

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

WRIT PETITION NO.2928 OF 2018

1. Matsyodari Shikshan Sanstha, ... **Petitioner**
Near Moti Bag, Jalna
Through its Secretary, Manisha w/o
Rajesh Tope

2. Late Ankushrao Tope
Arts, Commerce & Science College,
Moti Bag, Jalna
Through its Principal
Rajendra Jagannathrao Gaikwad

VERSUS

1. Nandkumar s/o Santram Malshkhare,
Age 53 years, Occu: Retired Professor
R/o Archana Nagar, Ambad Road, Jalna

2. Dr. Babasaheb Ambedkar Marathwada
University, through its Registrar

3. Joint Director, ... **Respondents**
High Education, Aurangabad Region,
Aurangabad

Mr. S. S. Tope h/for Mr. V. V. Pawar, Advocate for the petitioner,
Mr. Vivek J. Dhage, Advocate for respondent No.1
Mr. K. M. Suryawanshi, Advocate for respondent No.2.
Mr. S.R. Yadav, AGP for respondent No.3

CORAM : RAVINDRA V. GHUGE, J.

DATE : 25th March, 2022

ORAL JUDGMENT:

1. Rule. Rule made returnable forth with and heard finally by
consent of the parties.

2. While issuing notice and granting ad interim protection, this Court had passed the following order on 23.03.2018:-

“1] The petitioners are aggrieved by the order dated 08/02/2018 passed by the University and College Tribunal, Aurangabad, by which, delay of 4 years, 5 months and 15 days caused in filing the appeal by respondent No.1, has been condoned.

2] Grievance is that respondent No.1, who is a retired lecturer and who had sought voluntary retirement on 31/01/2012, has raised a dispute by contending that he was forced to resign . He accepted his entire dues under the Voluntary Retirement Scheme and after 4 years 5 months and 15 days, has preferred an appeal. Reliance is placed upon the judgment of Hon'ble Apex Court in the case of Maruti Suzuki India Ltd. Vs. Mansing 2012(AIR)SCW 2488.

3] Issue notice to the respondents, returnable on 03/04/2018.

4] Learned AGP waives service for respondent No.3.

5] Until the returnable date in this matter, the impugned order dated 08/02/2018 shall stand stayed and Appeal No. BAMU04 of 2018 before the University and College Tribunal, Aurangabad shall be adjourned.

6] Copies of the petition paper book shall be supplied for issuance of notice on or before 03/04/2018, failing which, this petition shall stand dismissed without reference to the Court on 04/04/2018.”

3. I have considered the strenuous submissions of the learned Advocates for the respective sides and have perused the record available.

4. At the very outset, the learned Advocate for the appellant, respondent no.1 herein, submits on instructions that he is not agreeable to deposit the entire amount of Rs.23,77,117/- received by him at the time when he was relieved from employment after tendering his resignation. He is not desirous of parting with the amount since, presently, he does not have the capacity to repay the amount.

5. The facts that emerged from the record are as under:-

- (a) The appellant was a Professor in Economics, working in the Arts and Commerce College (presently renamed as the Late Ankushrao Tope Arts, Commerce and Science College) Motibag, Jalna
- (b) He tendered his resignation on 11.10.2010 under his own signature. He prayed that the same be accepted and be acted upon.
- (c) The management had not initiated steps to accept the said resignation.

- (d) On 7.01.2011, he withdrew the said resignation contending that he was under mental pressure due to domestic problems. The management respected his request and did not proceed with the resignation letter.
- (e) The appellant then tendered a resignation letter on 25.07.2011 praying that the same be accepted after 90 days w.e.f. 22.10.2011. Copy of the said letter was served on the Joint Director, Higher Education, Aurangabad Division.
- (f) Three days prior to the expiry of the 90 days period, the appellant withdrew the said resignation letter vide communication dated 19.10.2011 again contending that the domestic problems were creating mental pressure and as his pressure reduced, he was withdrawing the resignation.
- (g) The management permitted him to withdraw his resignation.
- (h) The appellant then again tendered a resignation on 03.11.2011 indicating that he personally did not desire to continue in employment and the resignation should be accepted after 90 days w.e.f. 01.02.2012.
- (i) On 04.11.2011, the appellant reminded the petitioner employer that he should be paid his unpaid salary for the period 23.10.2011 to 31.10.2011 (8 days). In the same

communication, he has prayed for his unpaid salary of March, 2011 and some period of the years 1990-91. He has also prayed for his salary of March, 2011 and two months salary of the years 1991-92.

