

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6978 OF 2014

Deogonda Rajgonda Patil .. Petitioner
vs.
Appasaheb Daulu Khede & Ors. .. Respondents

Mr. Prabhakar Jagdale and Mr. Shripad Jagdale for Petitioner.
Mr. Venkatesh Shastry with Mr. Swapnil Walve for Respondent No. 1.
Mr. M. L. Patil for Respondent Nos. 2 to 4.
Mr. A. D. Kango – AGP for Respondent No. 5.

CORAM : M. S. SONAK, J.
DATE: 30 JANUARY 2015

P.C. :-

1] Rule. With the consent and at the request of the learned counsels for the parties, Rule is made returnable forthwith. In fact by order dated 12 January 2015, the parties were put to notice that this matter would be taken up for final disposal on 30 January 2015.

2] This petition is directed against the order dated 30 April 2014, by which the School Tribunal has refused to condone delay of about 67 days in filing an appeal.

3] The perusal of the impugned order would indicate that the School Tribunal has adopted an unduly rigid approach. Besides, the Tribunal has proceeded on the basis that the only cause shown by the petitioner was inability to get legal assistance on account of

agitation by Advocates from the period between 29 August 2013 to 30 October 2013. The Tribunal, has further approached the issue on basis of the conception that the petitioner was required to explain every day's delay with mathematical precision. Such approach, is contrary to well settled position of law, in matters of considering applications for condonation of delay.

4] It is the case of the petitioner that his services were '*otherwise terminated*' with effect from 17 June 2013, when he was not permitted to sign the muster roll. The limitation for filing of appeal against termination is 30 days and therefore the appeal ought to have been filed on or before 17 July 2013. However, the same has been filed on 25 September 2013 i.e. after a delay of about 67 days.

5] In his application seeking condonation of file filed along with memo of appeal, the petitioner has made reference to previous petition, namely writ petition no. 2055 of 2012 preferred by him in this Court. The same was disposed of by order dated 21 March 2013. However, certain corrections were applied for and the same were granted by the order dated 21 June 2013. It is the case of the petitioner that such orders were obtained by the petitioner sometime in July 2013. Further, the petitioner, in the said application had made reference to communication dated 10 July 2013 addressed by

him to the Education Officer requesting for advise in the matter of proper course of action to be adopted in the light of the orders made by this Court in writ petition no. 2055 of 2012. Thereafter, the petitioner had made reference to the agitation of lawyers for the period 29 August 2013 and 23 October 2013, on account of which, it was difficult for the petitioner to obtain proper legal advise in the matter of the remedy available to him.

6] Mr. Shastry, the learned counsel appearing for the respondent no. 1 defended the impugned order made by the School Tribunal by contending that there was no jurisdictional error or perversity in making of the same. Mr. Shastry submitted that in the present case, the proceedings pending before the High Court had absolutely no nexus with the issue of so-called termination of the petitioner's services. Further, Mr. Shastry even attempted to contend that the cause of action in the present case cannot be 17 June 2013 but it must be some date prior in point of time. It was emphasized that for a period of over a month, no explanation was offered and the Tribunal has rightly held that in absence of any explanation, the delay could not have been condoned.

7] At the outset, the very status of the respondent no. 1 as a party in the present petition is by no means clear. The petitioner has been described as a President of Shri Gajanan Shikshan Sanstha.

At the same time, the respondent no. 2 has also been described as being the President of the very same society. Mr. Patil had put in appearance on behalf of the respondent nos. 2, 3 and 4 who are the the President, Secretary and the Head Master respectively. Be that as it may, there is absolutely no merit in the submissions made by and on behalf of the respondent no. 1.

8] The question is really not whether there is any nexus with the writ petition which was pending in this Court and the issue of termination of the petitioner. The real question is the perception of the petitioner in that regard. Even otherwise the facts would indicate that the writ petition was concerning the issue of surplusage. The petition was disposed of by order dated 21 March 2013, which was thereafter clarified on 21 June 2013. The petitioner has stated that this order was received by him sometime in July 2013. This is quite reasonable. In these circumstances, it cannot be said that the proceedings before the High Court had no nexus whatsoever with the issue of the petitioner's termination. In any case, it was absolutely natural for the petitioner to consider the orders made by this Court in the petition already filed by him in the matter of deciding upon the remedy which he ought to adopt.

9] The petitioner has placed material on record precisely in this regard. The material is in form of written communications addressed by the petitioner to the Education Officer specifically seeking the Education Officer's advise as to the remedy which the petitioner ought to adopt in the matter, in the light of the orders made by this Court. There is ample cause shown by the petitioner as to why it was not possible for him to file the appeal within the prescribed period of limitation.

10] In fact the School Tribunal has also accepted that cause was shown for almost half the period, but has thereafter proceeded to say that there is no cause shown for the balance period. This reasoning of the Tribunal, apart from being highly pedantic, indicates very clearly that the School Tribunal did not advert to the application seeking condonation. Time and again the Supreme Court as well as this Court has laid down that there is no obligation to explain each day's delay. As long as explanation offered is reasonable, bonafide or does not smack any malafides or is not put forth as a part of some dilatory strategy, the courts and the Tribunal are expected to show utmost consideration in the matter, so that the cause on merits is not thrown out. The impugned order made by the Tribunal completely ignores this approach.

11] The School Tribunal has itself not accepted that the cause of action occurred in favour of the petitioner at any date prior to 17 June 2013. There is no error in not accepting this position. Accordingly, there is no merit in the submission made on behalf of the respondent no. 1 that the cause of action had in fact occurred at some date prior to 17 June 2013.

12] In my judgment, the cause shown by the petitioner was certainly a sufficient cause. In rejecting such cause, by applying incorrect principles, the School Tribunal has virtually failed to exercise jurisdiction which is vested in it. In the case of *N. Balakrishnan vs. M. Krishnamurthy*¹, the Supreme Court has held that condonation of delay is a matter of discretion of the court. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to

1 (1998) 7 SCC 123

think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. There is no presumption that delay in approaching the court is always deliberate. The words "*sufficient cause*" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice.

13] It is necessary to mention that in this case the respondent no. 5, Deputy Education Officer (Secondary) has filed a very lengthy affidavit opposing the admission of this petition. The petitioner was the employee of an aided school, which is represented by the respondent nos. 1 to 4. Before the School Tribunal, the Education Officer, who had been impleaded as a respondent had not resisted the application for condonation of delay by filing a reply. This was rightly so. It is therefore quite surprising that the respondent no. 5, should in a matter of this kind choose to file such a lengthy affidavit. In any case the perusal of the affidavit would indicate that the same relates more to the merits of the petitioner's case as set out in the memo of appeal, than on the aspect of condonation of delay. In any case there is nothing in the affidavit filed by the respondent no. 5, which would in any manner dilute the sufficient cause shown by the petitioner in filing the appeal.

14] In view of the aforesaid, the impugned order is set aside. The delay in preferring the appeal is condoned. The appeal is restored to the file of the Tribunal, which shall decide the same in accordance with law and as expeditiously as possible

15] Rule is made absolute.

16] All parties to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka