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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2725 OF 2023**

Shri Milind Manohar Dhule

.. Petitioner

Versus

**The District Collector Kolhapur
& Anr.**

.. Respondents

Mr. Chetan G. Patil for petitioner.
Ms. R. A. Salunkhe, AGP for State.

**CORAM: S. V. GANGAPURWALA, ACTING CJ. &
SANDEEP V. MARNE, J.**

DATE: MARCH 10, 2023

P.C.:

- 1.** Rule. Rule made returnable forthwith. With the consent of parties, heard finally.
- 2.** The petitioner had initially filed original application bearing Original Application No. 1038 of 2014 for absorption. The petitioner was working as unpaid clerk. The same was in tune with the policy of the year 2006. The petitioner withdrew the original application with liberty to file a fresh application for the same relief. The petitioner thereafter filed an application on 22nd November, 2016 with the authority for absorption of unpaid clerk in view of the policy dated 2nd September, 2016. In fact, the fresh policy of the year 2016 gave a fresh cause of action to the petitioner. The petitioner made representation on 22nd November, 2016. The same was rejected on 4th December, 2017. The petitioner filed the original application bearing Original Application No. 600 of

2019 on 26th June, 2019. There was delay of six months and twenty-two days in filing the original application.

3. The Tribunal has rejected the said original application on the ground that in the year 2014, the original application was withdrawn with liberty to file a fresh application. The fresh application was filed in the year 2016. The reason given of financial exigency is not accepted by the Tribunal.

4. It is trite that whenever the technical considerations and cause for substantial justice are pitted against each other, cause for substantial justice shall prevail.

5. The petitioner was not to gain by delay. The petitioner has got fresh cause of action in view of the Government Resolution dated 2nd September, 2016. Whether the petitioner would be entitled for the benefit of the said Government Resolution would be another question altogether which the Tribunal is required to consider on merits.

6. Considering that the delay is not abnormal one and so also reason given for delay, we are inclined to accept the contention of the petitioner.

7. The impugned order of the Tribunal rejecting the application for condonation of delay in filing the original application is quashed and set aside. In case the original application conforms to all other aspects, then the original application shall be registered and dealt with on its own merits.

8. Rule is accordingly made absolute. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)