

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

3 WRIT PETITION NO.8278 OF 2021

JIJAMATA SHIKSHAN PRASARAK MANDAL, PADOLI THR ITS
PRESIDENT VENKAT VISHWANATHRAO GUND AND ANOTHER
VERSUS
NAVNATH MAROTI SARPALE AND OTHERS

...

Advocate for Petitioners : Mr. S. S. Jadhavar
AGP for Respondent No.2: Mr. S. R. Yadav-Lonikar
Advocate for Respondent No.1 : Mrs. M. A. Kulkarni

CORAM : RAVINDRA V. GHUGE, J.
DATE : 21st March, 2022

ORDER:

1. The petitioner Management is aggrieved by the Order dated 10.07.2020 passed by the School Tribunal, Solapur thereby condoning the delay of 4 years, 9 months and 13 days in Misc. Application No.109/2019.
2. The strenuous submission of the learned Advocate for the petitioners can be summarized as under:-
 - (a) The original appellant claims to have been orally terminated on 20.10.2014.
 - (b) All his representations beginning with from dated 03.11.2014 till 26.06.2018 (from page Nos. 37 to 58 of the petition paper book) are without any acknowledgment.

- (c) All these representations have been manufactured to create a picture that the appellant was continuously pursuing the Management with regard to his oral termination.
 - (d) The appellant is not a confirmed employee.
 - (e) A new person Dhanaji Shahaji Kshirsagar has been appointed in his place.
 - (f) The limitation for preferring an appeal under Section 9 of the MEPS Act, 1977 is 30 days.
 - (g) The delay is too large to be condoned.
 - (h) The delay cannot be condoned on sympathetic grounds.
3. The learned Advocate for the original appellant submits in brief as under:-
- (a) The appellant has been working as peon with the School from 16.06.2003 until 20.10.2014.
 - (b) He is an illiterate person.
 - (c) He used to sign on a muster roll which was made available for him for recording his attendance.
 - (d) After 11 years of service, the management stopped permitting him to sign muster roll from 20.10.2014.
 - (e) He used to deliver his representations from 03.11.2014 till 26.06.2018 to the Headmaster who would not issue an acknowledgment.

- (f) The School Tribunal has recorded that the Education Officer initiated an enquiry into the grievance of the appellant and finally directed the management that as his services are approved and he is in continued employment, he should be permitted to sign the attendance sheet and work in the premises.
- (g) The School Tribunal has rightly considered the circumstances for condoning the delay.
- (h) The said school was on permanent non grant basis.
- (i) Respondent No.3 namely Dhanraj Shahaji Kshirsagar, who was respondent No.4 before the School Tribunal, has the qualification of B.A., B.P. Ed. and was working in the school as a teacher from 13.06.2005.
- (j) Respondent No.3, later on, was shown to be a peon after 2011 and presently he has been selected and appointed as Talathi and is no longer in the services of the school.
- (k) The appellant specifically makes a statement before this Court that if his appeal is finally allowed by the Tribunal on merits, he would not claim back wages for the period of 4 years, 9 months and 13 days.

4. Having considered the strenuous submissions of the learned Advocates for the respective sides, it is apparent that the appellant is

assailing his unlawful termination dated 20.10.014. No doubt, the delay seems to be a bit large of 4 years and 9 months. However, laches or oblique motives are not attributed to the conduct of the appellant. So also, if this delay is not condoned, the doors of litigation would be shut on the appellant and he would never be able to assail his unlawful termination in his entire life time.

5. There is no dispute that the appellant joined as a peon on 16.06.2003 and was working till 20.10.2014. The petitioners have specifically canvassed that it is a case of abandonment of service. The record reveals that the appellant has been granted approval and is working for 11 years. As per Rule 16(3) of the MEPS Rules, 1981, if a permanent employee remains absent without leave for 7 days, it is to be treated as a breach of discipline and he is liable for disciplinary action by conducting a departmental enquiry. If his continuous absence without leave exceeds three years, he is deemed to have voluntarily abandoned his services.

6. The learned counsel for the petitioner, therefore, canvassed that even if the management has not conducted an enquiry, the appellant can be deemed to have abandoned services due to three years of consecutive absence.

7. I am of the view that Clause 3 cannot be broken into two separate portions so as to be treated as stand alone provisions. Rule 16 (3) reads as under:

“(3) In the case of a permanent employee who, without sufficient cause, fails to apply for leave within 7 days from the date of absence, it shall be treated as breach of discipline and he shall be liable for suitable disciplinary action after due inquiry. A permanent employee who is absent from duty [without leave continuously for a period exceeding three years] or more, shall be deemed to have voluntarily abandoned his services.”

8. It is thus clear that the moment a permanent employee is absent without leave for seven days, it is to be treated as a breach of discipline and he becomes liable for disciplinary action. The management, therefore, is obliged to initiate appropriate action. If such absence continuous without leave for a period exceeding three years, the management can take a plea that he has voluntarily abandoned his services.

9. It is well settled that remaining unauthorizedly absent i.e. without leave being sanctioned, is a charge of unauthorized absenteeism and such charge has to be proved, if the management intends to initiate disciplinary action against such an employee. In the

case in hand, the petitioner management is totally silent for the entire period of about 4 years.

10. It is the case of the appellant that he was consistently addressing the Headmaster from 03.11.2014. There is a possibility that being a Peon, he may not have mustered enough courage to call upon the Headmaster to issue an acknowledgment to him. In the absence of any allegation that he was working elsewhere, it is quite improbable that the appellant would have voluntarily left permanent employment thereby causing his own unemployment.

11. In my view, the law laid down by the Hon'ble Apex Court in the case of *Collector Land Acquisition, Vs. Mst. Katiji & Ors*, **AIR 1987 SC 1353** would be applicable in this case. Paragraph No.3 of the said judgment reads thus:

“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."

12. Considering the entire fact situation as analyzed above, it is obvious that there no laches attributable to the conduct of the appellant, inasmuch as, if the delay is not condoned, he would be restrained from challenging his unlawful termination in his lifetime. The

statement made by the appellant that if he succeeds before the Tribunal, his back wages for the period of delay which is 4 years, 9 months and 13 days could be deprived, can be accepted in order to balance the equities.

13. In view of the above, this petition is partly allowed only to the extent of deleting the direction of the School Tribunal regarding payment of Cost of Rs.2000/- and replacing the same with the direction that if the appellant eventually succeeds before the Tribunal, he would be deprived of the back wages for the period of 4 years, 9 months and 13 days.

(RAVINDRA V. GHUGE, J.)

JPC