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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.3023/2016

- 1 Shri Chakradhar Shikshan and Samaj
Probodhan Mandal Pangari Road, Beed.
Through its President.
- 2 Shri Chakradhar Shikshan and Samaj
Prabodhan Mandal, Pangari Road, Beed.
Through its Secretary.
- 3 Shivneri Primary School, Pangari Road,
Beed, through its Headmaster.
...Petitioners...

Versus

- 1 Smt. Anuradha W/o Raosaheb Gajare,
Age 42 years, Occ. Nil,
R/o C/o Sunil Kamlakar Jahagirdar,
Kulswamini, Navgan Road,
Datta Nagar, Beed.
- 2 The Education Officer (Primary),
Zilla Parishad, Beed.
...Respondents...

.....

Shri S.S. Thombre, Advocate for petitioners.
Shri R.I. Wakade, Advocate for respondent no.1.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 15.03.2016

PER COURT :

1] The petitioners are aggrieved by the order dated 14.12.2015 delivered by the School Tribunal, Aurangabad, by which Miscellaneous Application No.14/2015 filed by respondent no.1 has been allowed and delay of 286 days in filing the appeal has been condoned.

2] Shri Thombre, learned Advocate for the petitioners, has strenuously criticized the impugned order. Contention is that a delay of 286 days is a long delay. Respondent no.1 was terminated by order dated 18.9.2014. She has filed the appeal on 30.6.2015. Reasons adduced for seeking condonation of delay are neither acceptable nor reasonable. Every day's delay should have been explained by respondent no.1.

3] Shri Thombre further submits that the School Tribunal has mechanically allowed the application for condonation of delay. The impugned order is an outcome of a mis-placed sympathy. Unless the reasons put forth for seeking condonation of delay are not strong enough, the application deserves to be rejected. He, therefore, prays that the impugned order be quashed and set aside.

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4] Learned Advocate for respondent no.1 – employee supports the impugned order. He indicates that respondent no.1 had filed the Writ Petition No.4812/2014 before the learned Division Bench of this Court. During the pendency of the writ petition, she was terminated. The order of termination dated 18.9.2014 received on 25.9.2014 was placed on record before the learned Division Bench. However, as the remedy u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977, was available, the learned Division Bench allowed respondent no.1 to withdraw the petition. Hence, the delay of 286 days.

5] I have considered the submissions of the learned Advocates for the respective sides and have gone through the impugned order.

6] The Apex Court in the matter of *Collector, Land Acquisition, Anantnag v. Mst.Katiji* (AIR 1987 SC 1353) has observed as under:-

“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.

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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.

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."

(emphasis supplied)

7] In the light of the above ratio, I find that the School Tribunal has taken a pragmatic approach in

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allowing the application for condonation of delay. The delay caused is neither deliberate nor inordinate. Laches are not attributed to the conduct of respondent no.1 – employee.

8] In the light of the above, this petition, being devoid of merit, is, therefore, dismissed. Rule is discharged. No costs.

(RAVINDRA V. GHUGE, J.)