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

WRIT PETITION NO.1613 OF 2015

Milind Mitharam Bouskar,
Age : 40 years, Occ : Gramsevak,
R/o Vasant Vihar, Tapi Nagar,
Bhusawal, Tq.Bhusawal,
District Jalgaon.

...PETITIONER

-VERSUS-

- 1 Divisional Commissioner,
Nashik.
Nashik Division, Nashik.
- 2 Chief Executive Officer,
Zilha Parishad, Jalgaon,
Tq. & District Jalgaon.

...RESPONDENTS

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Advocate for Petitioner : Shri Patil Ujwal Subhash.

AGP for Respondent No.1 : Shri S.N.Kendre.

Advocate for Respondent No.2 : Mrs.Kutti Choudhary Chaitali.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd 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 12.12.2014 passed by the Divisional Commissioner, Nashik (Respondent No.1) on the miscellaneous application for condonation of delay in preferring an appeal against the orders of the Chief Executive Officer dated 14.06.2013 and 15.03.2014.

3 The Petitioner claims to be a Gramsevak of Gram Panchayat, Survade (Kd), Bodvad, District Jalgaon. When he was working as a Gramsevak at Gram Panchayat, Mangi, Taluka Raver, District Jalgaon, he was placed under suspension on 12.05.2011 and subsequently, he was reinstated on 27.09.2011. At the relevant time, the disciplinary proceedings were pending against him. By the order dated 14.06.2013 passed by Respondent No.2, the Petitioner was held guilty of having indulged in an act of misappropriation. By way of punishment, his period of suspension was converted into a punishment along with stoppage of increment for a period of four years on permanent basis. The order directing recovery of misappropriated amount was also passed against him.

4 The Petitioner contends that the order of Respondent No.2 is dated 14.06.2013. The same was not supplied to him. After he received it, he preferred an appeal before Respondent No.1. Since there was delay in

filing the said appeal, an application for condonation of delay was filed. However, the said application has been rejected by the impugned order.

5 The learned AGP and Mrs.Kutti, learned Advocate appearing for Respondent Nos.1 and 2, respectively, have strenuously supported the impugned order. It is submitted that the Petitioner should have shown due diligence while challenging the order of Respondent No.2 dated 14.06.2013. The delay has not been properly explained. In the absence of proper reasons, Respondent No.1 has rightly rejected the application for condonation of delay.

6 I have heard the learned Advocates for the respective sides and have considered their submissions as are recorded herein above.

7 Rule 13(e) of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964 (herein after referred to as “the 1964 Rules”) provides for challenging the order passed by the Chief Executive Officer by way of an appeal, against the orders imposing penalty, before the Commissioner of the Division.

8 Rule 16 provides for a limitation period of three months from the date on which the Appellant or the Applicant, as the case may be,

receives a copy of the order in respect of which an appeal or revision is made. Proviso thereunder enables the Appellate or the Revisional Authority to entertain an appeal or revision under Rule 15 after expiry of the said period, if the Authority is satisfied that the Appellant/ Applicant had a sufficient cause for not submitting the appeal or revision application in time. There is no dispute with regard to these provisions under the 1964 Rules.

9 Respondent No.1 has noted in the impugned order that the Petitioner received the order dated 15.03.2014 passed by Respondent No.2 on 02.04.2014. The Appeal is, therefore, delayed by 38 days since it was filed on 17.07.2014.

10 I find from the conclusion drawn by Respondent No.1 that the said Authority believes that there is no provision for condonation of delay. It is concluded that the appeal should have been filed within 90 days and since it was not so filed, the Petitioner alone can be held responsible.

11 I am unable to agree with the conclusion of Respondent No.1 for the reason that the application for condonation of delay was filed by the Petitioner seeking condonation of delay. The reasons supporting the prayer for condonation of delay should have been considered by

Respondent No.1.

12 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."

13 Respondent No.1 was expected to consider as to whether, any laches are attributable to the conduct of the Petitioner and whether, he would benefit by causing delay in preferring his appeal. Respondent No.1 should also have considered as to whether, the delay was inordinate and deliberate.

14 I do not find any conclusion in the impugned order that laches are attributable to the conduct of the Petitioner. I also do not find that the delay can be said to be inordinate or deliberate. I also do not find that the Petitioner would derive any advantage by delaying the filing of his appeal.

15 In the light of the above, this Writ Petition is allowed. The impugned order dated 12.12.2014 is quashed and set aside. The

application for seeking condonation of delay stands allowed.

16 Respondent No.1 is, therefore, directed to register the appeal preferred by the Petitioner and after issuing notice to all litigating sides, shall cause a hearing on the appeal in accordance with law and decide the same on its own merits.

17 Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)