

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 7637 OF 2018
IN
SEDCOND APPEAL STAMP NO.16314 OF 2018

The Superintending Engineer,
Upper Painganga Project Circle,
Sinchan Bhavan, Nanded,
District Nanded

... Applicant/
Applicant

Versus

Ramrao s/o Yeshwantrao Maske & Ors.

... Respondents

.....

Mr. B. R. Surwase, Advocate for the Appellant.
Mr. R. P. Bhumkar, Advocate for Respondent No.1.
Mr. G. O.Wattamwar, AGP for Respondent Nos. 2 to 5.
Ms. Surekha Mahajan, Advocate for Respondent No.8.

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CORAM : A. M. DHAVAL, J.
Reserved on : 14.12.2018
Pronounced on : 20.12.2018

ORDER :-

1. This is an application by the Government Department for condonation of delay of 944 days in preferring Second Appeal.
2. Respondent no.1-Ramrao is the original plaintiff. He joined the service in the Irrigation Department on 04.04.1977. As per the

S.S.C. Certificate, his birth date was recorded as 15.08.1950. On 13.04.2005, he filed an application to his employer that his birth date should be changed from 15.08.1950 to 04.04.1953. He claimed that his birth date was recorded correctly at the time of his admission in the school and in the subsequent schools for some time, but while transferring from one school, the birth date of another student shown just above his name was recorded in his school leaving certificate and the same mistake was continued in the S.S.C. certificate and in the service book. The department rejected his application and his request to forward his proposal to the Government. He filed R.C.S. No.251 of 2006 for change of date of his birth and for consequential relief of carrying out correction of service record. It is not in dispute that as per his original birth date, he has retired on 31.08.2008 on superannuation. On 07.11.2008 i.e. after his retirement, the suit was decreed. It was declared that his birth date is 04.04.1953 and the defendants were directed to consider correction in plaintiff's date of birth in their respective official record within the four corners of Secondary School Code, Government Resolutions and Rule 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. The appellant department challenged this judgment by way of Regular

Civil Appeal No. 102 of 2009 before the District Judge-2, Hingoli, who dismissed the appeal with costs on 13.08.2015.

3. The present Second Appeal is preferred on 12.06.2018 i.e. after a period of 1034 days. After deducting the period of limitation and certified copies, there is delay of more than 940 days. Major part of the delay is on account of time consumed in prosecuting remedies by way of writ petition instead of second appeal. The writ petition was filed on 03.12.2015 which ultimately came to be withdrawn on 07.02.2018 (797 days). Liberty was prayed for and granted to avail the appropriate remedy of filing second appeal without expressing any opinion on merits.

4. Mr. Surwase, learned Advocate for the appellant has submitted that as per the provisions of Section 20 of the Administrative Tribunals Act, 1985, the Civil Court has no jurisdiction to grant reliefs which the Administrative Tribunal can grant. Both the courts below have not considered this aspect. Besides, as per Rules 36 and 38(2)(f) of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, the employee is bound to claim change of date of birth within five

years from the date of appointment. Respondent no.1 has filed the suit at the fag end of his career and no change can be made in the service book after the employee has retired. In this case, the decree was passed after the retirement. Besides, the procedure prescribed therein was not followed. The copy of birth register was not produced. Due to wrong advice, the appellant lost his valuable time in prosecuting the remedy by way of writ petition. Considering the larger public interest, the delay should be condoned.

5. Per contra, learned Advocate Mr. Bhumkar appearing for respondent no.1 has argued that Civil Court has jurisdiction to decide the status of the plaintiff and his date of birth is such a status. The jurisdiction of Civil Court is not ousted by the provisions of the Administrative Tribunals Act in the facts and circumstances of the case. There is huge inordinate delay. Merely because a writ petition was filed, such huge delay cannot be condoned. There is no reasonable and just cause for the entire period and even for the period prior to the filing of writ petition and subsequent to the withdrawal thereof. Ms. Mahajan appearing for the S.S.C. Board argued that, as per the Secondary School Code, the period of limitation for effecting change in the S.S.C. certificate is only three

years. Learned AGP Mr. Wattamwar for respondent nos. 2 to 5 has supported the appellant.

