

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 3052 OF 2023

Aasaram S/o Sakharam Chormare
Since died Through his Legal Hair,
Mahananda Wd./o Aasaram Chormare
Age: 57 years, Occu.: Household,
R/o: Paradgaon, Tq. Ghansawangi,
Dist. Jalna.
At Present Swapnil App. Flat No. 9,
Dahanukar Colony, Karve Road, Kotharud,
Pune, 411038.

... Petitioner

Versus

1. The State of Maharashtra,
The Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
2. The Settlement Commissioner
& Director of Land Records, Pune.
3. The Dy. Director of Land Records,
Aurangabad.
4. The District Superintendent of Land
Records, Osmanabad.

... Respondents

...
Mr. U. S. Patil, Advocate for Petitioner.

Mr. S. K. Tambe, AGP for Respondents/State.

...

CORAM : RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.

RESERVED ON : 06th April, 2023.

PRONOUNCED ON : 08th June, 2023.

J U D G M E N T : (Per Sanjay A. Deshmukh, J.)

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

2. On 20th March, 2023, we had passed the following order:-

“1. Leave to correct prayer clause ‘C’. Correction be carried out forthwith.

2. The Petitioner has put forth prayer clauses ‘B’, ‘C’ and ‘D’ as under :-

“B] By way of appropriate writ, order or directions in the like nature, this Hon’ble High Court may kindly quash and set aside the impugned order dated 14/12/2021 passed the Maharashtra Administrative Tribunal, Aurangabad in Misc. Application NO.174/2017 in Original Application st. no. 588/2017.

C] By a Writ of certiorari or any other appropriate writ or directions in the like nature, the misc. Misc. Application No.174/2017 filed by the petitioner for delay condonation may kindly be allowed and the delay of 7 years caused in filing the original application may kindly be condoned in the interest of Justice and oblige.

D] Pending hearing and final disposal of the Writ Petition, this Hon'ble High Court may kindly direct the respondents to pay the amount of GPF, GIS and the arrears of suspension period from 31.5.2006 to 13.7.2009 and also the benefits of six pay commission report with interest to the petitioner."

3. The Tribunal has rejected the Application and has refused to condone the delay of 7 years and 9 months in preferring an Appeal against the dismissal from service. Another reason for rejection is that the Tribunal has come to the conclusion that the Petitioner had taken a false stand that he had preferred an Appeal before the Tribunal and this was considered to be an act of dishonesty.

4. The learned Advocate for the Petitioner submits that the Petitioner would file an affidavit undertaking in this Court, that he would not claim any monetary benefits or incidental/consequential benefits, for the period from 13.07.2009 when he was dismissed till 26.04.2017 when he filed the Original Application before the learned Tribunal, within two weeks.

5. List this Petition on 06.04.2023 for passing orders."

3. The Petitioner died. His wife proceeded with this Petition.

4. Late Aasaram was initially appointed as a Surveyor on 15th November, 1978. On 31st May, 2007, he was suspended as he

illegally collected Rs.67,154/- from the people as measurement charges. Departmental Enquiry was conducted against him in the year 2008. He was held liable and removed from service by an order dated 13th July, 2009. On 9th November, 2009, he submitted an application to Respondent Nos.1 and 2 for reinstating him and prayed for GPF, GIS and arrears of subsistence allowance as per the 6th Pay Commission. Respondent Nos.1 and 2 have not decided the application dated 9th November, 2009. The original Petitioner filed Original Application before the learned Maharashtra Administrative Tribunal, Bench at Aurangabad, along with Miscellaneous Application No.174 of 2017 for condonation of delay of 7 years and 9 months caused for filing the Original Application. By an order dated 5th May, 2017, Miscellaneous Application No.174 of 2017 for condonation of delay was rejected and registration of Original Application was refused.

5. Against the said order dated 5th May, 2017, Aasaram (husband of the Petitioner) moved this Court by filing Writ Petition No.10161 of 2017. By the order dated 11th June, 2019 passed in Writ Petition No.10161 of 2017, this Court partly allowed the Writ Petition and Miscellaneous Application No.174 of 2017 in Original Application (Stamp) No.588 of 2017 was remanded back for deciding the same

afresh on merits.

