

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1116 OF 2016

Bebi Ramrao Dube,
Age-57 years, Occu-Service,
R/o At present Parsoda,
Tq.Vaijapur, Dist.Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32,
2. The Additional Divisional Commissioner,
Aurangabad Division,
Aurangabad,
3. The Chief Executive Officer,
Zilla Parishad,
Aurangabad,
4. The Education Officer (Primary),
Zilla Parishad,
Aurangabad,
5. The Head Master,
Z.P.C.P.S. Samiti, Vaijapur,
Tq. Dist.Aurangabad,
6. The Block Education Officer,
Panchayat Samiti, Aurangabad,
Tq. and Dist. Aurangabad

RESPONDENTS

Mr.V.G.Salgare, Advocate for the petitioner.
Mr.Shimant Mundhe, Advocate for respondent Nos. 3 to 6.
Mr.D.V.Tele, AGP for respondent Nos. 1 and 2.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 01/02/2016

ORAL JUDGMENT :

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

2. Learned Advocate for the petitioner submits that an order dated 05/09/2009 has been issued by respondent No.3 thereby directing 350 days in the service tenure of the petitioner to be considered as non working days. Consequentially, this order is likely to affect the pension and pensionary benefits of the petitioner.

3. The petitioner preferred an appeal No.12/2013 on 29/01/2013 for challenging the impugned order dated 05/09/2009. The limitation period for challenging the order is 90 days. The appeal was delayed by 3 years and 53 days.

4. Mr.Salgare further submits that the father and the mother of the petitioner were ailing for a long time. He was engaged in matters of their ill health. Eventually, his mother passed away on 01/09/2012 and subsequently his father also passed away. Hence the delay is caused in challenging the order dated 05/09/2009.

5. It is further submitted that no individual litigant can be said to be affected by the appeal belatedly filed by the petitioner. Delay has not been caused intentionally or deliberately and the petitioner does not derive any advantage by causing the delay.

6. Learned AGP appearing on behalf of respondent Nos. 1 and 2 submits that unless the reasons put forth for condonation of delay are not acceptable, the application for condonation of delay cannot be accepted.

7. Mr.Mundhe, learned Advocate appearing on behalf of respondent Nos. 3 to 6 submits that the reasons cited for condonation of delay are unsatisfactory. Merely because the father and the mother of the petitioner were unwell, would not mean that the petitioner should not be alert and diligent about the cause of action. The illness of the parents is unconnected with the amount of delay caused by the petitioner. He is likely to take advantage of the said period of delay in the event his appeal is finally allowed.

8. I have considered the submissions of the learned Advocates for the respective sides.

9. Rule 16 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964, reads as under :-

“Period of limitation for appeals and revision :- No appeal or application for revision under these rules shall be entertained unless it is submitted within a period of three months from the

date on which the appellant or, as the case may be, the applicant receives a copy of the order in respect of which the appeal or revision is made :

Provided that, the appellate or the revisional authority may entertain the appeal or revision, as the case may be, after the expiry of the said period, if it is satisfied that the appellant or applicant had sufficient cause for not submitting the appeal or the revision application in time."

10. There is no dispute that the appeal could have been preferred by the petitioner to respondent No.2 authority. There is no dispute that the delay caused is of about 3 years and 55 days.

11. Normally, in matters of condonation of delay, a liberal view has to be taken to ensure that no litigant is thrown out at the threshold of litigation only on the ground of delay. It also has to be considered whether the applicant is likely to draw or gain any advantage in causing the delay.

12. The Apex Court in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] has issued certain guidelines while considering the applications for condonation of delay 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. 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."

13. In the instant case, the father and the mother of the petitioner, who were said to be ailing for some time, have subsequently passed away. These reasons cannot be ignored. There is no contention by the respondents that the petitioner has deliberately caused the delay

so as to draw undue advantage. As such, in the above backdrop, I am of the view that the respondent No.2 should have condoned the delay so as to enable the petitioner to seek a redressal of his grievance on the merits of the matter.

14. In the light of the above, this petition is allowed. The impugned order dated 17/10/2015 delivered by respondent No.2 is quashed and set aside. The delay caused is condoned on the condition that in the event the petitioner succeeds in her appeal, she shall not be given any interest on the monetary benefits, if any, for the period of delay i.e. 3 years and 55 days.

15. Respondent No.2 shall register the appeal preferred by the petitioner. The litigating sides shall appear before respondent No.2 on 15/02/2016 at 3.00 p.m. and shall thereafter abide by the dates of hearing as may be posted by the learned Divisional Commissioner, Aurangabad. Needless to state, respondent No.2 shall decide the appeal of the petitioner on its own merits.

16. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)