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

902 CIVIL APPLICATION NO.13486 OF 2022
IN/WITH
REVIEW APPLICATION (ST.) NO.25054/2022
IN
WRIT PETITION NO.10128/2014

BALIRAM MARUTI DOKE
VERSUS
EXECUTIVE ENGINEER, PUBLIC WORKS DIVISION, BEED

AND
903 CIVIL APPLICATION NO.13492 OF 2022
IN/WITH
REVIEW APPLICATION (ST.) NO.25051/2022
WITH CA/13494/2022 IN RAST/25051/2022
IN
WRIT PETITION NO.10110/2014

RAM BHOJIBA HIRWE
VERSUS
EXECUTIVE ENGINEER, PUBLIC WORKS DIVISION, BEED

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Mr Parag P. Shahane, Advocate for Applicants
Mr S. K. Tambe, A.G.P. for Respondent/State

CORAM : RAVINDRA V. GHUGE, J.

DATE : 15th June, 2023

PER COURT:

1. I have heard the submissions of the learned Advocate for the Applicants and the learned A.G.P. on behalf of the Respondent, at length, and have perused the record with their assistance.

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2. This is a peculiar case, wherein it was not pointed out to the Court that, the retirement age of the Petitioners in the Class-IV category as a 'Daily Wager', would be 60 years. When this Court dictated the judgment dated 10/08/2015 in both the petitions filed by the original complainants, it recorded in paragraph Nos.12, 13 and 14, as under :-

“12. It is in this backdrop that I am of the view that equities would be balanced and ends of justice would be met by directing the respondents to continue the petitioners on the same service conditions under which they are working today till their superannuation. Since this order is being passed in the above recorded peculiar circumstances and the three rounds of litigation up to this Court, this order shall not operate as a precedent.

13. The respondents shall record the birth dates of these petitioners and if in the event of any absence of such record of birth date, the respondents shall refer both the petitioners to the competent Medical Board so as to determine their age. Such determination shall bind both the sides and the petitioners shall then stand superannuated on completion of 58 years of age.

14. It is made clear that they shall not be entitled for any other benefits inclusive of any retiral benefits in the light of the fact that their reference cases have been dismissed by the Labour Court.”

3. The last sentence in the reproduced paragraph 13 indicates that this Court concluded that, the Petitioners would

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superannuate at the age of 58 years, apparently, on the presumption that the retirement age in the Public Works Department (P.W.D.) for the Class-IV employees is 58 years. Even the Petitioners were not aware. After one of the Petitioners Shri. Ram Bhojeba Hirwe was issued with the notice at the retirement at 58, that both of them realized that, they are likely to be retired at the age of 58 years, when the retirement age was 60 years. On account of this development, they noticed for the first time that, this Court had inadvertantly held that, they would retire at the age of 58 years. It is on these premises, that both of them rushed to this Court by filing the review applications on 19/09/2022 along with the applications for condonation of delay, when both of them were in employment.

4. Shri. Ram Bhojeba Hirwe retired on 26/09/2022. Since the delay was not condoned and the matter was under circulation, he could not secure ad interim orders from this Court. The second Petitioner Shri. Baliram Maruti Doke is still in employment, as he is yet to reach the age of 58 years. Shri. Ram Bhojeba Hirwe is now 58 years and 9 months of age.

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5. The learned A.G.P. would have been justified in his vehement submissions that the delay of 2567 days is quite large and worthy of being termed as inordinate. However, it is well settled that, delay condonation is to be considered in the facts and circumstances of each case, and it is to be appreciated, as to whether the delay was deliberate or without any justification. The principles laid down in **Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy, (2013) 12 SCC 649**, by the Hon'ble Supreme Court are as under :

“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.*

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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 :-

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- 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.”*

6. In **Collector, Land Acquisition, Anantnag v/s Mst. Katiji**, AIR 1987 SC 1353, the Hon'ble Supreme Court has concluded that, delay does not benefit any litigant and in fact, if a litigant is guilty of deliberate delay, he would jeopardize his case.

7. It is also well settled that, a litigant should not be put to disadvantage on account of an act not attributable to him. It is obvious that, this Court observed that the Petitioners would superannuate at the age of 58 years and, therefore, one of the Petitioners has been superannuated before completing 60 years of age. The said observation in the order of this Court, led the

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P.W.D. to retire Shri. Ram Bhojeba Hirwe after he completed 58 years.

8. In the above circumstances, the delay caused in filing these review applications, deserves to be condoned. **The civil applications are, therefore, allowed.** Delay stands condoned.

9. By the consent of the litigating parties, the review applications are taken up for hearing. The contentions of the learned A.G.P. on behalf of the P.W.D. while opposing the civil applications, are common even while deciding the review applications. Under the Right to Information Act, 2005, Shri. Ram Bhojeba Hirwe prayed to the P.W.D. Department to answer his query, as to whether Class-IV employees, even if he is a 'Daily Wager', would retire at the age of 58 years or 60 years. By a communication dated 28/04/2023, the Public Information Officer, P.W.D., Beed has informed the said Petitioner that, the age of retirement of the Class-IV employees is 60 years. However, since the High Court permitted the P.W.D. to retire the Petitioners at the age of 58 years, that Shri. Ram Bhojeba Hirwe was superannuated. The said communication is taken on record and marked as 'X' for identification.

10. In view of the above, the last sentence in paragraph 13 of the Judgment of this Court, dated 10/08/2015, shall stand modified as under :-

"Such determination shall bind both the sides and the petitioners shall then stand superannuated on completion of 60 years of age."

11. Insofar as Petitioner Shri. Baliram Maruti Doke is concerned, he is still in employment. Issue is as regards Shri. Ram Bhojeba Hirwe, who has been superannuated at the age of 58 years on 26/09/2022. From the document 'X', it is apparent that, he would have continued in employment till the age of 60 years, but for the order passed by this Court.

12. The learned Advocate for the Petitioners submits that, Shri. Ram Bhojeba Hirwe would not claim interest on any backwages. He still has 15 months for attaining the age of 60 years and he, therefore, prays that he may be reinstated with such backwages as the Court may deem appropriate. A fair statement is put forth on behalf of Shri. Ram Bhojeba Hirwe, which deserves sympathetic consideration. At the same time, the

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P.W.D. Department, which always has paucity of funds, cannot be foisted with financial burden. Hence, to balance the equities, as Shri. Ram Bhojeba Hirwe has lost around 9 months of his employment, the learned Advocate for the Petitioners submits on instructions from the said Petitioner, that grant of 50% of the backwages for this period, would be appropriate.

13. As such, in the case of Shri. Ram Bhojeba Hirwe, he shall be reinstated in service, expeditiously, and in any case, on or before 01/07/2023. He shall be paid 50% of the daily wages as backwages towards his tenure of service from 26/09/2022 till 30/06/2023. The said amount shall be paid within 90 days without interest, considering the delay.

14. Pending civil application, if any, stands disposed off.

15. In view of the above, this modified Judgment, shall be uploaded on the official website of the Bombay High Court.

(RAVINDRA V. GHUGE, J.)

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