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

WRIT PETITION NO. 3778 OF 1998
WITH
CIVIL APPLICATION NO.1492 OF 2006
IN WP/3778/1998

Popat Sitaram Godge,
Age : 29 years, Occ : Nil,
R/o Chincholi Gurav,
Tq.Sangamner,
District Ahmednagar.

...PETITIONER

-VERSUS-

1 The Registrar,
 Amrutwahini Udyog Sheti
 Va Shikshan Vikas Sansthan,
 At & Post Sangamner Sakhar
 Karkhana, Tq.Sangamner,
 District Ahmednagar.

2 The Principal,
 Amrutwahini Model School,
 Amrutwahini, Tq.Sangamner,
 District Ahmednagar.

...RESPONDENTS

...
Advocate for Petitioner : Shri P.B.Shirsath a/w Shri S.V.Suryawanshi.
Advocate for Respondent Nos.1 and 2 : Shri R N Dhorde, Senior Advocate
h/f Shri Mobin Shaikh.
...

CORAM: RAVINDRA V. GHUGE, J.
DATE :- 01st October, 2015

Oral Judgment:

1 This matter was admitted by order dated 09.09.1999. I have gone through the petition paper book and I have considered the impugned

order and the documents which form the part of the compilation.

2 The Petitioner has filed this petition on account of refusal of the School Tribunal in condoning the delay caused in preferring the appeal before the School Tribunal. The Application for condonation of delay Exhibit-2 has been rejected by the impugned order dated 04.07.1998.

3 It appears from the record that the Petitioner, who was terminated on 22.05.1994, has filed the appeal on 14.08.1997. On advise, he initially preferred the civil suit before the Civil Court for challenging his termination. Further, on advise, he had filed a complaint before the Industrial Court and subsequently has filed a writ petition before this Court. The School Tribunal has recorded these aspects.

4 It was stated by the Petitioner before the School Tribunal that after he realized that the jurisdiction to deal with his termination dated 22.05.1994 was with the School Tribunal, he has withdrawn the petition and has filed the appeal before the School Tribunal. The School Tribunal has, therefore, recorded that from the date of withdrawal of the petition, six months have lapsed after which the appeal was filed. Hence, the application was rejected.

5 Shri R.N.Dhorde, learned Senior Advocate appearing for Respondents/ Educational Institution, has drawn my attention to the affidavit in reply filed by the Respondents/ Educational Institution on 27.07.1999. He points out that the Petitioner had remained absent and had abandoned his service. Hence, his service was terminated w.e.f. 27.05.1994.

6 He further points out that the Petitioner filed Regular Civil Suit No.327/1994 for challenging his termination before the Civil Court on 30.07.1994. Realizing that the Civil Court had no jurisdiction, he withdrew the said suit on 15.11.1994. He, thereafter, filed Complaint (ULP) No.370/1994 on 24.11.1994 before the Industrial Court at Ahmednagar. The same was also withdrawn after realizing that the Industrial Court had no jurisdiction. He then preferred Writ Petition No.334/1995 before this Court which was pending for almost two years. He sought liberty to withdraw the petition on 11.07.1997 so as to prefer an appeal before the School Tribunal.

7 Shri Dhorde, therefore, submits that these are mischievous acts on the part of the Petitioner. It was an attempt to choose a forum. Even after withdrawing the petition from this Court on 11.07.1997, his

appeal was preferred after a lapse of six months. No leniency, therefore, deserves to be granted to the Petitioner inasmuch as this Court should not express any sympathy towards the Petitioner. He prays that this petition be dismissed with costs as the impugned order of the School Tribunal, which takes stock of the entire situation, is neither perverse nor erroneous and therefore, calls for no interference.

8 I have considered the submissions of the learned Advocates for the rival sides.

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 Apex Court, in a recent judgment in the case of *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*, **(2013) 12 SCC 649**, has laid down certain contingencies which are to be fulfilled if the delay is to be condoned in the matter. Paragraphs 8 to 22 read as under:-

“8. Before we delve into the factual scenario and the

defensibility of the order condoning delay, it is seemly to state the obligation of the court while dealing with an application for condonation of delay and the approach to be adopted while considering the grounds for condonation of such colossal delay.

9. In Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others [(1987) 2 SCC 107], a two-Judge Bench observed that:

“3. The legislature has conferred power to condone delay by enacting Section 5 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.”

The learned Judges emphasized on adoption of a liberal approach while dealing with the applications for condonation of delay as ordinarily a litigant does not stand to benefit by lodging an appeal late and refusal to condone delay can result in an meritorious matter being thrown out at the very threshold and the cause of justice being defeated.

10. It was stressed that there should not be a pedantic approach but the doctrine that is to be kept in mind is that the matter has to be dealt with in a rational commonsense pragmatic manner and cause of substantial justice deserves to be preferred over the technical considerations. It was also ruled that there is no presumption that delay is occasioned deliberately or on account of culpable negligence and that the courts are not supposed to legalise injustice on technical grounds as it is the duty of the court to remove injustice.
11. In the said case the Division Bench observed that the State which represents the collective cause of

the community does not deserve a litigant-non-grata status and the courts are required to be informed with the spirit and philosophy of the provision in the course of interpretation of the expression “sufficient cause”.

12. In G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore [(1998) 2 SCC 142], Venkatachaliah, J. (as his Lordship then was), speaking for the Court, has opined thus:-

“14. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See : Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd. [AIR 1962 SC 361] ; Shakuntala Devi Jain v. Kuntal Kumari [AIR 1969 SC 575] ; Concord of India Insurance Co. Ltd. V. Nirmala Devi [(1979) 4 SCC 365] ; Lala Mata Din v. A. Narayanan [(1969) 2 SCC 770] ; Collector, Land Acquisition v. Katiji etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fide on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression ‘sufficient cause’ in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay.”