6. The only point for my consideration is:

“whether the delay of 944 days in preferring the appeal deserves to be condoned.”

I answer in the affirmative subject to costs as follows:

7. In *Isha Bhattaacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Ors. [2013 (12) SCC 649]*, the Apex Court took resume of the entire case law on the subject of condonation of delay and laid down the guiding principles. Some of the relevant principles are as follows:

“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 term “sufficient cause” should be understood in its 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.”

8. Learned Advocate Surwase relied on the following cases:

1. *State of Nagaland vs. Lipoc AG [(2005) 3 SCC 752]*, wherein it was held that expression sufficient cause should be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The observations were in the context of delay on the part of government officials on account of red-tapism. There was a delay of only 57 days.

2. *Maharashtra State Warehousing Corporation vs. Sudhadevi [2018 (5) Mh.L.J. 163]*, wherein it is held that the Legislature has conferred the power to condone delay by enacting Section 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.

9. I rely on *R. B. Ramlingam vs. R. B. Bhvaneshwari [(2009) 2 SCC 689]*, wherein it was held that the test of 'sufficient cause' is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases where circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such.

10. In *M. K. Prasad vs. P. Arumugam [AIR 2001 SC 2497]*, there was delay of 554 days in preferring appeal which was condoned subject to costs of Rs.50,000/-. It was held;

"9. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant, but on his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable....."

11. In *State Of Karnataka vs Y.Moideen Kunhi & Ors.* reported in *AIR 2009 SC 2577*, there was huge delay of 6500 days in matters involving 4000 acres of land. The State had filed Review Petition and after 300 days from Review Petition, the S.L.P. was filed. The Apex Court has held that it is duty of the Court to protect the public justice and the expression “sufficient cause” must receive liberal construction to advance substantial justice. In that case, delay was condoned subject to heavy costs of Rs.10,00,000/-. In the present case, the issue involved is of larger public interest which requires to be adjudicated as the Government employees are regularly claiming change of date of birth at the fag end of their service and if their request is not considered, suits are filed.

12. I find that “sufficient cause” is to be interpreted in the light of the facts of the case and the probable consequences of non-condonation or condonation of delay.

13. In the present case, the Government Department had engaged an Advocate and unfortunately, he filed a writ petition instead of second appeal. A litigant not aware of the legal provisions has to act as per the legal advice given to him.

Therefore, the time consumed by him in bonafidely prosecuting his rights by filing writ petition will have to be condoned while considering condonation of delay. The major part of the delay of about 800 days out of 944 days is on account of this ground. It is obvious that while filing writ petition, the period of limitation was not considered and some period was wasted as the writ petition was filed after the period of around four months. After withdrawal of the writ petition, instructions were taken and the matter was handed over to the new Advocate who required several documents and thereafter, there was summer vacation. In the light of all these facts, I find that the delay has been satisfactorily explained.

14. It is material to note that the question of law raised is about the right of a Government employee to get his date of birth changed, the jurisdiction of the Civil Court vis a vis the jurisdiction of the State Administrative Tribunal, and compliance of the provisions of Rules 36 and 38 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. These issues relate to the larger public interest. If there are wrong legal notions in this regard, those need to be addressed to. Considering the gravity of the subject of public interest, the delay in this matter needs to be

condoned with pragmatic and justice-oriented approach. It is also settled that considering the methodology, insensitive and time consuming attitude in obtaining sanctions, holding meetings, granting permissions and raising funds, adopted in the Government Departments, some latitude is required to be given to the Government in the matter of condonation of delay. No doubt, there is some negligence or some lethargy on the part of the Government employees which cannot be encouraged by liberally condoning the delay. It is therefore, necessary to impose costs. Hence the following order:

ORDER

- I. The application is allowed subject to costs of Rs.5,000/- to be paid by the applicant to respondent no.1-original plaintiff within four weeks from today.
- II. If the amount of costs is paid, the appeal be taken up for scrutiny and place at the earliest before this Bench for hearing on admission.

(A. M. DHAVALE)
JUDGE

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