

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1281 OF 2015

The Chief Executive Officer,
Zilla Parishad Jalna
Tq. and Dist. Jalna,
Through Ashok S/o Dattatray Kolhe,
Age-52 years, Occu-Service as Add.C.E.O.
Zilla Parishad, Jalna

-- PETITIONER

Versus

Babu S/o Arjun Ghodke,
Age-52 years, Occu-Service,
R/o Mali Galli, Badnapur,
Tq.Badnapur, Dist.Jalna

-- RESPONDENT

WITH
WRIT PETITION NO.1282 OF 2015

The Chief Executive Officer,
Zilla Parishad Jalna
Tq. and Dist. Jalna,
Through Ashok S/o Dattatray Kolhe,
Age-52 years, Occu-Service as Add.C.E.O.
Zilla Parishad, Jalna

-- PETITIONER

Versus

Dnyandeo S/o Bhimrao Ubale,
Age-50 years, Occu-Service,
At Post : Ayurvedik Dispensary,
Panewadi, Tq.Ghansawangi, Dist.Jalna

-- RESPONDENT

Mr.S.S.Tope, Advocate for the petitioner.
Mr.P.M.Shinde h/f Mr.P.B.Jadhav, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 11/09/2015

ORAL JUDGMENT :

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

2. The petitioner in both these petitions is the Zilla Parishad, Jalna. Both the respondents are identically situated. Both had filed Complaint (ULP) No.62/2004 and 63/2004 respectively before the Industrial Court, which have been allowed by the impugned common judgment dated 19/12/2006. I am, therefore, taking up both these petitions together for hearing and disposal.

3. While issuing notices to the respondents, I had directed the petitioner to deposit Rs.50,000/- in each petition in this Court since the petitions have been filed on 13/01/2015 after 8 years and 1 month for challenging the impugned judgments dated 19/12/2006.

4. Mr.Tope, learned Advocate on behalf of the petitioner has strenuously criticised the impugned judgments. He concedes that the impugned judgment dated 19/12/2006 is challenged after 8 years. He points out the grounds for delay in preferring these petitions in paragraph No.3 of the memo, which are as under :-

- (a) The respondents/employees have not forced the petitioner for implementation of the impugned judgment.
- (b) The respondents were working on half payment and did not seek execution of the impugned judgment.
- (c) Since the respondents preferred Criminal Complaint (ULP) No.1/2014 u/s 48(1) of the M.R.T.U.and P.U.L.P. Act, 1971, praying for punishing the C.E.O. of the petitioner / Zilla Parishad for disobedience and since the petitioner received the summons in the said case, the petitioner has preferred these petitions.
- (d) The petitioner is a semi-Government Institution and therefore delay has occurred in filing the petitions.

5. Mr.Tope has relied upon the following judgments in support of his contention.

- [1] *Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others*, [AIR 1987 SC 1353] [Paragraph No.3]
- [2] *Sonerao Sadashivrao Patil and another Vs. Godawaribai Laxmansingh Gahirewar and others*, [AIR 1999 Bombay 235] [Paragraph No.10]
- [3] *Rajkumar S/o Rohitlal Mishra Vs. Jalgaon Municipal Corporation*, [2013(2) SCC 751] [Paragraph No.6]
- [4] *Incharge Officer and another Vs. Shankar Shetty*, [2010(0) BCI 220] [Paragraph No.5]
- [5] *Hindustan Aeronautics Ltd., Vs. Dan Bahadur Singh and others*, [2007(6) SCC 207] [Paragraph No.14].

6. He further submits that merely because the respondents have

worked for 240 days in a calendar year, it cannot be overlooked that they were working as part timers for cleaning the office and storing the drinking water. They were not appointed by following the rules of Recruitment and Appointment as are prescribed in the Maharashtra Zilla Parishad's District Services (Recruitment) Rules, 1967. Their appointments amount to a back door entry.

7. He further submits that the Government has formed a District Selection Committee, which is chaired by the District Collector and the CEO of the Zilla Parishad, is a member, for selecting, recruiting and regularizing Class-IV employees in Zilla Parishad. None of the respondents have been selected by such District Selection Committee. It is, therefore, submitted that as the respondents have no merit to support their claims for regularization. The impugned judgment is perverse and erroneous.

8. Mr.Shinde, learned Advocate on behalf of the respondents/ employees strenuously opposes the petitions. He submits that both these respondents have been appointed on fixed pay of Rs.80/- per month w.e.f. 01/05/1986 and 03/05/1986 by appointment orders dated 30/04/1986 and 18/12/1986, respectively. Since then, they have been in employment of the petitioners.

