

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

WRIT PETITION NO. 2654 OF 2016

Sunanda Ambadasrao Kale,
Age : 46 years, Occu. Presently
Household, R/o : Gokunda,
Taluka Kinwat, District Nanded **...PETITIONER**

Versus

- 1] The President,
Marathwada Gramin Shikshan Sanstha,
Himayat Nagar, Taluka Hadgaon,
District Nanded.
- 2] The Secretary,
Marathwada Gramin Shikshan Sanstha,
Himayat Nagar, Taluka Hadgaon,
District Nanded.
- 3] The Head Master,
Hutatma Jayavantrao Patil Vidyalaya,
Kanoki, Taluka Kinwat,
District Nanded.
- 4] The Education Officer, [Secondary]
Zilla Parishad, Nanded.
- 5] Ramesh Nandu Jadhav,
Age Major, Occu. Service,
R/o. Kanaki, Taluka Kinwat,
District Nanded. **...RESPONDENTS**

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Advocate for the Petitioner : Shri S. S. Jadhavar
Advocate for Respondent Nos. 2 and 5 : Shri P. M. Nagargoje
AGP for Respondent No. 4 : Shri B. A. Shinde

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 06th SEPTEMBER, 2018.

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ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the learned Advocates for the respective sides.

2. The petitioner- original appellant before the School Tribunal is aggrieved by the order dated 05/12/2015 passed by the learned Presiding Officer, School Tribunal, Latur, by which, her application praying for condonation of delay of 5 (five) years, 7 (seven) months and 12 (twelve) days, has been rejected.

3. I have heard the learned Advocates for the respective sides at length on 03/09/2018 and today.

4. The contention of the petitioner is that though she had worked as a peon from 09/06/1992 till 31/12/2008, she was forced/compelled to file an application for voluntary retirement on 01/01/2009 and was immediately shown to

have been relieved from employment. The respondent-Management is under the Chairmanship of a Member of Parliament, who has been elected as such, several times. A close relative was to be accommodated in place of the petitioner and hence the service of the petitioner was dispensed with in undue haste.

5. The petitioner had undergone an abdominal hystectomy surgery on 19/12/2011 and was advised rest. In the meantime, her husband died on 29/03/2012 creating a huge mental impact and economic crisis for the petitioner. On 10/02/2014, the treating doctor issued her a Medical Fitness Certificate after treatment from 05/04/2012 to 31/01/2014. On 07/02/2014, she applied to the Headmaster and the Education Officer for permission to report for duties after her illness. Both of them, under the influence of the Chairperson/President, who is a former Minister in the State of Maharashtra as well as a Member of the Lok Sabha, advised her that she could not report for duties unless the President grants her the permission. After the Lok Sabha Elections in 2014, the petitioner met the said President but, she referred the

petitioner to the Secretary of the Institution. After keeping her on tenterhooks, she was finally informed that the Management is not agreeable to allow her to report for duties as her voluntary retirement application has been accepted from 01/01/2009. Consequentially, the petitioner realized that her services for almost 17 (Seventeen) years has been washed away and she has no option but to challenge her "otherwise termination". It is stated that due to the clout of the President of the Institution, the petitioner was helpless as the Department of Education also did not bother to consider her grievance purely under the influence of the President. It is then that the petitioner approached the School Tribunal.

6. The learned Advocate for the Management and the Headmaster as well as the newly appointed person in place of the petitioner, has strenuously opposed this petition. It is vehemently canvassed that the President of the Institution did not exert any pressure on the petitioner. She voluntarily submitted her application for seeking voluntary retirement. On her request, the retirement application was accepted. The President has nothing to do with this employee as the

President does not interact with Class-II, III and IV employees, who are in interaction with the Headmaster of the School. It is further stated that the President of the Institution had not given any assurance to the petitioner. The allegations against the President are motivated as the petitioner is under an impression that she would derive an advantage in the proceedings by alleging coercion at the hands of the President.

7. He then submits that any employee would have waited for a period of 6 (six) months or 1 (one) year, if at all any assurance was given to the employee. No employee would keep quiet for 5 (five) years and 7 (seven) months. A New person has already been appointed in place of the petitioner and a right is created in the said employee owing to the conduct of the petitioner. He further submits that there was hardly one or two representations made by the petitioner in this period of about 5 (five) years and 7 (seven) months and 12 (twelve) days before approaching the School Tribunal. The delay is inordinate.

