is of 30 days. Delay caused does not appear to be either deliberate or inordinate. Laches are also not attributed to the conduct of the Petitioner. In my view, an application for condonation of delay has to be dealt with liberally if the delay is not inordinate, is not deliberate and does not render any advantage to the Applicant. If laches are not attributed to the conduct of the Petitioner in the above circumstances, an application for condonation of delay can be allowed.

9 The Apex Court, in the case of *Collector, Land Acquisition, Anantnag v/s Mst.Katiji*, **AIR 1987 SC 1353**, while dealing with the issue of delay, has observed in paragraph 3 as under:-

“3. *The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach*

is adopted on principle as it is realized that:-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala-fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The

doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

10 The observations of the Apex Court in the Collector, Land Acquisition case (supra) clearly indicate the Court has to adopt a pragmatic approach while dealing with such applications. I find that the learned Presiding Officer of the School Tribunal, Nashik has taken a

pedantic view in this matter. This is not the first time that the orders passed by the same learned Presiding Officer refusing to condone minor delays in filing appeals, have been brought to the notice of this Court. This Court has observed in some of its earlier judgments concerning the same learned Presiding Officer that a pedantic approach is being taken in dealing with the condonation of short delays.

11 It is expected that the learned Presiding Officer, who has delivered the impugned judgment, considers the observations of the Apex Court in a proper perspective as set out in the Collector, Land Acquisition matters (supra).

12 In the light of the above, this petition is allowed. The impugned order dated 29.12.2014 is quashed and set aside. Miscellaneous Application No.6/2013 stands allowed.

13 The School Tribunal, Nashik shall forthwith register the appeal lodged by the Petitioner and shall issue notice to the litigating sides.

14 Rule is made absolute in the above terms.

15 Registrar (Judicial) of this Court shall place a copy of this order before Smt.R.J.Rai, learned Presiding Officer, School Tribunal, Nashik.

(RAVINDRA V. GHUGE, J.)