

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

WRIT PETITION NO. 2084 OF 2017

**BABU NAGAPPA PHULARI
VERSUS
PRESIDENT MAHATMA PHULE EDUCATION SOCIETY PARBHANI AND
OTHERS**

...
Advocate for Petitioner : Shri Ghatge Mahesh V.
AGP for Respondents 4 and 5 : Shri S.N.Kendre.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th March, 2017

Oral Order:

1 While issuing notice on 14.02.2017, I had passed the following order:-

"1. *The petitioner is aggrieved by the impugned judgment dated 27/01/2017 delivered by the School Tribunal, Latur by which Appeal No.20/2015 has been disposed of by passing the following order:-*

"ORDER

1. The appeal, for the time being, is disposed of on the ground of limitation, due to want of challenge to otherwise termination dated 18.03.2013 with condonation of delay till 23.04.2015 i.e. for the period of 2 years and 5 days, after giving liberty to the appellant, to file the same with delay condonation application, if he wants and as per rules.

2. No order as to costs.

Date : 27.01.2017

(R.G.Malashetti)

Place : Latur

*Presiding Officer,
School Tribunal, LATUR*

2. *Issue notice before admission to the respondents, returnable on 08/03/2017. Learned AGP waives service for respondent Nos.4 and 5. Hamdast allowed.*
3. *Parties to note that this petition is likely to be heard finally at admission stage."*

2 The parties were, therefore, informed that the matter would be heard finally at admission stage.

3 Respondent No.2/ Secretary is said to have passed away and the position of the Secretary of the Institution is occupied by Respondent No.3, according to the statement made by the Petitioner.

4 Despite service of the court notice on Respondent Nos.1 and 3 i.e. Educational Institution, none appeared and no appearance is entered. I adjourned the matter on 08.03.2017 and posted it for this day in order to give another opportunity to the Respondents to appear in the matter. Yet, none have caused an appearance.

5 I have heard the learned Advocate for the Petitioner and have gone through the petition paper book.

6 These litigating sides were before this Court in Writ Petition Nos.11936/2016 and 12143/2016. By the judgment dated 08.12.2016, these two petitions were disposed of with the following observations:-

- "24. *There can be no dispute insofar as the contentions of Shri Salunke are concerned that the delay must be condoned before registering the appeal. However, it cannot be ignored that the Management has not challenged the registration of the appeal even after filing its Written Statement and even after the application Exhibit-5 for interim relief was considered and decided by the School Tribunal, over a period of one year. Had the Management, immediately after receiving the notice of the School Tribunal on the appeal, raised an objection and had sought de-registration of the appeal until the delay is condoned, the said argument could have been entertained. After the matter is heard on the application for condonation of delay and when Respondent No.1/ Appellant has canvassed his final submissions and the Management is to put forth its final arguments, at the fag end of the adjudicatory process, the prayer that the appeal should not be registered or be dismissed, cannot be entertained on the ground of equity.*
25. *In the peculiar facts as above and to ensure that ends of justice are met, I find that the School Tribunal will have to be directed that while deciding the appeal finally, it shall first come to the conclusion as to whether, there is a delay and whether, the delay can be condoned keeping in view Order 7 Rule 6 of the Civil Procedure, as has been rightly pointed out by the learned AGP. It cannot be disputed that in normal circumstances an appeal cannot be registered until the delay is condoned, but in the peculiar facts as recorded herein above and the confusion created owing to the Order below Exhibit-28, neither Respondent No.1/ Appellant who has lost his employment could be put to any disadvantage, nor*

can the contention of the Management on delay be ignored.

26. *In the light of the above, Writ Petition No.12143/2016 filed on 25.07.2016 is partly allowed and the School Tribunal is directed to decide Appeal No.20/2015 after hearing the final submissions of the Management on the next date. In doing so, the School Tribunal shall first conclude as to whether, there is any delay and whether, the said delay deserves to be condoned. Only after this stage, it may then decide the appeal on its merits. For clarity, if it concludes that the delay has been caused and the said delay does not deserve to be condoned, it shall pass an appropriate order without touching the merits of the matter. Rule is made partly absolute in the above terms."*

7 It is, therefore, apparent that this Court had directed the School Tribunal, Latur to consider Appeal No.20/2015 on condonation of delay as well as on merits. It was directed that the School Tribunal would first conclude as to whether, there is any delay and if the delay is caused, it would conclude as to whether, the said delay deserves to be condoned. If it concludes that the delay deserves to be condoned, it would proceed to decide the appeal on its merits.

8 The following are the undisputed factors in this case:-

- (a) The Petitioner filed Appeal No.20/2015 challenging his termination dated 30.04.2014.
- (b) He contended that the order of termination is never

communicated.

- (c) The Management filed the Written Statement contending that the written termination is dated 30.04.2014 after conducting a departmental enquiry regarding his absence from 19.04.2013 till 29.04.2014.
- (d) The Petitioner then amended his appeal and challenged the written termination order dated 30.04.2014 along with the enquiry proceedings.
- (e) The appeal was filed on 24.04.2015 which was, therefore, delayed by about 10 months and 25 days.
- (f) The Petitioner had preferred an application for condonation of delay.
- (g) Earlier orders passed by the School Tribunal created further controversy. This Court by the judgment dated 08.12.2016 in Writ Petition Nos.11936/2016 and 12143/2016 set aside the said orders and directed the School Tribunal to decide the aspect of condonation of delay and then decide the Appeal.
- (h) The Petitioner has not claimed oral termination from 19.04.2013.
- (i) So also, the Management does not claim his termination from 19.04.2013.
- (j) The Management has categorically contended that he has

been terminated by the written order dated 29.04.2014 w.e.f. 30.04.2014 after conducting an enquiry with regard to the purported unauthorized absence of the Petitioner from 19.04.2013 till 29.04.2014.