8. Reliance is placed upon the judgments of the

Honourable Apex Court in the matters of (1) *P.K. Ramchandran Vs. State of Kerala, AIR 1998 Supreme Court 2276*, (2) *Brijeshkumar and Ors. Vs. State of Haryana and Ors., AIR 2014 Supreme Court 1612*, and the judgment of this Court in the matter of *The Executive President, Pune Vidyarthi Grih & Ors. Vs. Bhaskar Bhagwant Yadav & Ors., 2000(4) ALL MR 798*.

9. I have considered the submissions of the learned Advocate as have been recorded above. The law on condonation of delay is crystalized in the judgments of the Honourable Apex Court in the matter of *Collector Land Acquisition, vs. Mst. Katiji & Ors, 1987 AIR S.C.1353*, and in the matter of *Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649*. In fact, the Honourable Apex Court has laid down certain principles in Esha Bhattacharjee Case (supra) as guiding principles for dealing with the applications for condonation of delay.

10. In the light of the above and especially in view of

service jurisprudence, it needs to be seen as to whether, any employee would gain any advantage by deliberately delaying the filing of her Appeal for challenging the order of removal from service. No employee would derive any advantage as he would actually jeopardize his case by delaying his challenge. It then has to be seen as to whether, the employee would gain any undue advantage. In service jurisprudence, an employee would gain no advantage by delaying his matter after being out of employment.

11. In the above backdrop, what assumes significance is that the concerned employee would be precluded from challenging her removal from services in her entire lifetime if the delay is not condoned. The doors of litigation would be shut upon her and an alleged illegal termination would be given a silent burial on account of technicalities.

12. The Honourable Apex Court has observed in *Collector Land Acquisition Case* (supra), in paragraph No.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."

13. It appears that this petitioner had undergone a surgical procedure. It is also not disputed that her husband passed away. A Class-IV employee who, on the one hand is precluded from reporting for duties and on the other hand suffers a surgical procedure followed by the death of her husband, is enough to suggest that this petitioner must have been under great stress. The sufferings of the widow in these

circumstances does not need to be further highlighted. In circumstances of this nature, the Court is expected to adopt a pragmatic approach rather than taking a pedantic view as this litigant is now practically precluded from assailing her alleged unlawful removal from service, if this Court is to dismiss this petition.

14. An important aspect in this matter needs to be understood in a proper perspective. The learned Advocate for the petitioner makes a statement, on instructions, that the petitioner would waive the entire monetary benefits from the date of her removal from service till the decision in this petition. This indicates that the petitioner does not desire to take any advantage of the delay caused in lodging of her Appeal. This also indicates that she is keen to seek a judicial review of her alleged illegal termination. Her employment was her only source of income. Her miseries have aggravated on account of the above referred factors.

15. In the matter of *P.K. Ramchandran Case (supra)*, There was hardly any explanation putforth by the State of Kerala and

hence the Honourable Apex Court ruled against the State.

16. In *Brijesh Kumar case* (supra), the delay was of 10 years 2 months and 29 days and the reasons cited were not found to be convincing.

17. Though the respondent- Management appeared before the School Tribunal, it refrained from filing any say in the matter to formally oppose the request of condonation of delay. Even arguments were not advanced before the School Tribunal and there was no whisper of opposition. Yet, I have heard the learned Advocate for the Management in this petition as the right to oppose can be considered even in these proceedings.

18. In this peculiar set of facts, I find that the statement of the petitioner can be recorded and I deem it appropriate to deprive her of the monetary benefits from the date of her termination till the passing of this order.

19. In view of the above, this petition is partly allowed. The impugned order dated 05/12/2015 is quashed and set aside

and M.A. No. 16/2014 stands allowed. The School Tribunal shall forthwith register the Appeal preferred by the petitioner.

20. The record reveals that the present respondent-Management had not participated in the hearing before the School Tribunal though an appearance was entered through an advocate. In order to avoid further delay, all the litigating sides in this matter, who are parties to the litigation before the School Tribunal, are directed to appear before the School Tribunal on 28/09/2018. Formal notices need not be issued by the School Tribunal.

21. The respondents shall file their written statements in the Appeal expeditiously and in any case on or before 31/10/2018.

22. Thereafter the School Tribunal shall endeavour to decide this Appeal as expeditiously as possible and in any case on or before 31/10/2020.

23. Needless to state, in the event the petitioner succeeds

before the School Tribunal, she would be deprived of all monetary benefits from the date of her purported termination till the date of the judgment of this Court delivered today, save and except continuity in service.

(RAVINDRA V. GHUGE, J.)

shp/-