6. By an order dated 14th December, 2021, the learned Tribunal again rejected Miscellaneous Application No.174 of 2017. Feeling aggrieved by the impugned order, the Petitioner has filed this Writ Petition and prayed for condonation of delay and for quashing and setting aside it, which was passed in Miscellaneous Application No.174 of 2017 in Original Application (Stamp) No.588 of 2017.

7. By this Petition, the Petitioner prayed for condonation of delay of 7 years and 9 months caused for filing the original application. The Petitioner also prayed for an amount of GPF, GIS and the arrears of suspension period from 31st May, 2006 to 13th July, 2009.

8. In the representation dated 2nd July, 2009, the Petitioner contended that he had not got the suspension allowance as per the 6th Pay Commission.

9. The learned Advocate for the Petitioner argued that the Petitioner is the wife of the deceased employee of Respondent Nos.2 to 4. She is entitled for the arrears of subsistence allowance as per the 6th Pay Commission. She is entitled for GPF and GIS amount. He

further argued that the reasons and findings recorded by the learned Maharashtra Administrative Tribunal, while dealing with the application for condonation of delay, are not legal, correct and sustainable. The learned Tribunal has failed to consider the grounds in the application for condonation of delay and would have allowed it in the interest of justice. He lastly prayed to allow this Writ Petition.

10. The learned AGP for the Respondents submitted that there is a delay of 7 years and 9 months and the application for condonation of delay is rightly rejected for two times by the learned Maharashtra Administrative Tribunal. He further submitted that when an employee is terminated, he has no right to claim the amounts of GPF, GIS and arrears of suspension allowance. He lastly prayed to dismiss this Writ Petition.

11. Perused the documents filed on record, particularly, the representations of the husband of the Petitioner dated 18th November, 2008, 2nd July, 2009, 9th November, 2009 and 18th April, 2017.

12. The suspended employee is certainly entitled for subsistence allowance, which is admittedly not paid to the deceased husband of the Petitioner. The Petitioner has filed affidavit dated 29th

March, 2023, in which she undertook that she would not claim monetary benefits or incidental / consequential benefits, for the period from 13th April, 2009 when her husband was dismissed from service till 26th April, 2017.

13. No doubt, the husband of the Petitioner is held liable for the acts of moral turpitude. While dealing with the application for condonation of delay caused in filing the original application, the learned Maharashtra Administrative Tribunal, ought to have considered the application liberally and condoned the delay in the interest of justice. The husband of the Petitioner has right to get subsistence allowance from the date of his suspension. After dismissal of the husband of the Petitioner from service, Respondent Nos.2 to 4 ought to have given him the amounts of GPF, GIS and arrears of subsistence allowance, which was not given to him. The Petitioner being his wife, is certainly entitled for it. The arrears of subsistence allowance must be paid to the wife of the deceased employee as per the 6th Pay Commission. All these aspects were not considered by the learned Maharashtra Administrative Tribunal, while considering the application for condonation of delay. The application for condonation of delay ought to have been allowed as it was not intentional delay, in the interest of justice. The impugned order

deserves to be set aside. The Writ Petition, therefore, deserves to be allowed.

14. In the result, the Writ Petition is partly allowed. The impugned order dated 14/12/2021, passed by the Maharashtra Administrative Tribunal, Aurangabad in Miscellaneous Application No.174 of 2017 in Original Application (Stamp) No.588 of 2017, is quashed and set aside. We are condoning the delay caused in filing the original application before the learned Maharashtra Administrative Tribunal, Bench at Aurangabad. The Original Application be registered.

15. No order as to costs.

16. Rule is made absolute in the above terms.

(Per Ravindra V. Ghuge, J.)

17. As I agree with the view taken by my learned brother Deshmukh, J., I deem it appropriate to record my reasons in support of the said conclusion.