- (j) The petitioner management waited for the expiry of the 90 days and finally accepted the resignation of the appellant dated 03.11.2021, on 31.01.2012 and made the same effective from 01.02.2012 as per the request of the appellant.
- (k) The petitioner management forwarded the proposal of the appellant to the Accountant General on 15.02.2012 which was approved on 26.07.2012.
- (l) The Joint Director, Higher Education sanctioned the same on 31.08.2012 and an amount of Rs.23,77,117/- (Rs. Twenty three lakhs seventy seven thousand one hundred and seventeen) was credited into the account of the appellant on 09.10.2012.
- (m) Even pursuant to the acceptance of the resignation, the appellant has addressed the Principal of the College on 13.09.2012 and on 02.07.2013 wherein he has insisted on clearing of his payment towards gratuity and pension as they were getting delayed due to administrative procedures and

while putting forth such request, he stated that he was scared of the Management and hence he had resigned on 03.11.2011.

- (n) The appellant approached the University and College Tribunal on 19.08.2016 with the grievance that he was under the pressure of the late Ankushraoji Tope, President of the Trust. After his demise on 03.04.2016, he was relieved of such pressure and hence, he has filed the Appeal with the delay of four years, five months and 15 days.

6. It is well settled law that in the matters of forceful resignation, time and circumstances are the essence. If a person is forced to resign, and if the incident of exerting pressure occurs in the premises of the employer, such a person can always lodge a complaint or approach an appropriate forum for contending that he was forced to resign and that his resignation should not be accepted. There are instances, when an employee is compelled to resign, for example, on 01.01.2020, the resignation is accepted on the same day, he is relieved on the same day and the payment of his legal dues is also made on the same day. Such a person can thereafter immediately raise a grievance and the undue haste or the mad haste visible on the part of the employer's conduct, would clearly indicate that the employee was compelled to resign.

7. The case in hands is quite peculiar. The appellant initially resigned on 11.10.2010. The management did not show any haste in

accepting the resignation. Four days prior to the expiry of 90 days, the appellant withdrew the resignation on 07.01.2011. Thereafter, the appellant again resigned on 25.07.2011 with 90 days notice period. Three days prior to the expiry of the notice period, he withdrew the resignation on 19.10.2011. Even on this occasion, the management did not show any haste in accepting the resignation. Thereafter, the appellant tendered his resignation on 03.11.2011. On 04.11.2011, he reminded the management of some unpaid dues as adverted to in the foregoing paragraphs. He allowed the notice period of 90 days to expire. Thereafter, the management began to process his retiral benefits by accepting his resignation with effect from 01.02.2012. The proposal was forwarded after 15 days as noted in the foregoing paragraph. The entire legal procedure was completed and the appellant was paid his legal dues on 09.10.2012 by crediting an amount of Rs.23, 77,117/- in his bank account. Not once has the appellant raised the issue with regard to purported pressure or coercion.

8. After the demise of the President of the Education Trust on 03.04.2016, he preferred his appeal on 19.08.2016, which is after four months and 16 days of the demise of the president, alleging that "*it was not within ambit of the appellant to controvert the wish of late Ankushraoji Tope. Therefore, he even could not file the appeal before*

this Hon'ble Tribunal. The termination order dated 02.06.1990 was also under the signature of late Ankushraoji Tope, the then President of Respondent no.3".

9. The learned Advocate representing the appellant Professor, submits that the appellant was earlier terminated by order dated 02.06.1990 for the reason that there was no continuation granted to him. The said order was not given effect to and according to the appellant, the said order was like a hanging sword on his head for 21 years till he resigned on 03.11.2011.

10. I find that the above excuses set out in the appeal memo and as a reason for seeking condonation of delay in filing the appeal after four years five months and 15 days, can only be termed as being lame excuses.

