

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1309 OF 2003
WITH
CIVIL APPLICATION NO.12423 OF 2015

Narayan Mariba Chavan
Age-33 years, Occu-Nil,
R/o Indira Gandhi Vidyalaya,
Gandhora, Tq.Tuljapur,
Dist. Osmanabad

PETITIONER

VERSUS

1. Jivan Vikas Sikshan Sanstha,
Tuljapur, Tq.Tuljapur,
Dist.Osmanabad,

2. The Head Master,
Indira Gandhi Vidyalaya,
Gandhora, Tq. Tuljapur,
Dist.Osmanabad,

3. The Education Officer (Secondary),
Zilla Parishad,
Osmanabad, Tq. And Dist.
Osmanabad

RESPONDENTS

Mr.M.P.Tripathi, Advocate for the petitioner.
Mr.U.K.Patil, Spl.Counsel with Mr.D.R.Korde, AGP for State/
respondent No.3.
Respondent Nos. 1 and 2 served.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 09/10/2015

ORAL JUDGMENT :

1. The petitioner submits that he has challenged the impugned

order of the School Tribunal dated 05/11/2001 by which the application for condonation of delay, has been rejected thereby refusing to condone the delay of 9 months and 10 days.

2. The only issue involved in this petition is the refusal of the School Tribunal to condone the delay and this petition is pending hearing for 12 years. I have heard the learned Advocates on the civil application seeking a final hearing in the petition and the same, therefore, stands allowed. They have addressed the Court finally on the Writ Petition.

3. Mr.Tripathi, learned Advocate for the petitioner has drawn my attention to the application for condonation of delay. He submits that it was specifically set out in the application that he had suffered oral termination on 23/12/1999 as an 'Assistant Teacher' in the school. He approached the Education Officer by filing representations and such representations were also submitted to the Management. The Education Officer, by orders dated 17/01/2000, 27/01/2000 and 15/02/2000, directed the Management to permit the petitioner to perform his duties. Since the Management did not respond and kept the petitioner at bay, he realized that the Management was not inclined to comply with the directions of the Education Officer.

4. In these circumstances, he had filed the appeal on 03/10/2000 and had supported his prayer for condonation of delay with an affidavit, which is also placed on record.

5. He further submits that the Management opposed the application for condonation of delay strenuously resulting in the passing of the impugned order dated 05/11/20001. Consequentially, the petitioner had no option but to file this writ petition. On 11/09/2003, none appeared for the petitioner and this Court, by its order dated 11/09/2003, admitted the petition making Rule returnable within 8 weeks. Since then, the petition was to be heard finally as this Court had passed an order on 01/07/2011 in CA No.13730/2010 listing the petition for final hearing.

6. He further submits that even if the delay appears to be of about 9 months, the petitioner has not caused the delay with ulterior motives. He gains no advantage by delaying his matter. Owing to the rejection of the condonation of delay application, the School Tribunal has dismissed the appeal by its order dated 05/11/2001. He, therefore, prays for allowing of this petition.

7. Mr.Patil, learned Advocate appearing on behalf of the Management, has strenuously opposed the petition. He draws my attention to the affidavit in reply filed by the Management alongwith several complaints by girl students as well as their parents concerning the inappropriate behaviour of the petitioner.

8. He further submits that the petitioner was on probation from 14/06/1999. Complaints objecting to his inappropriate behaviour were lodged on 14/08/1999 and onwards which is in less than two months from the commencement of his probation period. Apprehending disciplinary action or any other action at the hands of the Management, the petitioner stopped reporting for duties and approached the School Tribunal.

9. He further submits that after the petitioner himself left employment, a new person was appointed in his place to ensure that the imparting of education does not suffer. The said person has now been confirmed in employment and his services have also been approved.

10. Mr.Patil, therefore, submits that this petition does not deserve to be entertained. Alternatively, he submits that if this Court is

inclined to condone the delay, the petitioner should be deprived of all monetary benefits as well as continuity of service in the event he succeeds for the above mentioned reasons, as well as on account of a new person having been appointed, in his place and his services are approved.

12. I have considered the submissions of the learned Advocates as have been recorded above.

13. It is trite law that applications for condonation of delay are to be treated liberally in the event it is noticed that the delay is not inordinate, deliberate and intentional and if no laches are attributed to the conduct of the applicant. It also needs to be seen whether the applicant would be rendered remediless and would not be able to question the injustice caused to him if the application for condonation of delay is rejected.

14. In the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], the Honourable Apex Court has laid down guidelines while dealing with the application for condonation of delay, which are ;

" 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."

15. In the instant case, I do not find that the delay of 9 months would be said to be an inordinate delay. By the rejection of the

application, the petitioner is precluded from questioning his termination dated 23/12/1999 and is practically rendered remediless. As held in the Collector, Land Acquisition Case (supra), the condonation of delay would enable the applicant to canvass his case and the Tribunal would decide the matter on its merits.

16. As such, I find that the impugned order of the Tribunal dated 15/11/2001 is rendered unsustainable. Same is, therefore, quashed and set aside. The application for condonation of delay stands allowed and the appeal preferred by the petitioner shall stand restored and registered, subject to depriving the petitioner of all monetary benefits for the period 23/12/1999 till 05/11/2001, save and except notional continuity in service for the said period in the event the appeal is allowed.

17. The Tribunal shall note that the respondent claims that the petitioner was on probation and shall decide the appeal by considering all the contentions of the litigating sides. The Tribunal shall also bear in mind that a new person has been appointed in place of the petitioner and in the event the petitioner succeeds in the appeal, the Tribunal shall consider the approved employment of the said person while considering the request of grant of consequential

reliefs by the petitioner.

18. Rule is, therefore, made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)