

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

WRIT PETITION NO.8897 OF 2016

SAYYED ATHAR SAYYED AAJAM
VERSUS
PRESIDENT CHAIRMAN INAYAT EDUCATION SOCIETY PARBHANI AND
OTHERS

...
Advocate for the Petitioner : Dr.Godbole R.J.
AGP for Respondent 3 : Shri N.T.Bhagat
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd March, 2022

Per Court:

1. By this Writ Petition, the petitioner/ original appellant before the School Tribunal, seeks to challenge the order dated 03.09.2015 vide which, the Tribunal rejected Misc. Application No.18/2014 and declined to condone the delay of 03 years, 06 months and 19 days.

2. The petitioner had approached the School Tribunal for challenging his unlawful oral termination dated 15.02.2011. As he was consistently restrained from signing the muster roll, marking his presence and discharging his duties as a Peon, he finally approached the Tribunal and mentioned the first date from which he was orally restrained from marking his presence and discharging his duties, as the date of oral

termination. After a contest, the Tribunal concluded that sufficient grounds have not been put forth by the petitioner and therefore, his application for condonation of delay cannot be entertained.

3. It appears from the impugned order that the Tribunal has referred to several photostat copies of the letters, which are part of the correspondence by the petitioner with the Management as well as with the Education Officer, the Chief Executive Officer, Zilla Parishad, etc.. Reference is made by the Tribunal to these documents in paragraphs 23 to 31 of the impugned order.

4. The learned AGP submits that it was the petitioner, who contended that he was disallowed from marking his presence. The Management has denied the said contention. This Court may pass an appropriate order.

5. None appears for the employer Management. However, the Management has filed an affidavit in reply dated 27.02.2017. Their written statement filed before the Tribunal is also on record. It is contended that the petitioner was working as a Peon from 02.08.2004 till March, 2011. However, he was not appointed on a vacant post. On 14.02.2011, the petitioner voluntary left employment and remained absent without leave. It is specifically mentioned in paragraph 4 that “*the petitioner was orally informed to have been terminated in the last week of March, 2011 due to his unauthorized absence from second week of*

February, 2011". It is further reiterated in paragraph 5 that the petitioner was orally terminated.

6. In my view, the act of oral termination is non-est. It is surprising that the employer in this case boldly asserts that the petitioner has been orally terminated. Be that as it may, it is obvious that if the delay caused in preferring the appeal is not condoned, the admitted act of the employer of having orally terminated the petitioner, would never be tested in law. The doors of litigation would be closed upon him and the Management would get away with an illegal act of oral termination.

7. This Court, while dealing with such matters, has to balance the equities. The condonation of delay should not lead to a litigant drawing advantage by the delay. Either costs can be imposed on such litigant or he can be deprived of the back wages for the period of delay and the time spent in the application for condonation of delay being adjudicated upon, if he eventually succeeds before the Tribunal in his challenge to the termination.

8. The Honourable Supreme Court has held in ***Collector, Land Acquisition, Anantnag vs. Mst. Katiji and others***, AIR 1987 SC 1353, in paragraph 3 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. In view of the above, this Writ Petition is partly allowed. The impugned order dated 03.09.2015 is quashed and set aside and Misc. Application No.18/2014 is allowed with the following directions :-

(a) Considering that 30 days is the limitation from the date of the cause of action, if the petitioner eventually succeeds in his appeal, he would be deprived of the back wages from 15.03.2011 till August, 2015 in the light of the impugned order having been delivered on 03.09.2015. However, continuity in service would be granted.

(b) The petitioner and respondent No.3 shall appear before the School Tribunal at Latur on 11.04.2022. The Tribunal would issue notice to respondent Nos.1 and 2/ Management since the said party is absent during the hearing of this petition.

(c) The employer Management shall file it's written statement to the appeal along with the documents as may be desired, on or before 30.06.2022.

(d) Since the appeal has been preferred in 2014 and the cause of action dates back to 2011, the School Tribunal would endeavour to decide the appeal as expeditiously as possible and in any case, on or before 28.02.2023.