

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.4191/2015**

% **1st May, 2015**

GULZAR SINGH Petitioner

Through: Mr. Raj Kumar Sherawat, Advocate.

Versus

GURU HARKRISHAN PUBLIC SCHOOL Respondent

Through: Mr. Jasmeet Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition filed under Article 226 of the Constitution of India impugns the order of the Delhi School Tribunal (hereinafter referred to as 'the Tribunal') dated 02.9.2014, by which the Tribunal has dismissed the appeal filed by the petitioner/employee as being barred by time. As per the record, appeal would be barred by time by five months.

2. I am receiving quite a few orders of the Tribunal wherein I note that the Tribunal is seeming to take a very strict view of the matter with respect to condonation of delay, and which view ignores the ratio of the judgment of the

Supreme Court in the case of *N. Balakrishnan Vs. M. Krishnamurthy*, AIR 1998 SC 3222, and which holds that unless there is deliberate, *malafide* or gross negligence, reasonable delay should be condoned inasmuch as a person does not benefit by filing a petition with delay. Once no *malafides* or illegal motive can be imputed to a person to file a petition with delay, delay should ordinarily be condoned. The relevant observations of the Supreme Court in the case of *N.Balakrishnan (supra)* read as under:-

“13. It must be remembered that 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 think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant the Court shall compensate the opposite party for his loss.”

3. Learned counsel appearing for the respondent/School, in view of the ratio of the judgment of the Supreme Court in the case of *N.Balakrishnan (supra)* could not very seriously dispute the proposition as regards the entitlement of petitioner to get condonation of delay and the fact that petitioner derives no benefit, much less has a *malafide* motive in deliberately delaying the filing of the appeal. In fact, the facts of the present case show

that, really the petitioner would not have been correctly guided in law of not filing the appeal in time merely because another appeal against another order passed by the respondent/School was pending before the Tribunal.

4. In view of the above, this writ petition is allowed. Delay of approximately five months in filing the appeal before the Delhi School Tribunal is condoned.

5. Though it need not be stated, at the request of counsel for the respondent/School it is clarified that, obviously, nothing is observed by this Court with respect to the merits of the matter.

6. No costs.

7. Parties to appear before the Delhi School Tribunal on 28th May, 2015.

MAY 01, 2015
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VALMIKI J. MEHTA, J.