

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.419 OF 2018
(Secretary, Gram Vikas Shikshan Sanstha Vs. Sunil s/o Gangaram
Ganjagude and another)

Mr.P.M.Nagargoje h/f Mr.G.A.Gadhe, Advocate for the petitioner.
Mr.V.S.Badakh, AGP for State / Respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 15/01/2018

PER COURT :

1. The petitioner is aggrieved by the order dated 08/09/2017 passed by the School Tribunal, Latur, by which the application for condonation of delay of 4 months and 5 days filed by the respondent/original appellant has been allowed.

2. Learned Advocate for the petitioner/Management has strenuously criticized the impugned order. Contention is that observations in a particular sentence in paragraph No.9 of the impugned order, in fact, jeopardizes the defence of the defendants on the merits of the appeal.

3. It is then submitted that the M.E.P.S. Act, 1977 provides for limitation of one month in filing an appeal. All the representations

that were tendered by the appellant before various Educational Authorities as well as Management, are after the limitation period was over. Reliance is placed upon the judgment of the Hon'ble Apex Court in the matter of Ajit Singh Thakur and another Vs. State of Gujarat [AIR 1981 SC 733] wherein the appeal filed beyond limitation in criminal proceedings by the appellant, was considered.

4. I have considered the strenuous submissions of the learned Advocate and have gone through the petition paper book and the citation with his assistance.

5. It requires no debate that when it comes to civil or service matters, strictness with regard to the limitation period applicable to criminal proceedings, would not be applicable to the proceedings of the civil/service nature. The Hon'ble Apex Court in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] has observed in paragraph No.3, as under :-

" 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."

6. So also, the Hon'ble Apex Court has culled out certain factors while considering the applications for condonation of delay in civil proceedings in the matter of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [2013(12) SCC 649].

7. It requires no debate that when it comes as to applications for condonation of delay, the Court has to assess as to whether any laches or ulterior motive or malafides are attributed or attributable to the conduct of an applicant. In the absence of these factors, it has

to be assessed as to whether the delay caused can be said to be deliberate or inordinate. It also needs to be seen whether the litigant would be rendered remediless and the doors of the Court would be closed on him permanently if the delay is not condoned.

8. In the instant case, neither can the delay be said to be deliberate nor inordinate, in as much as, no malafides or laches are attributed to the conduct of the appellant. If the delay is not condoned, the appellant would be permanently barred from challenging his termination which is said to be dated 16/06/2016 as per the appeal preferred by the appellant. He would thus be rendered remediless. On this count, the impugned order can neither be said to be perverse nor erroneous.

9. In so far as the observations of the Tribunal in paragraph No.9 is concerned, the Tribunal has noted that "*it is seen that the appellant was working with the respondents till October 2016*" and *the respondents has failed to prove that the appellant was intentionally absent.*". These observations in fact are to be restricted only to the decision with regard to the application for condonation of delay and more so because the appellant himself has stated in the appeal that his termination is dated 16/06/2016 and he has prayed that his

otherwise termination dated 16/06/2016 be quashed and set aside.

10. As such, the above reproduced observations by the Tribunal shall stand be restricted to the decision on the application for interim relief and the Tribunal shall therefore decide the appeal filed by the appellant on its own merits and without being influenced by any observations set out in the impugned order.

11. Writ petition is disposed of accordingly.

(RAVINDRA V. GHUGE, J.)