11. The learned Advocate for the appellant has relied upon the following judgments:-

- (1) Ariane Orgachem Pvt. Ltd. Vs. Wyeth Employees Union & ors., 2016 AIR (SC) 1761.
- (2) Dr. Ashok Rajmal Mehta Vs. Shree Tirthankar Co., 2018 (1) Mh.L.J. 185.
- (3) Manoranjan s/o haripada pradhan & anr. Vs. Union of India, 2017(1) Mh.L.J. 163.
- (4) Salmone Villa Coop. Hsg.Society Ltd. Vs. Smt. Mary Fernandes & ors., 1997 (1) All MR 164.

(5) Balaji s/o Pandurang Manale Vs. Indira Memorial Eduztion Society, Ashiv, Tq. Ausa Dist. Latur , Writ Petition No.2201 of 2009.

12. The learned Advocate for the petitioners has relied upon the judgment of the Hon'ble Supreme Court delivered in *Man Singh vs. Maruti Suzuki India Ltd. and another*, 2011 (14) SCC 662.

13. The contention of the appellant is that the University and College Tribunal can consider the rival merits after the condonation of delay. The learned Advocate for the petitioner submits that the delay itself could not have been condoned for being inordinate and on lame excuses put forth.

14. I find from the judgment delivered by the Hon'ble Supreme Court in *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*, **2013 AIR SCW 6158**, that certain principles have been culled out by the Hon'ble Apex Court with the mandate that the said principles must be kept in focus while deciding the condonation of delay and especially in matters wherein the delay is quite large. It would be apposite to reproduce the principles enunciated by the Hon'ble Apex Court in paragraph 15 and 16, which 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.”

15. Considering the Solitary reason cited by the appellant, which I have concluded as being a lame excuse, his case would squarely fall under the principles enunciated by the Hon'ble Court at Clauses (v), (vi), (viii), (x), (b) and (d)

16. To test the bonafides of the appellant, as to whether he was seriously under any pressure or whether it is just a “case of take a chance litigation” resorted to by the appellant, I called upon him to deposit the entire amount which he had received on 09.10.2012 without any demur or any murmur or any protest. The appellant has specifically instructed the learned Advocate to make a statement that he is not in a position to deposit the said amount.

17. It does not call for any debate that ‘take a chance’ litigation is not to be encouraged. Litigants like the appellant before this Court who had resigned twice earlier and the management had shown no interest in his resignation and did not react till the notice period of 90 days was over, which indicates that the petitioner management was not bent upon ensuring the exit of the appellant. It was the appellant who submitted his resignation for the third time which was entertained by the management by following the due process of law. The conduct of the management does not indicate any haste, much less undue or mad haste. The management waited till the notice period was over and then

initiated the process of acceptance of his resignation. This is a clear indication that the management had no undue interest in extracting the resignation of the appellant or in hurriedly planning his exit from employment. It was almost after 10 months that were consumed in the legal process, that the appellant received his entire legal benefits on 09.10.2012. It was for more than four years he utilized the amount without any protest.

18. In view of the above, I find this case befitting to be termed as 'take a chance' litigation at the behest of the appellant who can be said to have abused the process of law by approaching the University & College Tribunal after four years, five months and 15 days. If this Court decides to blink at such cases, or turn a blind eye, litigants like the present appellant who is a highly qualified Professor, would indulge in abusing the process of law. The entire factors involved in this case are so glaring and convincing that there is no necessity to have his appeal being registered, much less to be decided on the basis of the averments. It would cause unnecessary loss of precious time of the Tribunal as well as expenditure to be incurred by the petitioner management on account of no fault on its part. Further abuse of the process of law can be averted and should be avoided. It is obvious that the College Tribunal did not apply its mind to this factor.

19. This petition is therefore allowed. The impugned order dated 08.02.2018 by which the University and College Tribunal has casually condoned the delay, stands quashed and set aside and Misc. Application No.12 of 2016 stands rejected.

20. Rule is made absolute in the above terms.

21. The learned Advocate for the petitioners prays for heavy costs to the tune of Rs.five lakhs since the appellant has not only harassed the management, but has dragged the management into litigation. The learned Advocate for the appellant Professor submits that the appellant was under the belief and continues to be under the belief that he was forced to resign and therefore he had approached the Court. Knocking the doors of the Court cannot be an offence and, therefore, costs should not be imposed. Considering these submissions and the fact that the appellant has been leading a retired life, I am not imposing costs.

(RAVINDRA V. GHUGE, J.)

JPC