13. In O.P. Kathpalia v. Lakhmir Singh (dead) and others [(1984) 4 SCC 66], the court was dealing with a fact-situation where the interim order passed by the court of first instance was an interpolated order and it was not ascertainable as to when the order was made. The said order was under appeal

before the District Judge who declined to condone the delay and the said view was concurred with by the High Court. The Court, taking stock of the facts, came to hold that if such an interpolated order is allowed to stand, there would be failure of justice and, accordingly, set aside the orders impugned therein observing that the appeal before the District Judge deserved to be heard on merits.

14. *In State of Nagaland v. Lipok AO and others* [(2005) 3 SCC 752], the Court, after referring to *New India Insurance Co. Ltd. V. Shanti Misra* [(1975) 2 SCC 840], *N. Balakrishnan v. M. Krishnamurthy* [AIR 1998 SC 3222], *State of Haryana v. Chandra Mani* [(1996) 3 SCC 132] and *Special Tehsildar, Land Acquisition v. K.V. Ayisumma* [(1996) 10 SCC 634], came to hold that adoption of strict standard of proof sometimes fails to protect public justice and it may result in public mischief.
15. In this context, we may refer with profit to the authority in *Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation* and another [(2010) 5 SCC 459], where a two-Judge Bench of this Court has observed that:-
 “14. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.”

Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short

duration and a stricter approach where the delay is inordinate.

16. In Improvement Trust, Ludhiana v. Ujagar Singh and others [(2010) 6 SCC 786], it has been held that:-

“16. While considering an application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not.”

It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party acts and behaves.

17. A reference to the principle stated in Balwant Singh (dead) v. Jagdish Singh and others [(2010) 8 SCC 685] would be quite fruitful. In the said case the Court referred to the pronouncements in Union of India v. Ram Charan [AIR 1964 SC 215], P.K. Ramachandran v. State of Kerala [(1997) 7 SCC 556] and Katari Suryanarayana v. Koppiseti Subba Rao [(2009) 11 SCC 183] and stated thus:-

“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both

parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

18. Recently in Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai [(2012) 5 SCC 157], the learned Judges referred to the pronouncement in Vedabai v. Shantaram Baburao Patil [(2001) 9 SCC 106] wherein it has been opined that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises. Thereafter, the two-Judge Bench ruled thus:-

“23. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

19. Eventually, the Bench upon perusal of the

application for condonation of delay and the affidavit on record came to hold that certain necessary facts were conspicuously silent and, accordingly, reversed the decision of the High Court which had condoned the delay of more than seven years.

20. *In B. Madhuri Goud v. B. Damodar Reddy [(2012) 12 SCC 693]*, the Court referring to earlier decisions reversed the decision of the learned single Judge who had condoned delay of 1236 days as the explanation given in the application for condonation of delay was absolutely fanciful.
21. 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 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.*

22. *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 nonchalant manner requires to be curbed, of course, within legal parameters.”

11 I find from the record available that laches/ motives cannot be attributed to the conduct of the Petitioner. He was working as a Typist-cum- Clerk with the Respondent/ Institution. Apparently, on a legal advise, he had preferred the civil suit and on realizing lack of jurisdiction in the Civil Court, he had withdrawn the said suit. Similar is the case in filing the complaint before the Industrial Court and the writ petition before this Court, which were withdrawn.

12 The Petitioner has permanently lost his employment. He is practically rendered remedy-less. If the doors of litigation are closed upon him, he would not be in a position, in his lifetime, to challenge his purported illegal/ stigmatic termination. From the affidavit in reply filed by the Respondent/ Institution, it appears that the Respondent/ Institution claims that the Petitioner has abandoned employment and had remained unauthorizedly absent and hence, has been terminated. These aspects

need to be gone into by a court of competent jurisdiction.

13 It is well settled that the Court should take a pragmatic view in the matters of delay rather taking a pedantic approach. I find that the impugned order passed by the School Tribunal reflects a pedantic approach.

14 The rigours of litigation suffered by the Respondent/ Institution could be mitigated by depriving the Petitioner of all incidental and consequential benefits in the event he succeeds before the School Tribunal for the period of delay, save and except the notional continuity of service.

15 Since I find that the Petitioner has not acted intentionally or deliberately and the delay caused is neither willful nor with oblique motives, I conclude that the impugned order deserves to be set aside so as to enable the Petitioner to canvass his grievance against the termination.

16 In the light of the above, this Writ Petition is partly allowed to the extent of quashing and setting aside the impugned order dated 04.07.1998. Application Exhibit-2, therefore, stands allowed and the delay stands condoned.

17 Nevertheless, the period from the date of termination which is 22.05.1994 till the filing of the appeal on 14.08.1997 shall be considered by the School Tribunal for depriving the Petitioner of all incidental and consequential benefits, save and except the notional continuity of service in the event his appeal is allowed.

18 The litigating parties shall appear before the School Tribunal on 19.10.2015 and shall refrain from seeking unnecessary adjournments. Formal notices need not be issued to the parties.

19 Since the appeal was presented in 1997 and as this petition was pending in this Court ever since, I am hereby directing the School Tribunal to register the appeal and decide the same on its own merits, as expeditiously as possible and preferably on or before 30.04.2016.

20 Rule is, therefore, made partly absolute in the aforesaid terms.

21 The pending Civil Application does not survive and hence, is disposed of.

(RAVINDRA V. GHUGE, J.)