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

WRIT PETITION NO. 9487 OF 2015

MANOHAR DADAJI NERKAR
VERSUS
MAHATMA JYOTIRAO PHULE SHIKSHAN SANSTHA THROUGH ITS
PRESIDENT AND OTHERS

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Advocate for Petitioner : Shri Patil Sandesh R.

AGP for Respondent Nos.3 and 4 : Shri D.R.Korde.

Advocate for Respondent Nos.1 and 2 : Shri Deshmukh Sachin S.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th October, 2015

Per Court:

1 The Petitioner is aggrieved by the impugned order dated 29.06.2015 passed by the School Tribunal, Nashik in Miscellaneous Application No.08/2014 by which, the request for condonation of delay in approaching the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, “the MEPS Act, 1977”), has been turned down.

2 The Petitioner submits that he was terminated by the Respondent/ Management on 12.07.2012. Under a bonafide belief that

the Labour Court will have jurisdiction in view of the fact that the Petitioner was working as a Superintendent, he preferred Complaint (ULP) No.32/2012 within the limitation of 90 days as prescribed under the MRTU & PULP Act, 1971.

3 Eventually, as it was revealed that the Labour Court has no jurisdiction, the Petitioner moved an application on 03.03.2014 before the Labour Court praying for leave to withdraw the complaint so as to approach the Court having jurisdiction. The complaint was, therefore, permitted to be withdrawn by the order of the Labour Court dated 03.03.2014.

4 The Petitioner further submits that he immediately lodged an appeal under Section 9 of the MEPS Act, 1977 before the School Tribunal on 11.03.2014. The circumstances, on account of which the delay was caused, were explained in the application for condonation of delay. The School Tribunal, by the impugned order dated 29.06.2015, has rejected the application for condonation of delay on the ground that there is inordinate delay caused by the Petitioner in approaching the School Tribunal.

5 It is pointed out that though the School Tribunal has noted

that the Petitioner had approached the Labour Court, it has held that the exact number of days of delay in filing the appeal, have not been mentioned by the Petitioner. It has also been observed that the Petitioner has not taken the pains to produce the certified copy of the order passed by the Labour Court on 03.03.2014. The Petitioner, therefore, prays that this petition be allowed and the delay caused be condoned.

6 Respondent Nos.1 and 2 have preferred an affidavit in reply. The learned Advocate appearing for the said Respondents strenuously contends that the Petitioner's approaching the Labour Court cannot be said to be a ground for condonation of delay. The Labour Court has not granted liberty to the Petitioner to approach the competent Court. It is obligatory on the part of the Petitioner to explain the delay of each and every day as per the ratio laid down in the judgments in *Ajit Singh Thakur Singh v/s State of Gujarat*, **1981(1) SCC 495** and in *State of Maharashtra v/s Vithu Kalya Govari*, **2008(6) Mh.L.J. 239**.

7 It is further contended that the School Tribunal has not committed any error in coming to the conclusion that the delay is not properly explained.

8 I have considered the submissions of the learned Advocates as

have been recorded herein above.

9 It is undisputed that the Petitioner approached the Labour Court challenging his termination, within limitation. After realizing that the complaint was not tenable, since the Petitioner was working as a Superintendent with the Respondent/ Management and there is a specific Act provided for enabling the Petitioner to approach the School Tribunal, the Petitioner moved an application on 03.03.2014 before the Labour Court specifically stating therein that he is withdrawing the complaint as the Labour Court does not have jurisdiction. He intends to prefer a proper proceeding before the Court having jurisdiction to deal with the matter. The Respondent/ Management has not opposed the said application. The Labour Court has granted permission to withdraw the complaint. The application was thus, allowed.

10 It, therefore, needs to be construed, in order to ensure that ends of justice would be met, that the prayer of the Petitioner was accepted. He was, therefore, entitled to file his appeal before the School Tribunal.

11 The Apex Court in the case of *Collector, Land Acquisition, Anantnag v/s Mst.Katiji*, **AIR 1987 SC 1353**, has observed in paragraph 3

as follows:-

“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.”

12 It is, therefore, trite law that while dealing with an application for condonation of delay, each and every day's delay is not required to be explained. As has been observed by the Apex Court in matter of Collector, Land Acquisition, Anantnag (supra) that if the logic is to explain each and every day's delay then, why not explain each and every hour's delay.

13 I find that the impugned order delivered by the School Tribunal apparently displays non application of mind. It is surprising that the School Tribunal lost sight of the fact that the Petitioner had approached the Labour Court under a wrong advise. The valuable rights of the litigant cannot be taken away only on account of being guided wrongly in approaching the Court which has no jurisdiction. The School Tribunal has adopted a pedantic approach which has been deprecated by the Apex Court in the case of Collector, Land Acquisition, Anantnag (supra).

14 Having approached the School Tribunal on the 08th day from the date of withdrawing the complaint before the Labour Court, it was expected that the School Tribunal should have shown pragmatism in allowing the said application. It is surprising that the School Tribunal has observed that exact days of delay and reasonable grounds for delay have not been mentioned in the application for condonation of delay.

15 It is in these circumstances the impugned order passed by the School Tribunal is perverse and erroneous. The same, therefore, deserves to be quashed and set aside.

16 In the light of the above, this Writ Petition is allowed. The impugned order dated 29.06.2015 is quashed and set aside. Miscellaneous Application No.8/2014 stands allowed.

17 The School Tribunal shall register the appeal filed by the Petitioner and shall decide the same in accordance with law.

(RAVINDRA V. GHUGE, J.)