

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 8824 OF 2021

Sayyad Rizwan Sayyad Kasam,
Age 32 years, Occu. Nil,
R/o. Azad College, Idgaha
Rauza Baugh, Aurangabad.

....Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya Mumbai-32.
2. President/Chairman
Maulana Azad Education Trust
Dr. Rafiq Zakaria Campus,
Rauza Baugh, Aurangabad.
3. The Principal,
Maulana Azad College of
Arts, Science and Commerce,
Dr. Rafiq Zakaria Campus,
Rauza Baugh, Aurangabad.
4. The Registrar,
Dr. Babasaheb Ambedkar Marathwada
University, University Campus
Aurangabad.

....Respondents

Mr. Amol N. Kakade, Advocate for petitioner.

Mr. K.B. Jadhavar, AGP for respondent No. 1/State.

Mr. P.S. Dighe, Advocate for respondent Nos. 2 & 3.

Mr. K.M. Suryawanshi, Advocate for respondent No. 4.

CORAM : ARUN R. PEDNEKER, J.

CLOSED ON : 29/11/2022

DELIVERED ON : 04/01/2023

JUDGMENT :

- 1) Rule. Rule made returnable forthwith. By consent of the parties,
heard finally.
- 2) By the present writ petition, the petitioner is challenging the order

dated 2.7.2021 passed in Misc. Civil Application (Delay) No. 10/2020 by the learned Presiding Officer, College and University Tribunal, Aurangabad, whereby the application filed by the petitioner for condonation of delay in filing the appeal is rejected and consequently the appeal is also dismissed.

3) The brief facts leading to the filing of this petition can be summarised as under :-

The petitioner was appointed as a Peon in the year 2011 in Maulana Azad College of Arts, Science and Commerce, Aurangabad. The petitioner was permanent employee of the respondent No. 3/college. It is the case of the petitioner that he was orally terminated on 19.12.2019 whereby respondent No. 3 had stopped allotment of any work and had threatened the petitioner from entering the college. It is the case of the petitioner that he made several representations, the last being on 20.10.2020 but the respondent/management did not respond to his representations. Therefore, the petitioner filed appeal under section 81 of the Maharashtra Public Universities Act, 2016 before the College and University Tribunal, Aurangabad along with the application for condonation of delay on 2.11.2020. Notices were issued to the respondents. The advocate for respondents remained present, but had not filed Vakalatnama. Thereafter, three dates were given to the respondents to file their written statement. Thus, on 17.3.2021 the learned Presiding Officer noted that the appellant is present, but none for the respondents and the respondents had not filed written statement till then. Thus, the Presiding Officer condoned the delay in filing appeal and registered the appeal by order dated 17.3.2021 and further notices were

issued to the respondents.

4) On 22.4.2021 application was moved by respondent Nos. 1 and 2 for recalling the order passed by the Presiding Officer dated 17.3.2021. The said application was objected by the petitioner. However, the Presiding Officer recalled it's order dated 17.3.2021 and thereafter the Presiding Officer by impugned order dated 2.7.2021 dismissed the application filed by the petitioner for condonation of delay in filing appeal and consequently the appeal was also dismissed.

5) In the application for condonation of delay, the petitioner raised following grounds, which are as under :-

"5] That, thereafter the present applicant made representation to the Principal and every time he made representations, the principal gave false assurance of allotting work and salary. Unfortunately due to the Global Pandemic and nationwide lockdown was announced and the woes of the appellant continued. After the relaxation of the national and state lockdown the appellant approached the Principal for work and salary wherein he was informed as the new management has taken over they want appellant and similar situated employees to be terminated and replaced by other employees of their choices.

6] That, the applicant requested and begged to be reinstated as he is the only sole earning member in the family and he is without salary since December. The National and state lock down has further worsened his financial condition, but the principal was unmoved by the prayers of the appellant.

7] That, on 20.10.2020 when the appellant approached the principal one more time with his request to reinstate, the principal asked him to forgo his pending salary, on refusal the principal abused and threatened the appellant not to enter the college premises or else a police complaint would be lodged against him. The appellant prays to this Hon'ble Tribunal to condone the delay so that

his application for reinstatement and pending salary could be heard for final adjudication.”

6) Mr. Amol N. Kakade, learned counsel for the petitioner submits that the Hon’ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3/2020 passed an order dated 8.3.2021 in respect of extension of limitation. The relevant portion of the said order of Supreme Court is as under :-

- “1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.
2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.”

7) The petitioner submitted that there was nationwide lockdown from 15.3.2020 and that the financial condition of the petitioner was precarious due to his termination and that since the petitioner was orally terminated without following the process of law for termination of an employee, the petitioner made attempts to get back into the institution by requesting the Principal to take him back. Thus, the petitioner contend that there are several grounds to condone the delay in filing appeal, more so when the valuable right of the petitioner to challenge his termination would be lost in the event of delay being not condoned. The learned counsel for the petitioner submits that in any event, once the delay was

condoned on account of failure of the management to file the written statement, the same could have not been recalled in absence of valid reasons.

8) Per contra, Mr. P.S. Dighe, learned counsel for respondents/ management submits that the petitioner has not made out the case for condonation of delay and the relied upon the judgment of the Hon'ble Supreme Court in the case of **Basawaraj & Anr. Vs. The Special Land Acquisition Officer reported in 2013 (5) ALL MR 934 (S.C.)** and submits that paragraph Nos. 12, 14 and 15 are relevant, which are as under :-

"12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "*dura lex sed lex*" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13.

