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

**WRIT PETITION NO.7310 OF 2018**

- |    |                                                                                                                        |            |
|----|------------------------------------------------------------------------------------------------------------------------|------------|
| 1. | Gramoudyogik Shikshan Mandal<br>MIT Campus, Satara Road,<br>Beed Bye Pass, Aurangabad<br>Through its General Secretary | PETITIONER |
| 2. | Jagdalemama Institute of Rural Technology<br>Taluka - Washi, District - Osmanabad<br>Through its Head Master           |            |

VERSUS

- |    |                                                                                                                                                     |             |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 1. | Shri Satish Rohidas Pawar<br>Age - 31 years, Occ - Nil<br>R/o Plot No. 181, Sane Guruni<br>Housing Society, Parijat Nagar<br>N-5, CIDCO, Aurangabad | RESPONDENTS |
| 2. | The District Vocational Education<br>And Training Officer,<br>Central Building, Yedshi Road,<br>Osmanabad                                           |             |
| 3. | The Deputy Director of Vocational<br>Education and Training, Regional Office,<br>Bhadkal Gate, Aurangabad                                           |             |

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Mr. Ajay S. Deshpande, Advocate for the petitioner  
Dr. R. J. Godbole, Advocate for respondent No. 1  
Mr. S. P. Tiwari, AGP for respondent - State

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**[CORAM : SUNIL P. DESHMUKH, J.]**

**DATE : 9<sup>th</sup> JULY, 2018**

**ORAL JUDGMENT :**

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petitioner purports to take exception to order dated 3<sup>rd</sup> April, 2018 passed by Presiding Officer, School Tribunal, Solapur on Exhibit-1 in Miscellaneous Application No. 18 of 2017, whereunder delay caused in filing appeal stands condoned on imposition of costs of Rs.3000/-.

3. The respondent - employee had been before school tribunal in first round of litigation claiming to have been orally terminated, however, while petitioner had contended that, way back in 2010 the respondent - employee had been terminated under a written order, the tribunal had dismissed the appeal on merits and being outside period of limitation.

4. In writ petition No. 471 of 2014 filed before this court by the respondent - employee against aforesaid dismissal, the matter had been sent back by this court under its order dated 18<sup>th</sup> April, 2017, passing following operative order-

“ i) The impugned order dated 22.11.2013 passed by the School Tribunal, Solapur in Appeal No.40/2012, is set aside and the matter is remitted back to the Tribunal to consider the same afresh;

ii) Needless to state that the Tribunal shall give due opportunities of hearing to both the parties;

iii) It would be open for the petitioner to move an application seeking condonation of delay occurred in preferring the appeal. The

*opportunity, of course, will be available to the respondent also to rebut the said contentions;*

*iv) It is clarified that this Court has not entered into merits of the contentions raised by the parties in the petition. All the issues are kept open, to be considered by the learned School Tribunal.*

*v) With the observations, as above, the writ petition stands disposed of. ”*

5. Albeit, it appears that after aforesaid order had been passed, there had been attempt by present petitioner to have review of said order, however that did not produce desired result.

6. As such, pursuant to the opportunity as had been made available to the respondent - employee, an application had been moved for condonation of delay.

7. Learned advocate Mr. A. S. Dedshpande for the petitioner vehemently submits, the Tribunal although in paragraph No. 19 or rather more prominently in paragraph No. 22 of the impugned order has observed that despite explanation given at the instance of present respondent - employee been found not to be acceptable, for not promptly acting upon and filing application for condonation of delay, yet, has suddenly veered around and condoned the delay.

8. Learned advocate submits that going by the observations

as are appearing under paragraphs No. 19 and 22 of the impugned order, the sudden change in the attitude and change in the flow of the order appears to be quite arbitrary and unsustainable. He, therefore, urges this court to indulge into the request being made and allow the writ petition.

9. Learned advocate Dr. R. J. Godbole appearing on behalf of respondent - employee, however, has a different version on this aspect, claiming to be based on factual position, which according to him is otherwise. He submits that after oral termination, an appeal had been moved. However, the management had strategized and had contended that there has been written termination order passed in 2010. In view of the same, an amendment had been caused to the memorandum of appeal and the matter had been proceeded with. There had been neither any intimation to the respondent - employee nor any notice had ever been served on him that such termination order had been passed. In the process, he submits that more than sufficiently it has come forth before the courts that there had been oral termination in 2012 and appeal had been filed, during the course of pendency of the appeal, the management had come up with the case of written termination in 2010 and amendment had been caused. The appeal had primarily been dismissed getting overweighed by the question of limitation rather than on merits

and this court after hearing the matter had remitted the matter to the tribunal for reconsideration afresh having considered it may be proper to have delay condonation application, and had let opportunity opened to the respondent - employee to file an application for condonation of delay. The respondent - employee had filed an application accordingly. It is in this process, time has been consumed and delay condonation application has been moved in 2017. The onus to explain delay in the circumstances, stands sufficiently discharged at the end of the respondent - employee.

10. He further submits that law in the cases of condonation of delay is largely that applications for condonation of delay are to be liberally construed and pedantic approach has to be eschewed. He for said purpose refers to and relies on judgment of the Supreme Court in the case of "*Collector, Land Acquisition, Anantnag V/s. Ms. Katiji and others*" reported in AIR 1987 SC 1353, as also, in the case of "*Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and others*" reported in (2013) 12 Supreme Court Cases 649,

11. Having heard submissions on behalf of learned advocates for the parties, needless to reiterate that the courts have been lenient and quite liberal in the matters of condonation of delay. In

the present matter, while observations to which attention has been drawn on behalf of the petitioner, those to some extent ostensibly appear to drift to a situation that the tribunal is influenced to consider that reasons given may not be acceptable. Although it is seemingly so observed, one may have to consider that substratum all along under observations appears to consider that the respondent - employee ought not have been bogged down by the circumstances and could have preferred application and that a litigant himself may not be attributed the blame, for his actions are generally controlled and driven by the guidance coming his way during litigation.

12. In the circumstances, it appears that it would be a case where, the expressions in impugned order may not be in tune with underlying considerations, and it appears that the tribunal all along had been considering that looking at the circumstances it would be expedient to condone the delay occurred. While the discretion has been exercised by the tribunal in favour of the respondent - employee, and while it does not appear that it is such a gross case wherein the order requires to be interfered with, writ petition would not be entertained and, as such, is dismissed.

13. Writ petition, in the circumstances, is not being entertained

and is dismissed. Rule stands discharged. It is, however, made clear that the observations aforesaid in this order have efficacy only to the extent of passing order in the writ petition and other contentions and grounds / issues are open to the parties to be canvassed.

**[SUNIL P. DESHMUKH, J.]**

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Dinesh  
Ramrao  
Pawar

Digitally  
signed by  
Dinesh  
Ramrao Pawar  
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