

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 1031 OF 2016

Mrs. Kalpana Laxmanrao Kapadnis

.....Petitioner

V/s.

Gurukrupa Adivasi Shikshan Mandal  
and Ors.

.....Respondents

\* \* \* \* \*

Mr. Kumud A. Bhatia, Advocate for the petitioner.

Ms. Anjali Helekar, Advocate for respondents no.1 and 2.

Ms. K.R. Kulkarni, AGP for respondents no.3 and 4.

**CORAM :- SMT. R.P. SONDURBALDOTA, J.**

**DATED :- 19TH SEPTEMBER, 2016.**

**P.C. :-**

1). This petition challenges the order dated 23<sup>rd</sup> September, 2015 by which the School Tribunal, Nashik dismissed the petitioner's application for condonation of delay. The services of the petitioner were terminated on 20<sup>th</sup> March, 2010. The petitioner had set out two reasons for not approaching the Court within the prescribed period of limitation. The first ground was that, on the legal advice received by her, she had filed Writ Petition No. 3551 of 2010 in this Court challenging her termination. At the time of admission of the petition, an objection was taken by respondent no.1, that the petitioner had alternate remedy of challenging the termination in the School Tribunal and therefore the petition as filed was not maintainable. The petitioner then withdrew the

petition on 22<sup>nd</sup> October, 2010. Therefore, the time taken in approaching a wrong forum requires exclusion. The second reason set out is that, time was consumed in obtaining certified copies of the order of withdrawal of the writ petition on 22<sup>nd</sup> October, 2010. The application as filed by the petitioner does not set out any of the details of the causes claimed i.e. the date of filing of the writ petition, the date of withdrawal of the writ petition, the date on which the application for certified copy of the order of withdrawal was made, the date on which the certified copy was ready and the date on which the certified copy was collected by the petitioner.

2). The Tribunal found that, the petitioner had applied for certified copy of the order of withdrawal of the writ petition on 15<sup>th</sup> November, 2010. The certified copies were ready on 3<sup>rd</sup> December, 2010 but the petitioner collected the same belatedly i.e. on 15<sup>th</sup> December, 2010. Then, there was further delay until 31<sup>st</sup> December, 2010 in approaching the School Tribunal. According to the School Tribunal, the delay in applying for the certified copy, the delay in collecting copy of the certified copy and thereafter the delay in filing of the proceedings before the School Tribunal are not explained. These reasons stated by the School Tribunal are seen to be justified by the petitioner's own application, wherein no explanations are set out for these periods.

3). Ms. Bhatia, the learned Advocate appearing for the petitioner however submits that it is well settled position in law that, while deciding an application for condonation of delay, the Court needs to adopt liberal approach. Ms. Bhatia, submits that, a

litigant does not stand to benefit for lodging the proceedings late and there cannot be any presumption that, the delay is caused deliberately. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred and everyday's delay cannot be explained. She relies upon the decision of the Apex Court in **Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Ors. reported in AIR 1987 SC 1273** to support her submission. In the decision cited, while observing that the Court should adopt liberal approach, the Apex Court has also stated reasons for adopting liberal approach. For the Court to adopt liberal approach, there has to be some case made out by the applicant/petitioner for condonation of delay. Once some case is made out, only then can the liberal approach adopted by the Court. In the case on hand, firstly as noted by the Tribunal, the petitioner has not set out any details whatsoever in the application. The details noted subsequently also indicate several gaps in the action taken by the petitioner which gaps remain unexplained till date. Even today, there is no explanation offered for the delay in applying for the certified copy of the order of withdrawal of the petition, the delay in collecting the certified copy and the delay in filing the proceedings after collecting the certified copy. Hence, there can be no interference with the impugned order. The Writ Petition is dismissed.

(SMT. R.P. SONDURBALDOTA, J)