

2. The petitioner, original appellant before the University and College Tribunal, Aurangabad, is aggrieved by the order dated 30.09.2021 by which, the delay of 150 days caused in filing the appeal for challenging his termination dated 24.07.2018, has not been condoned and MA No.02/2019 has been rejected.

3. The learned Advocate for the petitioner and the respondents Management have strenuously canvassed their respective pleadings.

4. The submissions of the petitioner can be summarized as under:

- (a) The petitioner was a part of the group of employees working with the College Management who sought arrears of salary in the light of the 5th and 6th Pay Commissions' recommendations.
- (c) They had approached this Court in Writ Petition No. 5730/2014 and since then, were at loggerheads with the Management.
- (d) Before this Court passed the order dated 22.10.2018, the petitioner was terminated alongwith several others on 24.07.2018.
- (e) A review application was also filed before this Court pertaining to the order dated 22.10.2018 and that consumed time, as well.

- (f) The petitioner has not deliberately caused the delay.
- (g) The petitioner does not gain any advantage from causing such delay.
- (h) The reasons due to which the petitioner did not take up the cause of his termination seriously, have been frankly set out in the application which may appear to be insufficient reasons.
- (i) The petitioner would be rendered remediless, , if the delay is not condoned and his illegal termination would attain finality.
- (j) The petitioner was working since 1997 as a Lecturer in the Civil Engineering department until his termination on 24.07.2018, which is 21 years of service.

5. The learned counsel for the Management has strenuously opposed this petition and her submissions can be summarized as under:

- (a) A single glance to the application seeking condonation of delay would indicate that reasons are not only casual in nature, but are fanciful as well.
- (b) When the limitation period was of 30 days, the delay of 150 days is too large.

- (c) The Principles which have been broadly culled out by the Hon'ble Supreme Court in *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*, **2013 AIR SCW 6158**, in Paragraph 15 and 16 of the said judgment read as under:

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

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.

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.

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

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.

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

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.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

xii) *The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

16. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are :-*

a) *An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

b) *An application for condonation of delay should not be dealt with in a routine manner on*

the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”

- (d) The delay should not be condoned too liberally and without a sufficient cause.

6. The learned counsel representing the University submits that as the litigation is only between the employee and his employer college, the role of the University is limited. Condonation of delay is a matter between the litigant and the Court and this court could pass an appropriate order.

7. It is well settled that while condoning the delay, the Court should not be oblivious to laches or oblique motives on the part of the litigants. If the delay caused is deliberate or intentional, this Court can take a strict view. At the same time, a pedantic approach cannot be adopted while considering such an issue and it is always preferable that a pragmatic view be taken.

8. In *Collector Land Acquisition, Vs. Mst. Katiji & Ors*, **AIR 1987 SC 1353** , the Hon'ble Supreme Court has recorded in Paragraph 3 of the judgment 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.”

9. Considering the above, I find from the record that laches or ulterior motive are not attributed to the conduct of the petitioner. No doubt, he should have taken his termination more seriously than his ongoing litigation alongwith several other employees together on the aspect of arrears of salary in view of the 5th and 6th Pay Commissions' recommendations. Loss of employment is said to be a civil death and the petitioner should have taken his termination seriously so as to immediately approach the Tribunal. The contention is that the University was requested by a large group of employees , who were terminated in similar fashion by the college management, to intervene in the ongoing tussle and hence, the petitioner as well as the similarly situated employees were of the view that things may get sorted out with the intervention of the University, before approaching the Tribunal.

10. The learned Advocate for the petitioner submits on instructions that since the refusal by the Tribunal to condone the delay closes the doors of litigations on him, he is willing to suffer

consequences by waiving back wages from 24.07.2018 till the order of the University and College Tribunal which is 30.09.2021.

11. In view of the above, this petition is partly allowed by recording the statement of the petitioner that if he eventually succeeds before the University and College Tribunal, he would not claim back wages for the period 24.07.2018 till 30.09.2021. In view of such statement and considering law applicable, the delay of 150 days, not being deliberate or inordinate, is condoned and order of the University and College Tribunal dated 30.09.2021 is quashed and set aside. M.A. 02/2019 stands allowed.

12. The litigating parties as well as the University and College Tribunal would note that in the event, the petitioner succeeds before the Tribunal, he would not be granted back wages for the period 24.07.2018 till 30.09.2021, save and except, continuity in service and benefits connected thereto.

13. Since it is informed that the matters pertaining to the North Maharashtra University are taken up by the Tribunal on every Thursday, the litigating parties shall appear before the University and College Tribunal, Aurangabad on 07.04.2022 and the Tribunal need not issue separate notices.

(RAVINDRA V. GHUGE, J.)

JPC