

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 1548 OF 2017

Parmeshwar S/o Uttam Darade,  
Age – 33 years, Occu. Nil,  
R/o Limba Rui, Taluka and  
District – Beed

.. Petitioner

Versus

1] Matoshri Sevabhavi Sanstha,  
Wadzari, Matoshri Nivas,  
Sant Dnyaneshwar Nagar,  
Behind Govt. I.T.I. Beed,  
Through : Its President

2] The Head Master,  
Sant Shiromani Bhagwan Baba  
Primary Ashram School, Wadzari,  
Tq. Patoda, Dist. Beed

3] Sudhakar S/o Dattatraya Sanap,  
Age – 37 years, Occu. Service,  
R/o Sant Shiromani Bhagwan Baba  
Primary Ashram School, Wadzari,  
Tq. Patoda, Dist. Beed

4] The Regional Deputy Commissioner,  
Social Welfare Department,  
Aurangabad

5] The District Social Welfare Officer,  
Beed, Tq. & Dist. Beed

.. Respondents

...

Mr. M.P. Tripathi, Advocate for petitioner  
Mr. M.C. Syed, Advocate for respondents no.2 and 3  
Mr. S.P. Tiwari, AGP for respondents no. 4 and 5

...

CORAM : SUNIL P. DESHMUKH, J.  
DATE : 26-09-2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the parties finally, by consent.

2. Aggrieved by order dated 09-12-2015 passed by Regional Deputy Director, Social Welfare Department, Aurangabad, rejecting application for condonation of delay filed by present petitioner, claiming to have been orally terminated on 07-11-2008, the petitioner had been before this court. This is third round of writ petition before this court in respect of delay condonation in the appeal preferred by present petitioner.

3. Petitioner claims that he had been working as *Kamathi* with respondent no.2 from a long time and since 01-06-2007, he was not allowed to sign the muster roll. He continued to work with the respondent even thereafter. However, on 07-11-2008, he had been orally terminated and had been blocked from entering school premises. As such, an appeal before respondent no. 4 had been filed on 04-12-2008. Along with appeal, application for condonation of delay as well had been filed,

submitting that appeal is filed in time, however, if there is any delay, the same be condoned. Under order dated 25-07-2012, respondent no. 4 had purportedly condoned delay. Present respondents no.1 and 2 had been before the High Court in writ petition no. 6874 of 2012. This court found that the order condoning delay is without any reasons and, as such, said order had been set aside and the matter had been remitted to the authority directing it to hear the parties on application for condonation of delay. Subsequent to said order passed by this court, the authority had condoned delay under its order dated 05-10-2012, referring to events that had preceded passing the said order, had condoned the delay. Again respondents no. 1 and 2 had been before this court in writ petition no. 1992 of 2013 aggrieved by delay condonation. This court under its order dated August 24, 2015 once again remitted the matter to the authority, observing thus,

*" 18. Appeal no. 2 of 2009 is, therefore, remitted back to the said competent authority for hearing the litigating sides and for passing a reasoned order while deciding the application for condonation of delay. The litigating sides shall appear before the competent authority on 16.9.2015. Appeal No. 2 of 2009 shall be decided by the competent authority as expeditiously as possible and preferably on / or before the 15<sup>th</sup> day of December, 2015. "*

4. On this occasion, the authority had considered, the petitioner had claimed that he had been restrained from signing

the muster roll from 01-06-2007 although, he had been serving and on 07-11-2008, petitioner was restrained from entering into school premises and he had been, as such, orally terminated. Thereafter, on 04-12-2008, appeal had been filed along with application for condonation of delay. It has also been referred to that it is petitioner's case that he had been directed to work without signing the muster roll, keeping him on a hope that after some days, he would be allowed to sign the muster roll. However, on 07-11-2008, he had been orally terminated and had been restrained from entering into the premises.

5. In reply to aforesaid, respondents no.1 and 2 have contended that petitioner had been appointed as *Kamathi* for the academic year 2003-2004, for a period of one year. In the circumstances, it would not be proper to say that petitioner was working till 07-11-2008. His appointment had been made without giving advertisement and on the condition that his services would be brought to an end without any notice. Further submitting that the petitioner had not come to serve after academic year 2006-2007. Petitioner had been working in the school till 31-07-2004 and, thereafter, he had never turned up and it was contended that in order to bring the matter within limitation, reference to date 07-11-2008 has been made by the petitioner,

which is not correct. The application for condonation of delay does not refer to exact number of days of delay. Petitioner has contended that he had not been allowed to sign the muster roll from 01-06-2007, the appeal ought to have been filed within 30 days therefrom, however, appeal has been filed on 04-12-2008. As such, there is delay of 1 year and 5 months. There is no reason given for delay condonation.

