

(2017) 05 DEL CK 0052

In the Delhi High Court

Case No : 6581 of 2016

GANESH RAM BHATT

APPELLANT

Vs

SHARDA DEVI SANSKRIT VIDYAPEETH AND ANR.

RESPONDENT

Date of Decision : 08-05-2017

Acts Referred:

[Constitution of India](#), [Article 21](#) -
Amendment of the Schedule

[Code of Civil Procedure, 1908](#), [Order 22 Rule 9](#) -

[Delhi School Education Act](#)

Citation : (2017) 05 DEL CK 0052

Hon'ble Judges : V. Kameswar Rao

Bench : SINGLE BENCH

Advocate : Sanjeev Ralli, ?Mohit Chugh, Prabhav Ralli, Sunny Choudhary

Final Decision : Allowed

Judgement

1. The present petition has been filed by the petitioner challenging the order dated

April 4, 2016 in Appeal No. 17/2015 whereby the application filed by the petitioner

seeking condonation of delay of 430 days in filing the Appeal was dismissed. It is the

contention of Mr. Sanjeev Ralli, learned counsel for the petitioner that petitioner, while

working as Principal was suspended on April 28, 2011, which order was challenged by

him in this Court in Writ Petition (C) No. 7255/2011 wherein the petitioner had also

sought a prayer directing the respondents to allow the petitioner to resume his services.

He states that the writ petition was allowed in favour of the petitioner whereby the

Court has held that in view of the deeming provision in the Statute, the suspension order

dated 28th April, 2011 had died a natural death at the end of the fifteenth day reckoned

from April 30, 2011. The School was directed to pay the petitioner his unpaid salary

and allowances as admissible for the period reckoned w.e.f May 15, 2011 onwards. He

would also state that during the pendency of the writ petition, a chargesheet dated

November 27, 2011 was issued to the petitioner. The said chargesheet culminated in an

order of removal dated October 14, 2013. He concedes that the removal order was

received by the petitioner. He states that the aspect of the petitioner having been removed from the service was brought to the notice of the learned Single Judge in Writ

Petition (C) No. 7255/2011, when the Court in its order dated 31st October, 2013 has

accepted the request of the learned counsel for the respondent no.2 to place the same on

record. It is his submission that the petitioner was under a bona fide belief that even

though an order of termination dated 14th October, 2013 has been passed as the petitioner has prayed for a relief of resuming the services in the School, the said aspect

shall be decided in the writ petition only, the petitioner had not challenged the order

before the Delhi School Tribunal. Mr. Ralli would also submit that during the hearing

before the learned Single Judge, the petitioner had prayed that he be permitted

to

challenge the order dated October 14, 2013 before the Delhi School Tribunal which

request was not considered in favour of the petitioner. According to him, this aspect has

been noted by the Division Bench of this Court in LPA No. 108/2015 filed by the petitioner against the order dated 11th July, 2014 in Writ Petition (C) No. 7255/2011.

His submission is also that the petitioner had filed the LPA as the request of the petitioner was not accepted. That apart it is his submission that in the application seeking condonation of delay, the petitioner in Para 5 and 6 has stated as under:

"5. That neither the respondent no.1 nor the respondent no.2 has

placed the letter dated 14.10.2013 before Hon"ble High Court of Delhi in writ petition no. 7255/2011 which petition was heard and disposed of by Justice Hima Kohli vide judgment dated 11.07.2014.

6. That the appellant again approached the Hon"ble High Court of Delhi by way of LPA no. 108/2015 seeking condonation of delay for approaching the Hon"ble Tribunal due to pendency of the writ petition in the Hon"ble High Court of Delhi which was finally disposed of on 11.07.2014 and subsequent approaching the respondents for resuming duties which was not allowed to him by both the respondents on the ground of removal of the appellant vide letter dated 14.10.2013."

2. The aforesaid averments demonstrate sufficient cause for the Tribunal to condone

the delay in filing the Appeal. He states that the Tribunal has not recorded the stand of

the petitioner in right perspective while rejecting the application. According to him, it is

not the case of the petitioner that the respondent School had not informed him about the

order of his removal or supplied the copy of the same to him as noted in Para 5 of the

impugned order. That apart, it is his submission that the findings of the Tribunal that

the petitioner has not come with clean hands, is not borne out from the record. He

would state the delay was caused because of the pendency of the Writ Petition before

this Court and the Tribunal could not have rejected the application, more so when the

livelihood of the petitioner has been taken away by the School with the order of removal. It is his submission that the application for delay must not be strictly seen, but

should be considered liberally by balancing the rights of the parties and ensuring substantial justice is done. He would rely upon the judgment of the Supreme Court in

the case reported as 2002 3 SCC 195 Ram Nath Sao Alias Ram Nath Sahu and Ors. v.