(k) Naturally, the alleged absence from 19.04.2013 till 29.04.2014, is the subject matter of the enquiry and which would form the merits of challenge of the Petitioner in his appeal.

(l) The Tribunal concluded that the Appellant has not prayed for condonation of delay for the period 19.04.2013 till 29.04.2014.

9 The School Tribunal apparently has lost sight of the fact that the enquiry was said to have been conducted against the Petitioner for his alleged unauthorized absence. The muster roll purportedly indicates that the Petitioner has not marked his presence from 18.03.2013. The Management terminated the services of the Petitioner w.e.f. 30.04.2014 on the ground that he has remained unauthorizedly absent for a long time. The said termination is, therefore, dismissal by way of punishment. When this aspect is part of the enquiry proceedings, it is quite surprising that the School Tribunal in the impugned order concludes as under:-

"30. *Considering facts, circumstances, evidence on record*

and legal position discussed above, I come to the conclusion that there is delay from 19.04.2013 to 23.04.2015 i.e. of 02 years and 05 days in filing the appeal. The appellant neither claimed its condonation nor produced sufficient grounds for its condonation. But for that, an opportunity needs to be given to him in the interest of justice. Accordingly, Point No.1 answered as "partly affirmative" and Point No.2 answered as "as per final order".

10 In the entire impugned judgment, paragraph 30 appears to be the conclusion of the School Tribunal. It has completely lost sight of the fact that the Petitioner was dismissed for alleged unauthorized absence from 19.04.2013 till 29.04.2014. The issue of delay from 01.05.2014 till 23.04.2015 was before the School Tribunal. Despite the same, to say the least, the School Tribunal has passed an unusual order as under:-

“ORDER

1. The appeal, for the time being, is disposed of on the ground of limitation, due to want of challenge to otherwise termination dated 18.03.2013 with condonation of delay till 23.04.2015 i.e. for the period of 2 years and 5 days, after giving liberty to the appellant, to file the same with delay condonation application, if he wants and as per rules."

11 The issue, therefore, is as to whether, the delay of 10 months and 25 days can be said to be deliberate or inordinate or whether, laches are attributable to the conduct of the Petitioner. It cannot be ignored that the School Tribunal is the first available forum to the Petitioner and if the

delay is not condoned, he would be rendered remedy-less as he would then be precluded from challenging his disciplinary enquiry and his dismissal, before any Court in his lifetime. No doubt, if the delay is deliberate and if laches are attributable to the conduct of the Petitioner, the Court need not be liberal in condoning the delay.

12 The Honourable Supreme Court in *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*, **(2013) 12 SCC 649**), after considering the extensive case law on the point of condonation of delay, has culled out the principles which need to be followed while condoning the delay. The said principles evolved by the Honourable Supreme Court read as under:-

"21. *From the aforesaid authorities the principles that can broadly be culled out are:*

i) *There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

ii) *The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.*

iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

iv) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

- v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*
- vii) *The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
- ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*
- x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*
- xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*
- xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*
- xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22. *To the aforesaid principles we may add some more*

guidelines taking note of the present day scenario. They are :-

- a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*
- b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*
- c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*
- d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”*

13 The Petitioner has produced on record several documents running into about 30 to 40 pages from 04.04.2013 till 20.04.2015 in the form of representations alleging that he was illegally kept away from employment, was prevented from signing the muster roll and discharging his duties. The Management is said to have commenced the enquiry during the same period and claims to have passed the order of dismissal dated 29.04.2014 made effective from 30.04.2014 by way of punishment. It is, therefore, clear that the Petitioner had approached the Education Officer as well as the Management pleading to be permitted to report for

duties. Prima facie, this would indicate that he was neither sleeping over his right, nor did he deliberately cause any delay in order to take undue advantage of the same.

14 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."

15 In the light of the above, I find that the School Tribunal, Latur has grossly erred in passing the impugned order reproduced above. It can be termed to be an unusual order. The same is perverse and erroneous and clearly indicates lack of application of mind by the learned Presiding Officer of the School Tribunal. I am constrained to form an opinion that the learned Presiding Officer has ignored the directions of this Court set out in the order dated 08.12.2016, which I strongly disapprove.

16 As such, this Writ Petition is allowed. The impugned order dated 27.01.2017 is quashed and set aside. Appeal No.20/2015 is remitted to the School Tribunal, Latur with the following directions:-

- (a) The Petitioner as well as Respondent Nos.4 and 5 (the Education Officer and the Deputy Director of Education) shall appear before the School Tribunal on 29.03.2017.
- (b) The School Tribunal shall issue notice to the Educational Institution.
- (c) The delay of 10 months and 25 days is condoned on the condition that in the event the Petitioner succeeds before the School Tribunal, he would be deprived of the monetary benefits for the period of delay from 01.06.2014 till 23.04.2015.
- (d) The School Tribunal shall now proceed to decide Appeal No.20/2015 on its merits in relation to the dismissal of the Petitioner on 30.04.2014 by considering the rival contentions of the parties and by properly scrutinizing the entire record and proceedings of the enquiry.
- (e) Needless to state, the School Tribunal would also consider whether, the enquiry was conducted strictly in accordance with Rules 36 and 37 of the MEPS Rules, 1981.
- (f) Since the pleadings are complete and the matter was finally heard when the impugned order was passed, the School Tribunal would hear the learned Advocates for the respective sides on the merits of the matter and shall endeavour to

dispose of the appeal as expeditiously as possible and preferably on or before 31st August, 2017.

kps

(RAVINDRA V. GHUGE, J.)