9. He further submits that after completing about 10 years in employment, the respondents preferred WP No.1347/1995, 3251/1996 and 342/1998 seeking regularization in the service of the petitioner. As a group of writ petitions was earlier disposed of by the Division Bench of this Court, these petitions were also disposed of by permitting the respondents (original petitioners) to approach the competent Court / Tribunal and seek regularization. Their services were protected by this Court for 8 weeks so as to enable them to approach the Industrial Court or the Tribunal and pray for interim relief and seek regularization.

10. He submits that in the light of the order referred above dated 21/06/2004 delivered by this Court, both the respondents preferred their respective complaints before the Industrial Court.

11. He further states that the respondents have continued in employment and as on date have put in 29 years in service from 1986 onwards.

12. Mr.Shinde has relied upon the following judgments of the Apex Court for opposing these petitions on the ground of delay of 8 years :-

- [1] *Esha Bhattacharjee V.Managing Committee of Raghunathpur Nafar Academy and others*, [2013 AIR SCW 6158] [Paragraph Nos.22 and 23]
- [2] *Cheripalli Madar Vs. Assistant Division Engineers*, [Laws(SC)-2005-4-158] [Paragraph No.2]
- [3] *Uttaranchal Forest Development Corporation and another Vs. Jabar Singh and others*, [2007(3) Mh.L.J. 354] [Paragraph No.43]
- [4] *Ashok Kumar Vs. District Magistrate, Basti and another*, [2012(4) Mh.L.J. 587] [Paragraph Nos. 6, 13]
- [5] *Shivappa S/o Bhujangappa Bembale Vs.State of Maharashtra and another*, [2005(3) Mh.L.J.709] [Paragraph No.6]

13. In so far as the merits of the petitions are concerned, Mr.Shinde submits that it is a settled position in law that even part time workmen are held to be workmen u/s 2(s) of the I.D.Act, 1947. In catena of judgments, the Apex Court and this Court has granted regularization / permanency even to part time employees. 29 years of service put in by the respondents cannot be disregarded. The respondents have completed 240 days in continuous service in all these years.

14. He, however, submits on instructions from the respondents, who are present in the Court that their proposals could be placed before the District Selection Committee as suggested by Mr.Tope and

the District Selection Committee shall accordingly grant regularization to the respondents as per the directions of the Industrial Court. He further submits that this should be done within a stipulated period and the petitioner should not be given the liberty to delay the matter in order to frustrate the rights of the respondents.

15. I have considered the submissions of the learned Advocates as have been recorded hereinabove.

16. In so far as the issue of condonation of delay is concerned, the Apex Court in the matter of Collector, Land Acquisition Anant Nag (supra) has held in paragraph No.3 as under :-

"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."*

17. Similar observations are found in the judgments cited by Mr.Tope.

18. In the matter of Isha Bhattacharya (supra), the Apex Court has considered its view in the matter of Collector, Land Acquisition (supra) in paragraph No.6 of its judgment. The Apex Court considered the principles that are required to be followed while condoning delay in the matter of B.Madhuri Goud Vs. B.Damodar Reddy, 2012(12) SCC 693 and observed that the delay of 1236 days and the explanation put forth was absolutely fanciful.

19. The principles that were broadly laid down by the Apex Court in the B.Madhuri case (supra) as well as the principles that this Court has added thereto in the Isha Bhattacharya case (supra) in paragraph Nos.15 and 16 read as under :-

“15. From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic B.Madhuri Gaud c and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are :

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within.

legal parameters.”

20. Mr.Shinde has cited judgments on the same lines which need not be adverted to considering the view taken by the Apex Court in the Isha Bhattacharya case (supra). In conclusion, the Apex Court in the said judgment held in paragraph Nos. 22 and 23 as under :-

*“22. At this juncture, we are obliged to state that the persons who are nominated or inducted as members or chosen as Secretaries of the **managing Committees** of schools are required to behave with responsibility and not to adopt a casual approach. It is a public responsibility and anyone who is desirous of taking such responsibility has to devote time and act with due care and requisite caution. Becoming a member of the **Committee** should not become a local status syndrome. A statutory **Committee** cannot remain totally indifferent to an order passed by the court and sleep like "Kumbhakarna". The persons chosen to act on behalf of the **Managing Committee** cannot take recourse to fancy and rise like a phoenix and move the court. Neither leisure nor pleasure has any room while one moves an application seeking condonation of delay of almost seven years on the ground of lack of knowledge or failure of justice. Plea of lack of knowledge in the present case really lacks bona fide. The Division Bench of the High Court has failed to keep itself alive to the concept of exercise of judicial discretion that is governed by rules of reason and justice. It should have kept itself alive to the following passage from N. Balakrishnan (supra):*

The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

We have painfully re-stated the same.