Gobardhan Sao and Ors .; the judgment of this Court dated 21st July, 2016 in Writ

Petition (C) no. 2839/2016 titled as The Management Committee, Devi Samaj Modern

School, Near Sukhdev Vihar, New Delhi v. Jitender Kumar Singh and Ors. and the judgment of the Supreme Court in Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Ors. Civil Appeal Nos. 8183-8184 of 2013 decided

on September 13, 2013, the Judgment of the Division Bench of this Court in Jitender

Kumar Goel v. Directorate of Education and Ors . in LPA No. 883/2011 decided on 20th November, 2011 and Gulzar Singh v. Guru Harkrishan Public School W.P(C) 4191/2015 decided on May 01, 2015 in support of his contentions.

3. On the other hand, Mr. Sunny Choudhary, learned counsel appearing for the respondent School would support the order of the Tribunal. According to him, the plea

of the petitioner that he was under the bona fide impression that the issue of the petitioner resuming the service shall be decided in the Writ Petition (C) No. 7255/2011

is untenable. He states, the only issue in the writ petition was with regard to the suspension of the petitioner. According to him, when the writ petition was filed in the

year 2011, no chargesheet was issued nor an order of removal was passed. In the absence of an order of removal of the petitioner, there was no occasion for the Court in

Writ Petition (C) No. 7255/2011 to decide the issue of removal and his reinstatement.

In other words, it is his submission that the said plea was only a ploy to seek condonation of delay. He would further state that the petitioner having received the

order of removal dated 14th October, 2013, cause of action had accrued to the petitioner

on the same day to approach the Delhi School Tribunal within the period of limitation.

He having not approached the Tribunal and waited till the decision of the LPA to file an

Appeal before the Delhi School Tribunal with an application seeking condonation of

delay of 430 days was totally misconceived and rightly rejected by the Tribunal. It is

also his submission that at no point of time, did the petitioner file an application for stay

of the order of removal, which would show that the petitioner was conscious of the fact

that the same needs to be adjudicated by the Delhi School Tribunal. He has taken me

through the order of the Division Bench of this court in LPA No. 108/2015 dated

February 27, 2015 wherein the Division Bench had observed that lack of legal

knowledge is no excuse to condone the delay and left to the wisdom to the Delhi School

Tribunal to decide the issue of delay. According to him, the petitioner is an educated

person being the Principal of the School at the relevant point of time can't plead

ignorance of law for not filing the appeal immediately. He would state that the Delhi

School Tribunal has passed a reasoned order by considering the orders passed by the

Coordinate Bench of this Court and the Division Bench in the earlier round of litigation

filed by the petitioner. That apart, the delay of more than 430 days is substantial and

there was no plausible explanation given by the petitioner seeking condonation of delay.

He states that law of limitation extinguishes the right, if not exercised within the prescribed limitation period as provided by law. He would rely upon *Pratap Singh v.*

Maqsood and Ors. CM. No . 411/2010 in MAC application no. 8/2010 decided on April

15, 2010 in support of his contention. That apart it is his submission that the petitioner

had concealed the aspect of his removal from this Court in Writ Petition (C) No.

7255/2011 inasmuch as he filed an affidavit on 21st October, 2013 after he had received

the order of removal dated 14th October, 2013 without referring to the same. He also

submit that the judgments relied upon by the learned counsel for the petitioner shall not

be applicable in the facts of this case.

4. Having heard the learned counsel for the parties, the issue that falls for

consideration in this Petition is whether the application filed by the petitioner seeking

condonation of delay in filing the Appeal before the Delhi School Tribunal should have

been allowed thereby condoning 430 days delay.

5. There is no dispute that the writ petition filed by the petitioner being Writ Petition

(C) No. 7255/2011 was primarily against the suspension order dated 28 th April, 2011

and also seeking a writ in the nature of prohibition restraining the respondents from

removing / terminating the services of the petitioner except in accordance with law. It is

also a conceded position, during the pendency of the said writ petition, a chargesheet

was issued to the petitioner which culminated in the order of removal. The writ petition

was disposed of whereby the suspension order was held to be non-est and to have died a

natural death at the end of the fifteenth day. During the pendency of the writ petition no

application was filed by the petitioner for stay of termination order dated 14 th October,

2013. It appears that a plea was raised by the learned counsel for the petitioner before

the Writ Court to permit the petitioner to file an Appeal before the Delhi School Tribunal which is clear from the order in LPA 108/2015 dated February 27, 2015. The

Division Bench in Para 5 of the order did observe that there is no question for the learned Single Judge considering any request by the appellant to permit him to challenge his removal from service because a statutory right is vested with the appellant

under Section 8 of the Delhi School Education Act and Rules, 1973. In any case, in Para

9, the Division Bench held that it is for the Tribunal to decide whether the delay that has

occurred needs to be condoned or not. Suffice to state, the Division Bench left it to the

Tribunal to decide the issue of condonation of delay. The petitioner in the application

seeking condonation of delay, did not aver that the petitioner did not file an Appeal as

he was under an impression that till such time, the Writ Petition (C) No. 7255/2011 is

decided, the Appeal cannot be filed before the Tribunal. A perusal of the application,

the reason seeking condonation of delay, has been summed up in Para 8 of the application at Page 25 of the paper book, and the same is as under:

"That the appellant could not challenge the order of removal dated 14.10.2013 within the period of limitation as provided under Section 8 (3) of DSER 1973 due to pendency of the writ petition no. 7255/2011 in Hon"ble High Court of Delhi wherein the relief of resuming the duties besides quashing of letter of suspension on behalf of the appellant were also sought".

