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

WRIT PETITION NO. 8497 OF 2013

SHRI SHIVAJI SHIKSHAN SANSTHA, BHAT-SANGVI(TANDA)
VERSUS
KANHOBA SONAJI GHANGALE AND OTHERS

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Advocate for Petitioners : Mr.Salunke V.D.

Advocate for Respondents : Mr.Kudale Bhagwan S. for R/1.

AGP for Respondent No.3 : Mrs.V.A.Shinde.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th June, 2015

Per Court:

1 Heard.

2 The Petitioner takes exception to the order dated 06.09.2013 delivered by the School Tribunal, Latur in Miscellaneous Application No.1/2013, thereby condoning the delay caused by Respondent No.1 in filing his appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act, 1977) for challenging the order of termination dated 23.04.2012 which was given effect to on 01.05.2012.

3 Mr.Salunke, learned Advocate for the Petitioner, has strenuously contended as under:-

- (a) Respondent No.1 was appointed as a “Cook” in the Secondary Ashram School conducted by the Petitioner Educational Institution from 1998 and was terminated from service by order dated 23.04.2012 which took effect on 01.05.2012.
- (b) Respondent No.1 preferred an appeal before the Additional Commissioner (Tribal) on 19.07.2012 for challenging his termination.
- (c) Respondent No.1 had approached a wrong forum.
- (d) On 29.10.2012, the application/ appeal filed by Respondent No.1 was disposed of as being untenable by the Additional Commissioner (Tribal).
- (e) On 05.01.2013, Respondent No.1 preferred an appeal under Section 9 of the MEPS Act, 1977 before the School Tribunal at Latur along with an application seeking condonation of delay of 37 days.
- (f) By the impugned order dated 06.09.2013, the application filed by Respondent No.1 was allowed and the delay was condoned subject to the costs of Rs.2000/- to be paid by the First Respondent to the Petitioner.
- (g) Respondent No.1 has approached a wrong forum for which

no sympathy deserves to be shown.

- (h) Even while approaching a wrong forum, Respondent No.1 filed his application/ appeal on 19.07.2012 which is about 79 days after his termination came into effect on 01.05.2012.
- (i) There is no explanation why Respondent No.1 has caused the delay beyond 30 days in preferring his first application on 19.07.2012.
- (j) Even after the Additional Commissioner (Tribal) disposed of the appeal of Respondent No.1 on 29.10.2012, he was expected to file his appeal before the School Tribunal within 30 days, which should have occurred on or before 28.11.2012.
- (k) Respondent No.1 preferred his appeal on 05.01.2013 thereby, again consuming 67 days in approaching the School Tribunal.
- (l) There is no explanation why Respondent No.1 consumed 67 days in filing his appeal before the School Tribunal.
- (m) Total delay from the date of termination till the date of filing the appeal before the School Tribunal, excluding the period of limitation of 30 days, is about 237 days and the same amounts to an inordinate delay.
- (n) The explanation set out by Respondent No.1 is not satisfactory and does not deserve to be accepted.

- (o) The impugned order dated 06.09.2013 be quashed and set aside and Miscellaneous Application No.1/2013 deserves to be rejected.

4 Mr.Kudale, learned Advocate appearing for the contesting Respondent No.1, submits as under:-

- (a) After his termination, Respondent No.1, who is a “Cook” and not a highly qualified person, wrongly approached the Additional Commissioner (Tribal) believing that it was an appropriate remedy.
- (b) After the Petitioner appeared in the matter, filed it's reply and after the hearing on the application of Respondent No.1, the concerned Authority concluded that it did not have jurisdiction to entertain the grievance of Respondent No.1.
- (c) After the concerned Authority disposed of the application of Respondent No.1 on 29.10.2012, he searched for an Advocate and after noticing the appropriate forum, an appeal was filed on 05.01.2013 before the School Tribunal.
- (d) About 79 days were consumed earlier in approaching a wrong forum.
- (e) About 101 days were consumed as the proceedings before a wrong forum were pending.

- (f) 67 days were consumed in preferring an appeal before the School Tribunal.
- (g) By reducing the limitation period of 30 days in approaching a correct forum, delay is only of 37 days.
- (h) Delay is neither deliberate nor intentional.
- (i) If the delay is not condoned, the doors of litigation would be closed on Respondent No.1 and he would be rendered remedy-less.

5 I have considered the submissions of the learned Advocates who have taken me through the petition paper book.

6 It is not in dispute that Respondent No.1 approached an incorrect forum. He has spent considerable time in his proceedings before such a forum. After his application was disposed of, it was expected that he would approach the appropriate forum within limitation. Delay was caused even in approaching a correct forum after the Additional Commissioner (Tribal) disposed of his proceedings.

7 The Apex Court in the case of *Collector, Land Acquisition, Anantnag v/s Mst.Katiji*, reported in 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.”

8 In the instant case, though the delay has indeed been caused by Respondent No.1 in approaching the School Tribunal, it appears that the delay is not deliberate or intentional. Respondent No.1 does not gain any advantage in delaying his own appeal since he is questioning his termination and he is presently unemployed. As such, it cannot be said that laches are attributable to his conduct since he gains no benefit by delaying his own matter in the face of continued unemployment.

9 Nevertheless, the School Tribunal has imposed costs of Rs.2000/- on Respondent No.1, which amount has been deposited before the Tribunal, as per the statement made before this Court.

10 I am, therefore, of the view that a pedantic approach ought not be taken in such a matter wherein the issue involved is of loss of employment and when refusal to condone the delay would close the doors of litigation on Respondent No.1. He would be rendered remedy-less. I do not find that the delay caused could be termed as being inordinate.

11 In the light of the above, I do not find any merit in this Writ
Petition. It is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)