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

WRIT PETITION NO. 11568 OF 2015

SANE GURUJI SHIKSHAN PRASARAK MANDAL THROUGH ITS
PRESIDENT MILIND TILA PATIL AND

VERSUS

MAHESH APPASAHEB GAVANDE AND ANOTHERS

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Advocate for Petitioners : Shri Mukhedkar Amit A.

AGP for Respondent No.2 : Shri P.G.Borade.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th December, 2015

Per Court:

1 The Petitioner/ Management is aggrieved by the judgment and order dated 04.08.2015 delivered by the School Tribunal, Aurangabad in Miscellaneous Application No.18/2013 by which the said application for condonation of delay is allowed and the Appeal preferred by Respondent No.1/ Employee is registered.

2 Shri Mukhedkar, learned Advocate for the Petitioner, has strenuously criticized the impugned order. The contention is that by a specific order dated 16.06.2011 at page 34 of the petition paper book, Respondent No.1 was informed that his services are terminated w.e.f. 25.01.2011.

3 He submits that the appeal was filed in May, 2012 before the School Tribunal and the application for condonation of delay was filed on 26.07.2013. He further submits that merely because Respondent No.1 filed representations to the Management to reconsider its decision of terminating him, cannot be a ground for condonation of delay in the light of the judgment of this Court in the matter of *Ajabrao Tulsiramji Patinge vs. Shri Samarth Institution of Education and others*, **2009 (0) BCI 598** and in the matter of the *Executive President and others vs. Bhaskar Bhagwant Yadav and others*, **2001 (1) BCR 159 : 2001 (2) Mh.L.J. 226**.

4 He has taken me through the impugned judgment of the School Tribunal and has also drawn my attention to the application for condonation of delay. He, therefore, prays that the impugned order deserves to be quashed and set aside and this petition deserves to be allowed.

5 I have considered the submissions of the Petitioner as have been recorded herein above.

6 It is the contention of the Petitioner that Respondent No.1

was terminated by the order dated 16.06.2011 by which his services as a Junior Clerk have been brought to an end w.e.f. 25.01.2011. The Petitioner confirms that this is the order of termination.

7 Considering the termination order, I find that the same has been issued with retrospective effect and the termination with retrospective effect has been held to be impermissible in law by the Division Bench of this Court in the case of *Assaram Raibhah Dhage vs. Executive Engineer, Sub Divisional, Mula*, **1988 (4) Bom. C.R. 158 : 1987**

(2) CLR 231. The observations of this Court read as under:-

- “(1) The services of an employee, be he permanent or temporary, cannot be terminated with retrospective effect. Such is the ratio of this judgment.
- (2) On June 7, 1980 the petitioner, a project displaced person, was appointed as a Mustering Assistant in the Work Charge Establishment at a monthly salary of Rs.200/-. Thereafter he worked continuously without break in service till March, 1986, when by a letter of termination dated March 11, 1986 his services were retrospectively terminated with effect from March 1, 1986. Hence this writ petition.
- (3) The petitioner's learned counsel Miss Purohit is perfectly justified in making a grievance that it is unthinkable that an employee's services can be terminated with retrospective effect, as done in the present case. We join learned Counsel in her astonishment. For that matter, one of the conditions in the letter of appointment is that if the petitioner desired to resign he was liable to pay one months salary or give one months notice. It is therefore, ironical that on the other hand, the petitioner's services were terminated with retrospective effect.

- (4) *However, the respondents' learned Counsel Mr.Bhatkar ventures that the date of termination, namely March 1, 1986 in the letter of termination must be typographical error. This is an ipse dixit, it is purely conjecture and speculative reasoning. Significantly enough, in the affidavit in reply, no such case of a typographical error is even faintly suggested. For that matter, despite the fact that in the petition it has been categorically stated in no uncertain terms that by this letter of termination, the petitioner's services were terminated with retrospective effect from March 1, 1986 not even the whisper of a denial is to be found in the affidavit in reply. Thus, the myth of a typographical error stated across the Bar can safely be ruled out.*
- (5) *Mr.Bhatkar now takes refuge that the petitioner's appointment was merely temporary. However, he is unable to say under what provisions of law the petitioner's employment, even if temporary, could be terminated with retrospective effect.*
- (6) *In the result, the termination order dated March 11, 1986 is set aside. The petitioner shall be paid his salary as if he had continued to be in employment. The Rule is made absolute accordingly with costs."*

8 In the light of the above, it needs to be seen whether, Respondent No.1 draws any advantage by intentionally delaying the filing of his appeal and as to whether, the delay caused in filing the appeal could be fatal to his case. It also needs to be considered, whether, the delay caused could be said to be inordinate and/or deliberate. In addition to the above, it also has to be seen as to whether, Respondent No.1 would be rendered remedy-less for challenging the order of termination dated 16.06.2011 which has been issued with retrospective effect from

25.01.2011.

9 In the matter of Ajabrao Tulsiramji Patinge (supra), the delay was of more than 360 days. Similarly, in the case of the Executive President vs. Bhaskar Yadav (supra), the delay was of about three years. In the instant case, the appeal has been filed in May, 2012 and as such, beyond the limitation period of 30 days the delay is of about 270 days.

10 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."

11 Considering the facts of this case and the ratio laid down by the Apex Court in the case of Collector, Land Acquisition, Anantnag (supra), I am of the view that the judgments delivered by this Court in the cases of Ajabrao Tulsiramji Patinge (supra) and Executive President vs. Bhaskar Yadav (supra), would not be applicable to this case.

12 It is not revealed from the record that Respondent No.1 could derive any advantage by intentionally delaying the filing of his appeal. So

also, the delay cannot be said to be inordinate or deliberate. Laches are not attributed to the conduct of Respondent No.1. In this backdrop, if the delay was not condoned, Respondent No.1 would not get an opportunity of challenging the order of termination dated 16.06.2011 which has been given retrospective effect and which is impermissible in the light of the Division Bench judgment of this Court in the case of Assaram Dhage (supra).

13 Considering the fact situation, I do not find that the School Tribunal has committed any error in condoning the delay vide its order dated 04.08.2015. This petition being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)