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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6860/2009

- 1 Asha D/o Panditrao Gitte,
 Age 33 years, Occu. Service,
 Head Mistress,
 Sainath Madhyamik Vidyalaya,
 Waghbet, Tq. Parli-Vaijinath,
 Dist. Beed.

- 2 Tanaji Malusare Shikshan
 Prasarak Mandal, Waghbet,
 Tq. Parli-Vaijinath,
 Dist. Beed, Through its President,
 Radhakisan S/o Dnyanoba Gitte,
 Age : 48 years, Occu. Agri., ...Petitioners...

Versus

- 1 Education Officer (Secondary),
 Zilla Parishad Beed.

- 2 Arun S/o Uttamrao Gitte,
 Age 33 years, Occu. Nil,
 R/o Waghbet, Tq. Parli-Vaijinath,
 Dist. Beed. ...Respondents...

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Shri Sachin S. Deshmukh, Adv. for petitioners.
Shri V. G. Shelke, AGP for respondent No.1.
Shri R. J. Godbole, Adv. For respondent No.2.

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CORAM: RAVINDRA V. GHUGE, J.
DATE: 15.12.2015

ORAL JUDGMENT :

- 1] This petition was admitted by order dated

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12.10.2009, which reads as follows:-

"1. Heard learned Counsel for the petitioners and learned Counsel for respondent Caveator.

2. Rule.

3. It is made clear that the decision of Appeal No. 8/2006 pending before the Presiding Officer, School Tribunal, Aurangabad will be subject to the decision of this Writ Petition."

2] The petitioner is aggrieved by the order dated 17.4.2007 passed by the School Tribunal, Aurangabad, by which the application for condonation of delay in Appeal No.8/2006 was allowed and the delay of 7 months and 11 days has been condoned.

3] Shri Deshmukh has strenuously criticized the impugned order. He submits that the reasons put forth by the respondent - appellant were not acceptable. The delay can be condoned only if proper reasons are assigned and if the reasons for delay would indicate that the applicant was precluded by circumstances from approaching the School Tribunal at the earliest and within the limitation of 30 days. He, therefore, submits that the School Tribunal has considered the application only out of sympathy and ought not to have accepted the reasons

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cited by the respondent no.1 - appellant.

4] Shri Deshmukh further points out the grounds raised in the memo of this petition below paragraph no.8(i) to (viii) in support of his contention that the impugned order of the Tribunal condoning the delay deserves to be quashed and set aside.

5] Shri Godbole, learned Advocate appearing on behalf of the respondent no.2 - employee, supports the impugned order.

6] I have considered the submissions of the learned Advocates.

7] It is trite law that an application for condonation of delay, unless the delay is inordinate and deliberate, has to be considered liberally. It has to be kept in mind that the applicant who presents the application for condonation of delay, is not attributed with any laches. So also, it needs to be looked at as to whether the applicant would become remediless if the application for condonation of delay is rejected.

8] The Apex Court in the matter of *Collector, Land Acquisition, Anantnag v. Mst.Katiji* (AIR 1987 SC 1353) has observed in paragraph no.3 as under:-

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"An appeal preferred by the State of Jammu & Kashmir arising out of a decision enhancing compensation in respect of acquisition of lands for a public purpose to the extent of nearly 14 lakhs rupees by making an upward revision of the order of 800% (from Rs. 1000 per kanal to Rs.8000 per kanal) which also raised important questions as regards principles of valuation was dismissed as time barred being 4 days beyond time by rejecting an application for condonation of delay. Hence this appeal by special leave. 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

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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

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on technical grounds but because it is capable of removing injustice and is expected to do so. "

9] In the instant case, there is no dispute that the respondent no.2 had preferred his appeal after the limitation period was over. A delay of 7 months and 11 days was caused. Laches have not been attributed to the conduct of the employee. The delay is neither inordinate nor deliberate. In these circumstances, if the delay was not to be condoned, the respondent no.2 - employee who had lost his employment would have been rendered remediless and consequentially would have suffered civil death on account of loss of employment.

10] As observed by the Apex Court in the *Collector, Land Acquisition, Anantnag* (supra), by condonation of delay, the matter in relation to the cause of action would be considered on the respective merits of the cases of the litigating sides. This, therefore, cannot be termed to be an erroneous order or a perverse order.

11] As such, this petition being devoid of merits is dismissed. Rule is discharged. No costs.

(RAVINDRA V. GHUGE, J.)