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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 12227 OF 2023
in REVIEW APPLICATION (St.) NO. 11847 of 2023
in WRIT PETITION NO. 8818 of 2010

Shripati s/o Paraji Trimukhe
Age: 72 years, Occu: Retired
Municipal Employee, R/o S.T. Colony,
Diksal, Kallam, Tq. Kallam,
Dist. Osmanabad.

... APPLICANT

V/s.

1. The State of Maharashtra
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai.

2. The Director of Municipal Administration,
Maharashtra State, Pune.

3. Municipal Council, Kallam,
Tq. Kallam, Dist. Osmanabad.
Through its Chief Officer

... RESPONDENTS

...
Mr. V.P. Golewar, *Advocate for the Applicant*
Mr. P. K. Lakhotiya, AGP for Respondent-State

...

CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.

RESERVED ON : 19th January, 2024

PRONOUNCED ON : 5th February, 2024

ORDER (Per: Y.G. Khobragade, J.) :-

1. Heard Shri Golewar learned advocate appearing for the Applicant and Shri Lakhotiya the learned AGP for the State.

2. The learned counsel for the applicant submits in vehemence that, on 19.07.2012 the Coordinate Bench of this Court passed Judgment and order and rejected Writ Petition No.8818/2010, holding that Rule 57, Note 1 are not applicable to the petitioner. However, subsequently on 13.05.1970, the State Government issued a circular and clarified that the employee who has been brought on regular establishment from the daily wages establishment, his half temporary service can be considered for the pensionary benefits. Therefore, the applicant wanted to file an application for review of order dated 19-07-2012 passed in W. P. 8818 of 2010, however, he could not file application for review due to paucity of funds and due to Pandemic Covid-19 the Court functioning was suspended. Therefore, delay of 10 years 7 months and 18 days i.e. 3883 days is caused. Hence prayed for condonation of the same.

3. Per contra the learned AGP submits that the Applicant has not explained delay of more than 10 years satisfactorily. So also the Applicant himself stated that he approached various Courts. The Petitioner was pursuing other remedies available in law for the redressal of his grievance. Therefore it

cannot be said that the Applicant was innocent. Therefore, unexplained long delay cannot be condoned. Hence prayed for rejection of the application.

4. We have gone through the record. On face of record it appears that, on 19.07.2012 the Coordinate Bench of this Court (Coram: B.P. Dharmadhikari & Sunil P. Deshmukh, JJ.) passed the order in Writ Petition No.8818/2010 (Shripati Paraji Trimukhe V/s. The State of Maharashtra & Ors.), which reads as under:

“1] The petitioner, a daily wager, was regularized with express understanding that service as daily water will not be looked into for calculating any benefit. That clause is not in dispute.

2] Pension has been denied to him on the ground that he has not completed 10 years of service and, therefore, he does not qualify. Advocate Munde submits that Rule 57, Note 1, of Maharashtra Civil Services (Pension) Rules, 1982 is squarely attracted and shortfall can be made good by including half of the service put in on daily wage. As petitioner has put in 10 years of Service on daily wage, half of it, the 5 years can be added and thus, petitioner completes necessary qualifying service.

3] Learned AGP, as also, Advocate Sontakke point out that recourse to Rule 57, Note 1. is not permissible because of specific condition in the order of regularization.

4] After hearing respective counsel, we find that there is no challenge to order of regularization before this court. That order has been issued on 29th October, 2001 and petitioner has taken advantage thereof. It is, therefore, apparent that provisions of Rule 57. Note 1, are not available in the present matter. No case is made out for interference. Petition is rejected.”

5. It is needless to say that, the Applicant / Petitioner was engaged on daily wages, however, on 13.05.1970, the State Government issued circular clarifying that the person who is brought on regular basis from the daily wages establishment should be allowed to count half of his service rendered for computation of the pensionary benefits.

6. Article 124 of the Limitation Act provides 30 days period for review of Judgment/Order of the Court from the date of the Order. Sec. 5 of the Limitation Act provides discretionary powers to the Court to condone the delay, if it is bonafidely and substantially explained.

7. In the case of **Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and Ors.**; (2013) 12 SCC 649, the Hon'ble Supreme Court laid down principles while considering the application for condonation of delay as under:

“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 vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. (xi) *It is to 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 scrutinised 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.”

8. In the case of **Karnataka Rural Infrastructure Development Limited V/s. T.P. Natraja and Others (Civil Appeal No.5720/2021)**, the Hon'ble Supreme Court held that ignorance of law is no excuse. The notion of Legal literacy is based on the principle that every individual must be aware of their rights and obligations. The maxim '*ignorantia juris non-excusat*' or 'ignorance of the law is no excuse,' implies that the Court presumes that every party is aware of the law and hence cannot claim ignorance of the law as a defence to escape liability.

9. On perusal of the present application it appears that the Applicant prayed for condonation of delay of 10 years 7 months 18 days i.e. 3883 days

caused in filing the application to review the order dated 19.07.2012 passed in Writ Petition No.8818/2010. The Applicant set out grounds that due to paucity of funds and due to suspension of Court's work during Pandemic Covid-19, he could not file proceeding before any Court of law. Thereafter he received legal opinion from his legal adviser and he filed Writ Petition No.13028/2022 before this Court in the month of December, 2022 which was disposed off as withdrawn. Thereafter he got knowledge of the circular dated 13.05.1970. Thereafter he presented Review Petition along with the present application. However, the applicant has not given exact details on which date he came to know about circular dated 13.05.1970.

10. Needless to say that, the applicant has not offered sufficient explanation of 10 years and 7 months and said delay does not appear *bona fide* and substantiated. Therefore, considering the reasons set out in the application as well as ratio laid down in the cited case law, we are not inclined to grant the present application. Hence, **the Application seeking condonation of delay is rejected.** Accordingly, **the Review Application is disposed off.**

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]