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

WRIT PETITION NO. 10790 OF 2015

- 1 Bhagwanbaba Shikshan Prasarak Mandal,
Warni, Tq.Shirur Kasar, District Beed.
Through it's President
Dashrath Rambhau Sabale,
Age : 45 years, Occ : Service,
R/o Warni, Tq.Shirur Kasar,
District Beed.
- 2 Wanbhau Madhyamik Vidyalaya,
Shirur Kasar, Tq.Shirur Kasar,
District Beed.
Through it's Headmaster.

...PETITIONERS

-VERSUS-

Anil S/o Umaji Bramharakshas,
Age : 32 years, Occ : At present Nil,
R/o At Post Vihamandava,
Tq.Paithan, District Aurangabad.

...RESPONDENT

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Advocate for Petitioners : Shri R.T.Nagargoje h/f Nagargoje Govind R.

Advocate for Respondent : Shri Sunil B. Jadhav.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 28th October, 2015

Oral Judgment:

- 1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner is aggrieved by the impugned order dated 09.09.2015 passed by the School Tribunal, Aurangabad by which Miscellaneous Application No.7/2015 filed by the Respondent seeking condonation of delay, has been allowed.

3 The Petitioner/ Management contends that the Respondent/ Employee voluntarily resigned on 27.11.2014. He filed an affidavit on 30.11.2014. The resignation with the affidavit was accepted by the Petitioner on 15.01.2015.

4 It is further stated that the Respondent is a temporary employee. Therefore, Rule 40 of the MEPS Rules mandating accepting of resignation of a non permanent employee after 30 days has been complied with.

5 The appeal is preferred on 11.03.2015 along with the application for condonation of delay. The date of termination is wrongly stated by the Respondent. The Petitioner has not terminated his service. He submitted his resignation and the same is accepted on 15.01.2015. The limitation for preferring an appeal under Section 9 of the MEPS Act before the School Tribunal is 30 days from the date of severing of employer-

employee relationship.

6 Shri Nagargoje, learned Advocate for the Petitioner, therefore, strenuously submits that the delay is of 07 months and 14 days and not of 10 days.

7 The learned Advocate for the Respondent submits that the impugned order is legal and sustainable. Ultimately, the Respondent would make an effort to make out a case of forceful termination and extracting resignation under coercion before the School Tribunal. By the very admission of the Petitioner, the resignation of the Respondent is accepted on 15.01.2015. The limitation period, therefore, would end on 15.02.2015. The appeal is preferred on 11.03.2015.

8 It is, therefore, submitted that in any case, the delay caused in filing the appeal is not to be computed from the date of forceful resignation dated 27.11.2014, but from the date of acceptance of that resignation.

9 I have considered the submissions of the learned Advocates for the respective sides.

10 The issue as to whether, the resignation is forcefully extracted or not, will have to be gone into by the School Tribunal. The issue as to whether, the Respondent was a permanent or non permanent employee, will also have to be gone into by the School Tribunal.

11 It is trite law that the merits of the matter are not to be scrutinized at the time of condonation of delay.

12 The law on condonation of delay is well settled by the Apex Court in the case of *Collector, Land Acquisition, Anantnag v/s Mst.Katiji*, **AIR 1987 SC 1353**. The observations of the Apex Court in paragraph 3 read thus:-

“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."

13 In the light of the above, I do not find that laches are attributable to the conduct of the Respondent. Refusal to condone the delay would have closed the doors of litigation on the Respondent rendering him remedy-less. The delay caused can neither be termed as inordinate nor deliberate, as the Respondent does not derive any advantage on account of delay.

14 In such circumstances the impugned order could not be termed as being perverse or erroneous. The condonation of delay would not amount to causing grave injustice to the Petitioner in the light of the ratio laid down by the Apex Court in *Syed Yakoob v/s K.S.Radhakrishnan*, **AIR 1964 SC 477** and *Surya Dev Rai v/s Ram Chander Rai*, **AIR 2003 SC 3044**.

15 In the light of the above, this Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)