

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

**CIVIL APPLICATION NO.3049 OF 2023
IN
REVIEW APPLICATION (ST) NO.5731 OF 2023
IN
WRIT PETITION NO.663 OF 2017**

1. Kisan Kranti Shikshan Sanstha,
Bhagwati Nagar, Near Bus Stand,
Gangakhed, Tq. Gangakhed, District Parbhani
Through its Secretary,
Shri Subhash S/o Madhavrao Deshmukh,
Age: 58 years, Occu.: Agriculture/ Secretary,
R/o: Bhagwati Nagar, Near Bus Stand,
Gangakhed, Tq. Gangakhed, District Parbhani
2. Parampujya Purshotam Maharaj Matimand Vidhyalaya,
Gangakhed, Tq. Gangakhed, District Parbhani
Through its Head Master,
Kishan S/o Madhavrao Deshmukh
Age: 57 years, Occu.: Service,
R/o: Bhagwati Nagar, Near Bus Stand,
Gangakhed, Tq. Gangakhed, District Parbhani ... **APPLICANTS**

VERSUS

1. Shri Vishnu S/o Tukaram Mundhe,
Age: 48 years, Occu.: Service,
R/o: Bhandari Colony, Gangakhed,
Tq. Gangakhed, District Parbhani
2. The State of Maharashtra,
Through its Secretary,
Social Welfare Department,
Mantralaya, Mumbai -32.
3. The Commissioner,
Handicapped Welfare, Maharashtra State,
3, Church Road, Pune-1
4. The Social Welfare Officer,
Block-A, Zilla Parishad, Parbhani. ... **RESPONDENTS**

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Advocate for Applicants : Mr. Eknath G. Irale
AGP for Respondents: Mr. A.S. Shinde

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**CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

DATE : 09.06.2023

PER COURT :

By way of this application, the original respondent Nos.4 and 5 from the writ petition who represent the Management and the School being run by it are seeking condonation of delay in filing the review application in respect of the judgment and order dated 23.08.2018 in WP No.663/2017.

2. We have heard the learned advocate Mr. Irale for the applicants. He submits that without there being any oblique intention, the applicants could not cause appearance in the writ petition and it was decided *ex parte*. He would submit that without there being any concrete proof regarding the rate of salary being paid to the respondent No.1 - original petitioner, this Court passed the order by making observation accepting the statement being made by him as a gospel truth. He would further submit that there is a serious dispute as regards the rate at which the salary was being paid and it would be necessary for this Court to embark upon the inquiry and reach some acceptable figure as per the record available with the applicants. A fair opportunity deserves to be extended to them to contest the writ petition on merits, which is possible only if the delay is condoned.

3. The learned advocate further submits that every attempt has been made to explain the delay in the application. There was intervening

pandemic during which period by virtue of the order passed by the Supreme Court, the delay for the period of pandemic was liable to be condoned. It is only after the respondent No.1 preferred the Contempt Petition No.557/2019 and the petitioners were served with a notice that prompt action was taken to approach this Court with this application seeking condonation of delay. The delay was neither intentional nor deliberate. In the matter of **Collector, Land Acquisition, Anantnag and Anr. Vs. Mst. Katiji and Ors.; (1987) 2 S.C.C. 107**, the Supreme Court has laid down the parameters on the basis of which the delay can be condoned. Irreparable loss and gross injustice would perpetuate if the petitioners are not extended opportunity to seek review after condonation of delay.

4. We have carefully perused the record. At the outset, it is necessary to note that it would not lie in the mouth of the petitioners to demonstrate that they were oblivious of the proceedings that were happening in the writ petition and even the passing of the order sought to be reviewed. *Ex facie*, the applicant No.2 had caused appearance in the Writ Petition through an advocate, as can be seen from the order under review. It is not that the order under review was passed *ex parte*. Rather, this Court in paragraph No.6 of the order under review has expressly demonstrated the dilatory conduct of these applicants. It was specifically observed that both these applicants, the person who represent the Management and the person who is the Headmaster are real brothers and still they were not ably assisting the court in deciding the matter on its own merits. We need not

reproduce the observation in paragraph No.6 and whatever we have noted would suffice.

5. Apart from the aforementioned conduct of the applicants it is also pertinent to note that they are not fair enough in even calculating the delay inasmuch as in the prayer clause they have left the place blank, conveniently omitting to calculate the delay even when they have been seeking a discretionary relief having suffered a drastic order.

6. Be that as it may, admittedly, the order under review was passed on 23.08.2018 in presence of the learned advocate representing the applicant No.2. The period of limitation would start from the date of the passing of the order. This application for condonation of delay has been filed on 28.02.2023. Consequently the delay calculated by the office of 1612 days is correct. When the matter was first listed before the this Court on 10.03.2023, a dispute was raised on behalf of the applicants regarding even the quantum of the delay and a statement was made that the delay was merely of 875 days.

7. True it is that the principles which govern the requests for condonation of delay have been settled in catena of judgments viz. **Collector, Land Acquisition, Anantnag** (supra) and in **G. Ramegowda Major and Ors. Vs. Special Land Acquisition Officer, Bangalore ; (1988) 2 Supreme Court Cases 142**. Bearing in mind the parameters to be considered while appreciating the request for condonation of delay, the very conduct of the applicants becomes relevant. They represent the Management and the

School pitted against the Class-IV employee. Though one of them caused appearance in the writ petition the factual aspects were not controverted by filing any affidavit-in-reply. As is observed above, their conduct was noted by this Court also in paragraph No.6 of the order under review. Even admittedly, the applicants have resorted to filing of this review with an application for condonation of delay after they were served with a notice in the contempt proceeding. All these circumstances clearly indicate *mala fides* on their part in seeking a review by further seeking condonation of enormous delay of 1612 days. For all these reasons, we are not inclined to condone the delay.

8. The application is rejected.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)