

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8735 OF 2015

Ughade Rahul Murlidhar

.... Petitioner

Versus

Jivhala Apangamati Vikas Sanstha & Anr.

.... Respondents

Mr. P.R. Arjunwadkar i/b. Ms Prabha Badadar for the Petitioner.

Mr. V.S. Nimbalkar, AGP for State.

CORAM : VALMIKI SA. MENEZES, J.

DATE : 21st DECEMBER, 2022

PC. :

1. Rule. Rule made returnable forthwith.
2. By consent of parties, this petition is taken up for final disposal.
3. By this petition, the acceptance is taken to judgment and order dated 15/16.02.2012 passed by the Divisional Social Welfare Officer, Latur Division, Latur, dismissing an application for condonation of delay in filing an Appeal No.2 of 2011. The order dismissing an application for condonation of delay has been impugned herein.
4. It is the petitioner's case that the petitioner's services as a Special Teacher were terminated by an order dated 23.07.2007, which was challenged by the petitioner by way of an appeal bearing No.2 of 2011. The appeal was allowed by judgment and order dated 15.01.2010, which was challenged by Respondent No.1 in Writ Petition No.1766 of 2010; this petition came to be allowed on 16.03.2011 remanding the appeal back to

the Appellate Authority where the appeal was renumbered as Appeal No.2 of 2011. Thereafter, it appears that the appeal was dismissed as being beyond limitation by 10 months and 14 days as the petitioner had not filed any application for condonation of his delay. The petitioner challenged order dated 27.05.2011 dismissing his appeal by way of a Writ Petition No.5360 of 2011, which petition was disposed of by this Court on 17.10.2011, setting aside order dated 27.05.2011 passed by the Divisional Social Welfare Officer, Latur Division, Latur in Appeal No.2 of 2011, granting liberty to the petitioner to make an application explaining the circumstances in which the delay in filing the appeal occurred and direction to the Appellate Authority to dispose of such application for condonation of delay within a period of eight weeks from the receipt of this Court's order.

5. Thereafter, it appears that an application for condonation of delay was indeed filed by the petitioner on 27.12.2012 i.e. to say not within the period of four weeks as specified by this Court's orders, but with a further delay of about three months beyond that date. The application for condonation of delay records at Para 5 thereof, reasons for further delay in filing the application being due to the ill-health of Advocate for the petitioner, which was supported by medical certificate annexed to the application.

6. On hearing the application, the Appellate Authority dismissed the application mainly on the ground that the petitioner had not complied with the order dated 17.10.2011 of the High Court, which had directed that the application for condonation of delay be filed within a period of four weeks from the order i.e. to say that by 16.11.2011 and instead the

same was filed on 27.02.2012.

7. Heard learned counsel for the respective parties. Perused the record of the petition and the impugned order.

8. It is the petitioner's contention that the explanation for not lodging the application within four weeks as permitted by this Court's order was given in the great detail at Para 5 of the application. The petitioner further contends that notwithstanding the fact that it was more appropriate to have sought extension of time granted by this Court's order dated 17.10.2011 before filing an application for condonation of delay, sufficient averments at Paras 11 to 13 ever made to justify extension of time by this Court. The petitioner submits that the respondents are not disputed the averments made in the petition, on the basis of which he seeks extension of time by this Court to file the application beyond the period of four weeks as set out in order dated 19.10.2011.

9. Per contra, Respondent No.1 opposes the reliefs sought in the petition contending that even the reasons cited in the application for condoning delay i.e. the reason that the Advocate was indisposed and the supporting medical certificate do not appear to be genuine.

10. Be that as it may, it would be just and proper if the time of four weeks specified in order dated 17.10.2011 to file the application for condonation of delay is hereby considered to be extended, in view of filing of the application beyond the period of four weeks having been sufficiently explained in the petition.

11. The view taken by the Divisional Social Welfare Officer, Latur Division, Latur appears to be narrow and the application for condonation of delay

has been dismissed only on the count that it has been filed beyond the period of four weeks that was specified in this Court's order dated 17.10.2011. The impugned order dated 16.02.2012 has not been passed based upon the merits of the application for condonation of delay.

12. For the aforesaid reasons, I hereby set aside the order dated 15/16.02.2012 passed by the Divisional Social Welfare Officer, Latur Division, Latur, dismissing the application for condonation of delay in filing an Appeal No.2 of 2011 and direct the Divisional Social Welfare Officer, Latur Division, Latur, to consider the application on its own merits and decide whether delay in filing the appeal is to be condoned on the basis of the reasons specified in the application. The Divisional Social Welfare Officer, Latur Division, Latur, may dispose of the application for condonation of delay in Appeal No.2 of 2011 preferably within a period of eight weeks from the receipt of this order.

13. Parties to appear before the Divisional Social Welfare Officer, Latur Division, Latur, on 2nd January, 2023.

14. Rule is made absolute in the above terms.

15. Writ Petition stands disposed of.

[VALMIKI SA. MENEZES, J.]