14. In **P. Ramchandra Rao v. State of Karnataka, AIR 2002 SC 1856**, this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in **A.R. Antulay v. R.S. Nayak, AIR 1992 SC 1701**.

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an

adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

9) The learned counsel for respondents/management further submits that the Tribunal by its order has held that the lockdown was declared during the period 23.3.2020 to 30.7.2020 and there is inordinate delay in filing the appeal before the Tribunal and the lockdown cannot be reason for condonation of delay. The Tribunal further held that the period of limitation cannot be extended on equitable ground and thus, the learned counsel for respondents contends that the order of rejection of application for condonation of delay passed by the Tribunal may not be interfered by this Court.

10) Having considered the rival submissions, the following important facts emerging from the application for condonation of delay needs to be noted.

(1) Firstly that, the termination of the petitioner was oral and without following the process under the Service Rules applicable to the petitioner and thus there would always be hesitation in the mind of an employee to immediately approach

the Tribunal because the reality of he being terminated would have visited him only after he made repeated attempts to get back into the institution.

(2) Secondly that, the termination and the subsequent lock down has resulted in financial crises for the petitioner who was working as a Peon, class IV employee.

(3) Thirdly that, immediately after the oral termination of the petitioner, there was a pandemic and the Supreme Court while acknowledging the pandemic had condoned the delays and excluded large part of period from computing the period for condonation of delay.

(4) Valuable right of the petitioner would be lost if delay is not condoned.

11) It is to be noted that an employee of the respondent Nos. 2 and 3 cannot be dismissed without issuance of notice and initiating enquiry proceedings as per the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules 1979. It is the contention of the respondent/management that the management has not terminated the petitioner, but the petitioner stopped attending his work. Thus, this Court asked the respondent/management by order dated 5.12.2022 whether they would be willing to take the petitioner back in service. The respondent/management informed this Court on 7.12.2022 that they would not be willing to take back the petitioner.

12) When one of the officers of the management dehoes the rules applicable, adopts the method of oral termination, the respondent employee would be right in assuming that the officer is admonishing him

for the time being and would take him back after some time. Thus, the period of limitation in case of oral termination would commence when the employee is finally convinced that the management is not taking him back in service and not from the date when some official in the management terminates the employee orally. The employee is entitled to assume that the management will follow due process of law before terminating him. Thus, as contended in the application for condonation of delay, the employee was finally convinced on 20.10.2020 that the management is not taking him back in service and as such, I hold that there is no delay in filing of the appeal before the Tribunal.

13) In the instant case, however, even if the termination is taken as on 19.12.2019 i.e. the date of oral termination, for the reasons mentioned in this judgment, the petitioner has made out grounds for condonation of delay in filing appeal before the Tribunal.

14) The pandemic had brought the entire nation to hold and the period between March 2020 to March 2021 can be taken into consideration as one of the grounds for condoning the delay. The petitioner being out of service for a year during the pandemic there was financial strain on the petitioner. As per the petitioner he has worked for about 9 years as permanent employee and his valuable right would be defeated if delay is not condoned.

15) The Hon'ble Supreme Court has discussed the aspects to be considered while dealing with the applications for condonation of delay in filing appeal in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors.** reported in (2013) 12 SCC 649, wherein at paragraph Nos. 21 and 22, it has held as under :-

"21. From the aforesaid authorities the principles that can broadly be culled out are :

21.1 (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.

21.2 (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.

21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (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.

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (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.

21.7 (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (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.

21.9 (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.

21.10 (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.

21.11 (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.

21.12 (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.

21.13 (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 : -

22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard 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.

22.2 (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.

22.3 (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.

22.4 (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."

16) Having considered the rival submissions, valuable right of the petitioner would be lost if an pedantic approach is adopted in dealing with

the application for condonation of delay. A similarly placed another employee's petition of the present respondent/management was considered by this Court while deciding **Writ Petition No. 9292/2021 on 19.1.2022 (Farat Bano Mohammad Riyazoddin Vs. The State of Maharashtra and Ors.)**, wherein the delay in filing appeal before the Tribunal was condoned. Case of Farat Bano (supra) is also of oral termination and the Tribunal had taken the case of Farat Bano along with the case of the present petitioner for consideration. However, the grounds canvassed therein for condonation of delay are slightly different and may not be applicable to the case of the petitioner.

17) In view of the judgment cited supra in the case of **Esha Bhattacharjee**, this Court has no hesitation to hold that the petitioner has made out case for condonation of delay before the Tribunal by applying the parameters laid down at paragraphs 21 and 22 in the case of Esha Bhattacharjee to the facts of this case enumerated at paragraph 10 and 14 above. The judgment cited by respondents **Basavraj & Anr. [2013 (5) ALL M.R. 934]** supra held that the applicant has to explain "sufficient cause" and the judgment in case of **Esha Bhattacharjee** (supra) explains the parameters of "sufficient case" and various aspects to be taken into consideration while appreciating "sufficient cause" while considering application for condonation of delay. In view of the facts explained at para 10 and 14 of this judgment, I hold that the petitioner has made out sufficient cause to condone the delay in filing the appeal before the Tribunal.

18) Hence, the writ petition is allowed. The delay caused in filing appeal before the Tribunal is condoned. Appeal be registered. The

Tribunal is directed to decide the appeal on it's own merits.

19) Rule is made absolute in aforesaid terms.

[ARUN R. PEDNEKER J.]

SSC/