

(1)

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

WRIT PETITION NO.8292 OF 2021

FARAT BANO MOHAMMAD RIYAZODDIN
VERSUS
THE STATE OF MAHARASHTRA, THR. IT'S SECRETARY
AND OTHERS

...

Mr A. N. Kakade, Advocate for petitioner;
Mr A. A. Jagatkar, A.G.P. for respondent No.1
Mr P. S. Dighe, Advocate for respondent Nos.2 & 3
Mr K. M. Suryawanshi, Advocate for respondent No.4

CORAM : SMT. BHARATI DANGRE, J.

DATE : 19th January, 2022

PER COURT:

1. Heard the learned Counsel for the petitioner, the learned AGP for respondent No.1, the learned Counsel for respondent Nos.2 and 3 and the learned Counsel for respondent No.4.

The petitioner, working as 'Lab Assistant' in the respondent No.3 - College since 2008, aggrieved by the alleged oral termination/otherwise termination on 24/02/2020, approached the University and College Tribunal at Aurangabad, by instituting an appeal on 02/11/2020. In filing the appeal, since the delay had occasioned, she filed a separate application seeking condonation of delay of 92 days in filing the appeal.

(2)

2. On the appeal being filed along with the application for condonation of delay, the Tribunal, by an order dated 17/03/2021, allowed the application and condoned the delay and directed the appeal to be registered. On registration of the appeal, notices were issued to the respondents. The Management viz. Respondent Nos.2 and 3 in this petition, filed an application on 22/04/2021, seeking recall of the order passed on the delay application and seeking restoration of the said application to its original position and fixing it for hearing.

On the said application, the present petitioner filed a detailed reply on 28/06/2021, opposing the said application on the ground that there is no power vested in the Tribunal to recall its order and since the Tribunal had already recorded that the respondents had failed to appear, on considering the merits of the application, the delay was condoned.

3. On 02/07/2021, the Tribunal granted the application filed by the Management by recording as under :-

“2. By filing reply, the respondent nos.1 and 2 have raised objection that no sufficient cause is assigned by

(3)

the applicant for condonation of delay. According to the respondents, the gross delay of near about one year cannot be condoned on the ground of lockdown, because even after relaxation of lockdown, the appellant has not taken steps to file appeal within time limit. Accordingly, the respondents prayed for dismissal of the application.

3. Heard learned counsel for the applicant and counsel for respondent nos.1 and 2.

4. Learned Counsel for the applicant requested for condonation of delay on the ground of poor health condition of applicant as well as on the ground of death of her father. He has also pointed out that even the period of lockdown from 23.3.2020 to 30.7.2020 can be considered as one of the ground for condonation of delay.

5. Learned counsel for the respondent nos.1 and 2 submit that even if the lockdown period is excluded, even then there is inordinate delay in filing the appeal, which is filed on 2.11.2020. He has also pointed out that only on equitable ground delay cannot be condoned. Learned counsel for the respondent nos.1 and 2 has pointed out some infirmity in the appeal of the applicant. However, while considering the delay condonation application, the merits of the appeal need not be considered."

(4)

4. Pertinent to note that this order do not make any reference to the reply filed by the petitioner, opposing the application and the ground raised therein about the tenability of such an application. Be it so, the Tribunal afforded opportunity to both the parties and proceeded to hear the application for condonation of delay afresh and rejected the same by an order dated 02/07/2021 and this order is impugned in the present writ petition.

5. The order dated 02/07/2021, refuse to accept the bona fides of the appellant, justifying the cononation of delay and the Tribunal arrived at a conclusion that the inordinate delay in bringing the appeal, do not deserves condonation. The Tribunal recorded that in the appeal memo, the date of oral termination is mentioned by the appellant herself as 06/01/2020, but in the application for condonation of delay, the date of oral termination is mentioned as 24/02/2020. This is obviously done with an intention to get the benefit of the extension of period of limitation by projecting a false date of termination as 24/02/2020, to make the Tribunal believe that the applicant has approached the Tribunal with a bona fide intention. Recording that, if the oral termination is considered to be 06/01/2020, the period of

(5)

limitation of 30 days expired on 06/02/2020, however, delay condonation application along with appeal is filed on 02/11/2020 and this caused delay of 10 months in filing the appeal.