6. On this occasion, the authority purportedly framed two issues for determination, as to whether in the delay condonation application, there is reference to specific number of days delay and as to whether sufficient cause has been given for condonation of delay in filing appeal. On the first of the points, the authority has appreciated that applicant had been working from 04-06-2003 to 31-04-2007 and, thereafter, had been absent and since the appeal was to be preferred, date 07-11-2008 has been deliberately referred to. It has been referred to that approval to the petitioner's post has been for the academic year 2006-2007 and this position had been known to the petitioner. For getting approval to the applicant's post for next academic year, proposal was required to be sent. However, applicant did not do anything of that sort. The applicant had not given any material to lend credence that he had worked till 07-11-2008. It

was, as such, considered that the applicant had been working till 31-04-2007 and, thereafter, he had not been working. Since it appears that for the further approval, as approval to applicant's appointment was for academic year 2006-2007, he had not taken initiative for sending proposal and the applicant's contention that he had been working till 07-11-2008, does not appear to be probable and, therefore, it cannot be found out as to how many days delay has been caused. So far as second point is concerned, it has been considered that it could not be said that any reason has been given which has caused delay as the applicant did not make reference to any specific number of days delay and instead, it has been prayed that if there is any delay, the same may be condoned. As such, the reason given is not proper and is fallacious and, therefore, the delay does not deserve to be condoned. *Mathuradas Mohta College of Science, Nagpur V. R.T. Borkar and others* reported in 1997 (2) *Mh.L.J.* 168 has been referred to, that if application does not contain sufficient cause, delay would not be condoned. As such, the application on this third time around, has been dismissed.

7. Learned counsel for petitioner submits that whole approach of the authority in the third round had been erroneous. While on two earlier occasions, delay had been condoned, it has

been considered to be not supported by reason, the court had remitted the matter to support the order with reasons and not to re-appreciate the matter seating in appeal.

8. Learned counsel Mr. Tripathi submits that respondent no.4 has failed to appreciate that the petitioner has specifically come out with a case that he had been blocked from serving respondents no.1 and 2 from 07-11-2008, terminating his services and the appeal thereafter has been filed on 04-12-2008 along with an application for condonation of delay by way of abundant precaution, praying to condone delay, if any. Undercurrent of the application had been, taking into account termination dated 07-11-2008, the appeal is filed within time. However, if it is deemed to be belated since the petitioner had been prohibited from signing the muster roll from 01-06-2007 and if the appeal is deemed to be belated, then the same may be condoned specifically referring to that even after 01-06-2007, petitioner continued to work with the respondent till 07-11-2008. With this specific averment in the application, the delay was sought to be condoned.

9. Additionally, learned counsel for the petitioner on this occasion, purports to refer to a communication by Headmaster to

the president of the trust dated 19-12-2007, making a grievance with regard to conduct of petitioner in performing his services. He submits, this internal communication between respondents no. 1 and 2 given an indication and strengthens the case of the petitioner that the petitioner had indeed been working even after 01-06-2007 with respondents no. 1 and 2 without signing muster roll. This aspect involved in the matter should receive its due. Looking at the nature of the work performed by the petitioner, who is a Class-IV servant, a tangible material with regard to his working is hardly possible, however, Exhibit – “E” (page 53 of the paperbook) would not lend credence to but establishes that he had been working, however, there has been no response to the same. The authority has been oblivious of the same.

10. He submits that petitioner had been Class-IV employee and in the circumstances, it may also be considered that he is not adept with the legal aspects involved much less procedure therein. The deficiency in respect of the specifications as sought under the impugned order would not be attributable to him.

11. He further purports to refer and rely on two decisions of the supreme court; one in the case of *Collector, Land Acquisition, Anantnag V/s. Ms. Katiji and others* reported in *AIR 1987 SC 1353*, and the

other in the case of *Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and others* reported in (2013) 12 Supreme Court Cases 649.

12. He, therefore, urges to allow the writ petition submitting that grievances and complaints of the so-called deficiency in making approach or unworthiness of the same would have to be dealt with on merits and for the same, an opportunity shall not be made to be lost permanently to the petitioner.

13. Learned counsel Mr. Syed, appearing for respondents no. 2 and 3 vehemently submits that the date 07-11-2008 has been deliberately picked up with a view to bring the legal proceedings within limitation. He submits that the petitioner's services had continued only upto the end of academic year 2006-2007 and no further. He submits that as a matter of fact, it would have to be considered that going by the submissions on behalf of petitioner, as soon as the petitioner had been blocked from signing muster roll, within 30 days thereafter, appeal ought to have been preferred. However, since the appeal is preferred in December, 2008, an imaginary date has been referred to and about oral termination on 07-11-2008. During this period, petitioner had been aware of that, his post had been acquired by third person since June, 2007 and, as such, accordingly, said

person as well has been made a party to the appeal. He submits that there is no explanation whatsoever as to why appeal had not been preferred from 01-06-2007 till 07-11-2008. He submits that in the circumstances, in order to reduce the period of delay, the date 07-11-2008 has been picked up and given in the application. It is not at all worthy of consideration and same is fallacious.

