

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

WRIT PETITION NO.8318 OF 2016

THE PRESIDENT, SHIVSHANKAR SEVABHAVI SANSTHA AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Shri Nirmal Ramchandra J.
AGP for Respondents 1 and 2 : Shri S.W.Munde.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th August, 2016

Per Court:

1 The Petitioner/ Management is aggrieved by the order dated 22.01.2016 delivered by the School Tribunal, Latur by which Miscellaneous Application No.7/2011 filed by Respondent No.3/ Employee (original Appellant) seeking condonation of 495 days' delay is allowed. Cost of Rs.2000/- has been imposed on the original Appellant/ Employee.

2 The Petitioners submit that though the delay may appear to be not too long, yet after the limitation period of 90 days was over, the Employee has approached the School Tribunal after about 14 months. Specific reasons for condonation of delay have not been mentioned.

Though the School Tribunal has concluded that the entire delay is not properly explained, yet the delay is condoned.

3 The learned AGP appearing on behalf of Respondent Nos.1 and 2 submits that the Education Officer had not appeared before the School Tribunal despite the notice and therefore, his office has gone unrepresented.

4 I have considered the submissions of the learned Advocates.

5 It is settled law that the delay, unless is inordinate and deliberate, needs to be liberally condoned since the refusal to condone the delay would close the doors of the Court on the litigant and the claim against an illegal termination would never be tested within the framework of law and the Employee/ litigant would be rendered remedy-less.

6 In the instant case, the Petitioner/ Management has not attributed any laches to the conduct of the Employee. I do not find that the Employee has deliberately caused the delay since it is not to his benefit and he could derive no advantage, much less disadvantage, by delaying the filing of his own appeal which is the only remedy available to him against his alleged unlawful termination.

7 The School Tribunal has taken into account the copies of the medical papers submitted by the Employee indicating that he was suffering from “Viral Hepatitis” during the period in between September, 2009 to February, 2011. He was taking treatment from the concerned doctors, namely, Dr.A.B.Giri and Dr.Rajesh Kawarkhe during the said period. The said certificates were taken into account by the Tribunal looking to the fact that the Employee had preferred his appeal on 02.02.2011.

8 Despite the Petitioner/ Management having questioned the medical certificates, no further contentions have been put forth to indicate that the medical certificates were either false or bogus. In fact, in the Written Say filed by the Management before the School Tribunal, it has not even set out the exact date of termination of the Employee. In fact, the stand taken by the Employer is that of abandonment of service. The Management has denied that the services of the Employee were terminated and has contended that he voluntarily left employment.

9 The Apex Court, in the case of *Collector, Land Acquisition, Anantnag v/s Mst.Katiji*, **AIR 1987 SC 1353**, while dealing with the issue of delay, has observed in paragraph 3 as under:-

“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.”

10 Considering the facts of the case and the law as is laid down by the Honourable Apex Court, I do not find that the impugned order passed by the School Tribunal could be termed as being perverse or erroneous. The delay is neither inordinate nor deliberate and the medical certificates placed on record, prima facie, indicate that the Employee had taken treatment and the moment he was at ease in February, 2011, he has filed his appeal on 02.02.2011.

11 The learned Advocate for the Petitioner/ Management submits that during the pendency of Miscellaneous Application No.7/2011 filed by the Employee before the School Tribunal, Latur seeking condonation of delay, the Employee had approached this Court in Writ Petition No.1699/2011. He has subsequently withdrawn the said Writ Petition on 29.06.2011 and the petition has been dismissed as withdrawn. The learned Advocate further submits that when the miscellaneous application for condonation of delay was pending, the Employee could not have approached this Court for the same cause in the said writ petition.

12 In my view, though the learned Advocate for the Petitioner is right in his submissions, it cannot be ignored that the said writ petition has been withdrawn by the Employee and the same has been dismissed.

13 In the light of the above, the Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)