

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

WRIT PETITION NO. 2314 OF 2016

Anand Vitthal Shinde,
Age : 37 years, Occupation : Service,
R/o Loni, Taluka Paranda,
District Osmanabad.

...PETITIONER

-VERSUS-

- 1 Rajarshree Shahu Shikshan
Prasarak Mandal,
C/o Chatrapati Shivaji Secondary
and Higher Secondary School,
Osmanabad, Tal.Osmanabad,
District Osmanabad.
Through its Secretary.
- 2 The Principal,
Chatrapati Shivaji Secondary and
Higher Secondary School,
Osmanabad, Tal.Osmanabad,
District Osmanabad.
- 3 The Deputy Director of Education,
Latur Division, Latur.
- 4 Pay unit (Secondary),
Zilla Parishad Osmanabad,
Central Administration Building,
Osmanabad.

...RESPONDENTS

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Advocate for Petitioner : Shri Godbole R.J. a/w Shri Vishnu B. Narke.

Advocate for Respondents 1 and 2 : Shri S.S.Chaudhari a/w Shri
D.D.Sarwade.

AGP for Respondents 3 and 4 : Shri P.N.Kutti.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 31st August, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner/ Employee is aggrieved by the order dated 24.08.2015 by which his Miscellaneous Application No.63/2014 seeking condonation of 20 months and 08 days delay in filing the restoration application has been rejected.

3 The contention of the Petitioner is that Appeal No.34/2009 challenging his purported illegal termination dated 06.04.2009, was filed before the School Tribunal within limitation under Section 9 of the MEPS Act, 1977. However, he did not attend the dates of hearing since the parties were exploring the possibility of settlement. Finally, the Appeal was dismissed on 14.03.2013. The Petitioner came to know about the dismissal order on 02.04.2013. However, since he had entered into an exercise of exploring the settlement with the Respondent/ Management, he did not file an application for restoration of the appeal.

4 Shri Godbole, learned Advocate for the Petitioner/ Employee, therefore, strenuously submits that if the appeal is not restored, the Petitioner would be out of the Court and the doors of justice would be closed on him and that would cause grave injustice to him.

5 Shri Chaudhari, learned Advocate for the Respondent/ Management, has strenuously supported the impugned order. He submits that it is settled law that condonation of delay, though is to be liberally considered, an application can be rejected if it is based on false reasons and false grounds. He has seriously objected to the contentions of the Petitioner in the application wherein there are certain allegations against the office bearers of the Management and the Petitioner was attempting to get the delay condoned on the basis of such fallacious allegations. He, therefore, submits that no sympathy deserves to be shown to the Petitioner.

6 He further submits that the delay of 20 months and 08 days is not a short period. When the Petitioner himself has admitted that he came to know of the dismissal of his appeal within three weeks, he had slept for 20 months and 08 days. By leveling false allegations and putting forth false reasons of compromise discussion, he has attempted to mislead the

School Tribunal. He, therefore, prays for dismissal of this petition with heavy costs.

7 Shri Godbole submits, on instructions, that the Petitioner is withdrawing all the allegations against the Management officials. The Petitioner has no reason to have any animosity against the office bearers of the Management. He is aggrieved by his order of termination and his unemployment that has rendered him and his family to starvation.

8 I have considered the submissions of the learned Advocates as are recorded herein above.

9 There is no dispute that the appeal was filed within limitation. The issue is with regard to the departmental enquiry held against the Petitioner and his subsequent dismissal from service by way of punishment. He was a permanent employee of the Respondent Management. If the delay is not condoned, the doors of justice would be closed for the Petitioner and he would, thereafter, be precluded from challenging his purported illegal termination.

10 No litigating side benefits from causing delay in his own matter. The Honourable Supreme Court in the matter of the *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.”

11 As such, if the delay is to be condoned, the Respondent/ Management also deserves to be compensated for the reason that eventually if the Petitioner succeeds in his appeal, he should not derive any undue advantage caused by the delay in the matter. Moreover, whether, his application for restoration of the appeal needs to be allowed or not, is yet to be considered by the School Tribunal.

12 In the light of the above, this Writ Petition is partly allowed. The impugned order dated 24.08.2015 is quashed and set aside. The delay of 20 months and 08 days is condoned and Miscellaneous Application No.63/2014 is allowed. The School Tribunal shall now proceed to consider the application for restoration on the following conditions:-

- (a) In the event, the application for restoration is allowed and the appeal is restored and in the event, the appeal is eventually allowed, the Petitioner/ original Appellant shall not be entitled for monetary benefits from 14.03.2013 till the date on which the School Tribunal would allow the restoration of

the appeal. It is clarified that this direction shall not mean that this Court has expressed a view that the appeal should be restored.

13 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)