

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

WRIT PETITION NO.3096 OF 2020

Laxman Hunnu Rathod, ... **Petitioner**
Age: 62 years, Occu: Retired Police Inspector
R/o Vasantgrao Naik Nagar, Station Road,
Akkalkot, Tq. Akkalkot, Dist. Solapur

VERSUS

1. The State of Maharashtra
Through the Secretary,
Home Department, Mantralaya,
Nariman Point, Mumbai 400 032
2. The Superintendent of Police, Latur ... **Respondents**
S.P. Office, Shivaji Chow, Latur
Tq. & Dist. Latur

Mr. Vinod D. Godbharle, Advocate for the petitioner.
Mrs. Vaishali Patil Jadhav, AGP for the respondents State:

**CORAM : C. V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 11 JULY 2022

ORAL JUDGMENT (PER C. V. BHADANG, J.)

Rule, made returnable forthwith. The learned AGP waives service for the respondents. Heard finally by consent of parties.

2. By this petition, the petitioner is challenging the order dated 20 January 2020 passed by the Maharashtra Administrative Tribunal, Bombay, Bench at Aurangabad ('the Tribunal' for short) in

Misc. Application No.440 of 2019 in Original Application (St.) No. 1823 of 2019. By the impugned order, the learned Tribunal has refused to condone the delay of about 2 years 9 months and 17 days in filing the Original Application, challenging withdrawal of the leave encashment granted earlier to the petitioner.

3. The petitioner was serving as a Police Inspector and is facing a criminal case under the provisions of the Prevention of Corruption Act, 1988. The petitioner has since retired from service on 31 May 2015 while under suspension. It appears that the office of the second respondent had sanctioned the leave encashment to the petitioner on 18 September 2015. However, subsequently the In-charge Superintendent of Police, by his order dated 24 November 2015, has recalled the grant of the benefit placing reliance on Rule 68 (5) of the Maharashtra Civil Services (Leave) Rules 1981.

4. The petitioner sought to challenge the same before the Tribunal by filing Original Application, on 11 September 2019, resulting into a delay of 2 years 9 months and 17 days. The petitioner submitted that he was depressed on account of withdrawal of the benefits and also was looking for a match for her marriageable daughter which resulted into the delay. It was contended that the delay was neither deliberate nor intentional and sought its condonation.

5. The application was resisted on behalf of the respondents *inter alia* on the ground that sufficient cause for condonation of delay is not made out.

6. The Tribunal has not found the cause shown as sufficient and has, therefore, rejected the application.

7. We have heard the learned counsel for the parties. Perused record.

8. It is submitted by the learned counsel for the petitioner that the cause of action for pensionary and retiral benefits can be considered as a continuing cause. It is submitted that on account of pendency of the criminal case, except leave encashment and a provisional pension, at this stage, the petitioner was not entitled for any other relief. The petitioner was granted leave encashment, which has since been withdrawn. It is submitted that the petitioner does not stand to gain by approaching the Tribunal late.

9. The learned AGP submitted that the delay is not explained properly and the condonation has rightly been refused.

10. We have considered the circumstances and the submissions made.

11. The Supreme Court, in ***Collector Land Acquisition, Anantnag Vs. Mst. Katiji & Ors, 1987 AIR 1353***, has culled out the principles which are relevant in the matter of consideration of the prayer for condonation of delay, which are 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."*

12. The Supreme Court has further occasion to consider the question of condonation of delay in ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, (2013) 12 SCC 649***, in which it is *inter alia* held that there should be a pragmatic and justice oriented approach, in the matter of condonation of delay.

13. Although the principles, which are germane while considering the prayer for condonation of delay, are well settled, the question is about their application to individual facts of the case. It is true that there is a delay of over 2 years and 9 months in this case. However, considering the fact that the petitioner was out of service and claims to be under mental stress and also occupied with the family responsibility of searching for a match for his daughter who is stated to be of marriageable age, we find that considering the overall circumstances and in the interest of justice, the delay can be condoned, as sufficient cause is shown.

14. It is necessary to note that the circumstances leading to the delay cannot be weighed on a golden scale and the Court has to take a pragmatic view of all the attending circumstances. Thus, there is no presumption that the delay is intentional. In our view the delay deserves to be condoned. In the result the petition is allowed.

15. The impugned order is set aside. The delay in filing the Original Application stands condoned.

16. Rule is made absolute in the aforesaid terms.

SANDIPKUMAR C. MORE, J

C. V. BHADANG, J.

JPChavan