6. While dealing with the merits of the application, where the reason cited by the applicant is the demise of her father on 11/09/2020 and an unfortunate incident of the death of her twin foetus on 15/09/2020, the Tribunal, by making a reference to the decision of the Hon'ble Apex Court in case of **Basawaraj and anr. Vs. Special Land Acquisition Officer, [2013 (5) ALL MR 934]**, borrowed the ratio flowing from the said decision to the effect that period of limitation cannot be extended only on the equitable ground and unless sufficient cause for delay is assigned by the applicant, the Court cannot condone the delay. The Tribunal make a brief reference to the medical certificate issued by the Maternity Nursing Home, which reflect that the applicant was advised to take rest for six months. By cursorily referring to the said certificate, the Tribunal jumped to a conclusion that she was expected to file the appeal upto 06/02/2020, however, the appeal is filed on 02/11/2020 and it is for her to explain as to why the appeal could not be filed during the period of limitation.

(6)

7. The power to condone a delay is necessarily a discretion vested in a Court and which is expected to be exercised judicially. True it is that, merely for the sake of asking, a judicial authority will not condone the delay, but on a sufficient cause being shown, delay deserve to be condoned and though there cannot be a straight-jacket formula, about how the discretion has to be exercised, the guiding factor is the discretion to be exercised on equitable consideration, and in my considered opinion, this is one of the fit case where the discretion ought to have been exercised by the Tribunal, but has not exercised on the specious ground that delay is not at all explained.

Pertinent to note that in the memorandum of the appeal filed by the appellant, if the cause of action as pleaded in paragraph No. 19 is perused, the appellant has declared that she got the knowledge that she has been terminated on 24/02/2020 as she was restrained from entering the College premises and this was pleaded to be the cause of action for bringing the present appeal. The appellant specifically pleaded that there was a nationwide lockdown and since it was extended from time to time, by the new curbs being imposed when the entire nation was grappling with the Covid-19 pandemic, the appeal could not be filed within

(7)

limitation. By way of abundant precaution, since the appeal came to be filed in the month of November, the appeal was accompanied with an application of condonation of delay, computing the delay of 92 days from August to November.

When the said application is perused, the applicant has highlighted that from the month of July 2019, on account of certain medical complications arising out of her pregnancy, she was advised complete bed rest and on 11/09/2019, she lost her father and suffered another blow on 15/09/2019 on account of demise of the twin foetus. This caused her tremendous mental and physical exertion, which compelled her to remain absent from duties. When she expressed her inclination to resume the duties on 05/12/2019, it was turned down and thereupon she preferred representation to the Management, permitting to resume her duties, but since no heed was paid and she was informed that she has been terminated, she opposed the Tribunal by seeking a relief of setting aside the oral/otherwise termination on 24/02/2020.

8. In the wake of the Covid-19 pandemic, and to save the litigants as well as the lawyers from the unprecedented situation and scenario, the Hon'ble Apex Court was required to take suo-moto cognizance of the situation and in realm cognizance for

(8)

extension of limitation, in Suo-Motu Writ petition (Civil) No.3/2020, the Hon'ble Apex Court had issued certain directions, which included extension of the period of limitation in filing any suit/appeal/application/proceedings commencing from the period from 15/03/2020 till 14/03/2021 to be excluded .

The benefit of the aforesaid direction must go to the present applicant, who has preferred the appeal being aggrieved by the alleged oral termination on 24/02/2020 and as such, the period of limitation for bringing an appeal, expired on 24/03/2020, which clearly fall within the period set out by the Hon'ble Apex Court being from 15/03/2020 till 14/03/2021. In any case, since the appellant has filed an appeal in the month of November 2020, the Tribunal ought to have considered the extension of period of limitation by the Hon'ble Apex Court, but instead, it proceeded on a footing that the appellant is challenging the termination dated 06/01/2020 and therefore, the period of limitation has expired on 06/02/2020 and she cannot take benefit of the order passed by the Hon'ble Apex Court. This finding rendered by the Tribunal is incorrect since going by the appeal, the appellant has specifically prayed for setting aside the alleged termination dated 24/02/2020, which deserves an extension in the wake of the order passed by

(9)

the Hon'ble Apex Court in Suo-Motu Writ Peiition (Civil) No.3/2020.

9. In the wake of the above, the impugned order deserves to be quashed and set aside and being convinced on the merits of the matter, I need not deal upon the contention of the petitioner about whether the Tribunal was justified in recalling the order without taking into consideration her objection to the methodology adopted by the Tribunal in recalling it's order.

The impugned order is quashed and set aside. The delay being condoned, the Tribunal is directed to register the appeal and decide the same according to the merits of the matter.

At time, when the appeal is finally heard, parties shall reserve their rights to plead before the Tribunal about the payment of backwages during the period from the alleged termination till the date of the filing of the appeal.

(SMT. BHARATI DANGRE, J.)

sjk