23. Ex consequenti, the appeals are allowed and the order passed by the Division Bench condoning delay is set aside. As a result of such extinction the appeal before the Division Bench of the High Court shall also stand dismissed. The learned single Judge is requested to dispose of Writ Petition No. 6124(W) of 2003 as expeditiously as possible, preferably, within a period of six months as the lis involved is not likely to consume much time. In the facts and circumstances of the case, there shall be no order as to costs."

21. I have gone through the reasons cited by the petitioner in paragraph No.3 of the petition, which have been reproduced in the earlier part of this judgment. Besides one reason that the petitioner is a Semi-Government Institution and therefore delay occurs in such cases, the other reasons cited by the petitioner are in fact in the nature of blaming the respondents/employees for the delay caused by the petitioner in filing these petitions. It is canvassed that because the respondents/employees did not force the implementation of the impugned order, the petitioner did not approach this Court. It is further stated that because the respondents filed a criminal complaint seeking imposition of punishment on the C.E.O. Zilla Parishad for dis-obedience of the impugned judgment in 2014, that the petitioner felt the need of lodging these petitions.

22. In the B.Madhuri Goud and Isha Bhattacharya case (supra), the Apex Court has concluded that though a liberal, pragmatic, justice oriented and non-pedantic approach should be resorted to, gross negligence, lack of bonafides, lack of acceptable reasons, inaction and fanciful reasons should be carefully scrutinized by the Courts and the approach should be based on the paradigm of judicial discretion which is founded on objective reasonings and not on individual perception. The public body or entity could be given some

acceptable latitude.

23. I have scrutinized the contentions of the petitioner in the light of the above and I find that the reasons cited are indeed fanciful. It appears that the petitioner did not consider the delay being caused in its matters seriously and the lackadaisical approach of the petitioner is apparent on the face of the record. The reasons cited do not appear to be acceptable, much less convincing.

24. Considering the above as well as the contentions of the petitioner on the merits of the matter, I am not convinced that these petitions could be entertained so as to accept the prayers of the petitioner that the impugned judgments be quashed and set aside or that the complaints be remitted back to the Industrial Court for fresh adjudication.

25. I have also considered the fact that the petitioner did not render any assistance to the Industrial Court in deciding the two complaints. They chose to keep documents away from the Court and did not lead oral evidence.

26. The contention of the petitioner that the respondents have

acquired a back door entry in employment, is squarely answered by the conclusions of the Hon'ble Supreme Court in paragraph No.44 in the case of Secretary, State of Karnataka and others Vs. Umadevi and others, reported at AIR 2006 SC 1806 which read as under :-

“44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

27. Having put in 29 years in employment as on date, I do not find that the impugned judgments could be termed as perverse or erroneous.

28. Nevertheless, with the fair statement made by the respondents, the petitioner can be directed to consider the cases of these 2 respondents in the light of the judgment of the Industrial Court and place the said cases before its District Selection Committee so as to pass necessary orders for implementing the judgment of the Industrial Court within a period of 12 weeks from today.

29. Both these petitions are, therefore, disposed of on account of the delay caused. Needless to state, the amount of Rs.50,000/- deposited by the petitioners in each of these cases would stand refunded and the respondents are at liberty to withdraw the same with accrued interest from this Court.

30. At this juncture, Mr.Tope submits that the pending Criminal Complaint No.1/2014 could be disposed of. Mr.Shinde submits that as soon as the order of regularizing the services of the respondents by the District Selection Committee is conveyed to them, as is ordered by this Court hereinabove, they would file applications before

the Labour Court seeking disposal of the said complaint.

31. Recording the statement of Mr.Shinde, which is made on instructions, Criminal (ULP) No.1/2014 shall stand stayed for a period of 12 weeks from today, which is the period granted to the petitioner to secure orders of regularization from the District Selection Committee.

32. Rule is discharged.

33. Pending civil applications do not survive, hence disposed of.

(RAVINDRA V. GHUGE, J.)