14. He submits that on two occasions, skipping the relevant aspects involved, the matter of delay had been cursorily dealt with and decided. On both the occasions, the High Court found that applications for condonation of delay have not been properly dealt with and, as such, had directed the authority to pass reasoned order. On this occasion, while the authority had applied its mind to the application and the facts and circumstances and contentions of the parties, it was found that delay condonation application is deficient of giving specific number of days delay or rather in his estimate, avoiding giving reference to any specific number of days since it would be difficult to be accounted for. He submits that on this occasion, the authority has rightly appreciated the matter and that application does not bear sufficient reason supporting delay caused.

15. In support of his submission, he refers to the decision in the case of *Mathuradas Mohta College of Science, Nagpur* (supra). He also further relies on decision in the case of *The Executive President and others V. Bhaskar Bhagwant Yadav and others* reported in 2001 (1) *Bom.C.R. 159*, whereunder proceedings initiated against respondent were considered to be barred by law of limitation as well as decision in the case of *Ajabrao Tulsiramji Patinge V. Shri Samarth Institution of Education and others* reported in 2009 BCI 598.

16. The application filed by petitioner for condonation of delay as annexed to the petition refers to that he had been working with respondents no.1 and 2 since June, 2003 and was being paid salary for the period upto 31-05-2007. However, since 01-06-2007, the petitioner had not been allowed to sign muster roll. He has been given to understand that he would keep on working without signing muster roll and after some days, his salary would be resumed to be paid. Subsequently, it transpired that proposal for his approval had not been sent by respondents no.1 and 2. The petitioner is a Class-IV employee. All these aspects show that an appeal has been preferred after oral direction dated 07-11-2008 through an Advocate along with an application for condonation of delay making a reference to that if there is any delay, the same be condoned.

17. It is the case of respondents no.1 and 2 that since 01-06-2007, the petitioner has not been in their employment and had ceased to be their employee since then and that 07-11-2008, is an imaginary date to bring the proceedings in limitation. Under the circumstances, situation emerges that there is no denial that the petitioner had been erstwhile employee of respondents no.1 and 2. He is making a grievance of oral termination giving out reasons that he has not been allowed to sign the muster roll since 01-06-2007 and is orally terminated on 07-11-2008.

18. It appears that, in the interregnum, there has been internal communication between respondents no. 1 and 2 as can be borne out from page 53 of the writ petition, making grievance in respect of performance of service by the petitioner. The petitioner has come out with a case that he has thereafter been terminated on 07-11-2008. There is no explanation coming forth in respect of the communication appearing at page no. 53. It is about performance of duty by petitioner and the same lends credibility to the claim made by petitioner that he had been working without signing muster roll on 01-06-2007. Such a situation should be viewed from that angle and considered that it is quite probable that petitioner had continued to work even after

01-06-2007. It is by now well settled that a pedantic approach in the matter of condonation of delay is to be eschewed and applications for condonation of delay are to be considerately construed. It may not be ignored that decision on merits has primacy in jurisprudence.

19. It would be pertinent to refer to guidelines and considerations which would have to be given regard from the case of *Collector, Land Acquisition, Anantnag V/s. Ms. Katiji and others* reported in *AIR 1987 SC 1353*, which are as under,

*“ 3. The legislature has conferred the power to condone delay by enacting S. 5 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:-*

*(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late;*

*(2) Refusing to condone delay can result in 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 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 hours delay, every seconds 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 was no presumption that delay is occasioned deliberately, or on account 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. ”*

and from the case of *Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and others* reported in (2013) 12 Supreme Court Cases 649 relevant to us are as under,

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

*21.1. (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.*

*21.2. (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.*

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

*21.4. (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.*

*21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

*21.6. (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.*

20. The decisions which have been relied on by learned counsel for the respondents appear to have been decisions rendered on the merits of those cases alongside the aspect of delay condonation has also been considered, while on merits, the courts did not find the employee had any case. It had also been referred to that even otherwise, the delay in the same did not deserve to be considered.

21. It would thus be fair, that while the petitioner is before this court seeking an opportunity to have case dealt with on

merits with reasons as referred to and material lending credibility to the same being available, the same may not be taken away on technicalities and particularly on the ground of delay as in the present case.

22. Writ petition is therefore allowed. Delay in filing appeal before respondent no.4 is condoned. The appellate authority to deal with the case on merits without being influenced by the observations in this decision, which has efficacy only to the extent of delay condonation. Appellate authority to proceed with the appeal as expeditiously as possible.

23. Record and proceedings be sent back.

24. Rule is made absolute accordingly.

[SUNIL P. DESHMUKH]  
JUDGE

arp/