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

914 WRIT PETITION NO.11596 OF 2022

**UMESH BANSINATH JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

....

Mr M. P. Tripathi, Advocate for petitioner;
Mr S. G. Karlekar, A.G.P. for respondents/State

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 10th February, 2023

PER COURT:

1. The petitioner is before us assailing the order of the learned Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad (for short 'the Tribunal'), dated 28/10/2021, by which, the delay of three years and 10 months, caused in approaching the Tribunal has not been condoned and his application seeking condonation of delay, has been rejected.

2. The learned A.G.P. representing the respondents submits that, the delay caused in approaching the Court cannot be casually condoned. So also, the delay cannot be condoned on the ground

(2)

of sympathy and reasons have to be assigned for condonation of delay.

3. Having considered the submissions of the learned Advocates for the respective sides, we do find that the submissions of the learned A.G.P. are well placed. However, it also has to be seen, as to what is the nature of the cause of action.

4. The first ground raised by the petitioner is, that he has been relieved from employment and his resignation dated 22/12/2014, has been accepted by the Management on 28/01/2015 with retrospective effect from 06/01/2015. We find that the law laid down by this Court in **Assaram Raibhah Dhage Vs. Executive Engineer, 1989 (2) CLR 331**, may apply to the case of the petitioner, since this Court has specifically concluded that, neither a permanent employee, nor a temporary employee can be terminated from service with retrospective effect. This may apply even to the case of acceptance of a resignation with retrospective effect and relieving the employee, with retrospective effect. It also has to be seen, as to what would be the effect of not condoning the delay.

(3)

5. The petitioner desires to make out a case against his resignation letter to justify his request for reinstatement. By not condoning the delay, the doors of the Court would be shut tight upon the petitioner and he would not get an opportunity of assailing the said cause of action, any time during his life. As has been held by the Hon'ble Supreme Court in **Collector, Land Acquisition, Anantnag v/s Mst. Katiji, AIR 1987 SC 1353**, a pragmatic view has to be taken in the matters of condonation of delay, rather than towing a pedantic approach. In paragraph no. 3, it has been concluded by the Hon'ble Apex Court, as under :--

“3. The legislature has conferred the power to condone delay by enacting **Section 15** 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:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

(4)

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

(5)

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."

6. The learned Advocate for the petitioner submits that, the petitioner is an unemployed person. He has no means of income. He is not able to support himself or his family. He is, yet, willing to pay costs of Rs.3,000/- for condonation of delay.

7. Taking into account the legal aspects and the law laid down by the Hon'ble Supreme Court in Collector, Land Acquisition

(6)

Anantnag (supra) and since Section 21(3) of the Administrative Tribunals Act, 1985 enables the condonation of delay beyond the limitation of One year, **this petition is allowed.** The impugned order dated 28/10/2021, passed by the learned Tribunal is quashed and set aside. The costs of Rs. 3,000/- shall be deposited by the petitioner with the Advocates' Association of Bombay High Court at Aurangabad, within a period of three weeks.

(SANJAY A. DESHMUKH, J.) (RAVINDRA V. GHUGE, J.)

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