18. In *Collector, Land Acquisition, Anantnag Vs. Mst.Katiji*, AIR 1987 SC 1353, the Honourable Supreme Court has concluded that the Court should take a pragmatic view while considering a delay application and avoid a pedantic approach. It has been held 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."

19. In *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy*, (2013) 12 SCC 649, the Honourable Supreme Court has discussed the law and culled out certain principles as under:-

"8. Before we delve into the factual scenario and the defensibility of the order condoning delay, it is seemly to state the obligation of the court while dealing with an application for condonation of delay and the approach to be adopted while considering the grounds for condonation of such colossal delay.

17. A reference to the principle stated in *Balwant Singh (dead) v. Jagdish Singh and others* [(2010) 8 SCC 685] would be quite fruitful. In the said case the Court referred to the pronouncements in *Union of India v. Ram Charan* [AIR 1964 SC 215], *P.K. Ramachandran v. State of Kerala*

[(1997) 7 SCC 556] and Katari Suryanarayana v. Koppiseti Subba Rao [(2009) 11 SCC 183] and stated thus:-

“25. We may state that even if the term “sufficient cause” has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of “reasonableness” as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.”

18. *Recently in Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai [(2012) 5 SCC 157], the learned Judges referred to the pronouncement in Vedabai v. Shantaram Baburao Patil [(2001) 9 SCC 106] wherein it has been opined that a distinction must be made between a case where the delay is inordinate and a case*

where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises. Thereafter, the two-Judge Bench ruled thus:-

“23. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression “sufficient cause” would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

19. *Eventually, the Bench upon perusal of the application for condonation of delay and the affidavit on record came to hold that certain necessary facts were conspicuously silent and, accordingly, reversed the decision of the High Court which had condoned the delay of more than seven years.*
20. *In B. Madhuri Goud v. B. Damodar Reddy [(2012) 12 SCC 693], the Court referring to earlier decisions reversed the decision of the learned*

single Judge who had condoned delay of 1236 days as the explanation given in the application for condonation of delay was absolutely fanciful.

21. *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.

22. *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.”

20. We do find from the pleadings of the parties before the learned Tribunal and the analysis of the justification put forth by the original Applicant, that he had purportedly tendered a departmental appeal on 9th November, 2009 and the same was allegedly kept pending by the authorities, which has caused the delay. From paragraph Nos.7, 8, 11 and 12 of the impugned judgment, it appears that there was no evidence of the departmental appeal having been lodged with the appellate authority. The Respondents have denied that the original Applicant lodged such an appeal, in as much as, they have no record at all to indicate that such an appeal was tendered.

21. Ordinarily, no litigant benefits from causing delay in his own case. As such, in this case, either a false plea has been put forth by the Petitioner or that he may have prepared an appeal and for some reasons, may not have tendered it or that he did not have any evidence to show that the appeal was lodged with the appellate authority.

22. On the above premises, the application for condonation of delay could be rejected. However, we find that the litigation is now being conducted by the widow of the delinquent employee. The issue involved is as regards the payment of the subsistence allowance, the GPF and the GIS. The benefits of the 6th Pay Commission, to which the deceased employee would be entitled to, is also an issue, which needs consideration. If the delay is not condoned, the widow would never be able to seek the payment of unpaid suspension allowance, the General Provident Fund, GIS and the difference of salary, in view of the 6th Pay Commission Recommendations.

23. So also, if the delay is not condoned, the widow would not get any opportunity to contest the punitive removal of the deceased from the service and the legality and validity of the impugned order of punishment dated 13th July, 2009, would never be tested since the

doors of the Court would be closed.

24. The deceased Petitioner was before this Court earlier in Writ Petition No.10161 of 2017, when his application for condonation of delay was rejected by the learned Tribunal vide the order dated 5th May, 2017. By judgment dated 11th June, 2019, this Court quashed and set aside the impugned order of the learned Tribunal and remitted the matter to the Tribunal for reconsideration.

25. In view of the above and in the peculiar facts and circumstances of this case, I agree with the conclusion drawn vide the judgment authored by my brother Deshmukh, J., for allowing the Writ Petition to the extent of the condonation of delay.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE J.]

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