6. The plea made in the application is different from the one urged by the learned counsel for the petitioner before the Division Bench in Para 6 of the order dated February 27, 2015. Be that as it may, the fact that the writ petition was pending before

this Court, wherein the petitioner had sought relief of resuming the duties cannot be

disputed. That apart, from the order of the LPA 108/2015, it appears that a request was

made in the writ proceedings for being permitted to challenge the order dated October

14, 2013 before the Delhi School Tribunal. The Supreme Court in the case of Esha Bhattacharjee (supra) has laid down the following principles while considering the issue of this nature:

"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.

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.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

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 non-challant manner requires to be curbed, of course, within legal parameters."

7. That apart even in the Ram Nath Sao & Ors. (Surpa) the Supreme Court in para 12 has held as under: -

"12. Thus it becomes plain that the expression "sufficient cause" within the meaning of Section 5 of the Act or Order 22 Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will be dependant upon facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However, by taking a pedantic and hyper technical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way."

8. In the said case the Supreme Court referred to *Sital Prasad Saxena v. Union of India* 1985 1 SCC 163, wherein the Supreme Court has observed as under:

"What has been said umpteen times that rules of procedure are designed to advance justice and should be so interpreted and not to make them penal statutes for punishing erring parties.

9. A reference has been made to the judgment of the Supreme Court in *N.*

Balakrishnan v. M. Krishnamurthy 1998 7 CC 123 wherein in Para 18, the Supreme

Court said "Primary function of a Court is to adjudicate the dispute between the parties

and to advance substantial justice. The time-limit fixed for approaching the court in

different situations is not because on the expiry of such time, a bad cause would transform into a good cause". In Paras 11, 12 and 13 in the case of *N. Balakrishnan*

(supra) the Supreme Court held as under: -

"11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari* (1969) 1 SCR 1006 and *State of W.B. v. Administrator, Howrah Municipality* (1972) 1 SCC 366.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget

the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses." 10. That apart this Court in *Gulzar Singh*(supra) vide para 3 has held as under:

"Learned counsel appearing for the respondent / School, in view of the ratio of the judgment of the Supreme Court in the case of *N. Balakrishnan* (supra) could not very seriously dispute the proposition as regards the entitlement of petitioner to get condonation of delay and the fact that petitioner derives no benefit, much less has a mala fide motive in deliberately delaying the filing of the appeal....." 11. In so far as the plea of the learned counsel for the respondent that the Division

Bench while deciding LPA No. 108/2015 in its order dated February 27, 2015 had rejected the plea on a wrong impression that till the writ petition filed by him is

decided

by this Court, he could not file an appeal, is without basis is concerned, in Para 9 this

Court has left it to the wisdom of the Tribunal to decide the delay in filing the Appeal.

If that be so, no reliance can be placed by the learned counsel for the respondent Vidyapeeth on the order passed by the Division Bench in LPA 108/2015 on February

27, 2015. The plea of learned counsel for the respondent no.1 that with the dismissal of

the Appeal, a right has accrued in favour of the respondent no.1, which should not be

defeated by condoning delay in a routine like manner is appealing, but this court cannot

overlook the fact that the order, which is sought to be challenged by the petitioner

before the Delhi School Tribunal is order of removal from service which effects the right of the petitioner to livelihood under Article 21 of the Constitution of India. If the

right to challenge the said order is extinguished, the petitioner shall not have any remedy left to seek redressal against the same. Otherwise, as contended by Mr. Ralli

the petitioner would, against the order of the Tribunal can approach this Court, the

Division Bench and the Supreme Court to get justice, cannot be overlooked. In the

facts, the non-filing of the Appeal by the petitioner cannot be mala fide / intentional as

the petitioner would not stand to gain in delaying the filing of the Appeal. The pendency of the writ petition can be a factor which might have resulted in not filing the

Appeal during its pendency. Merely because the petitioner had not sought stay of the

order of removal dated October 14, 2013 in Writ Petition (C) No. 7255/2011 cannot be

a ground to infer, the petitioner never intended to challenge the order of removal. The

submission of the learned counsel for the respondent no.1 that, judgments referred to by

Mr. Ralli are not applicable is concerned, noting the broad principles laid down in the

aforesaid judgments and seeing the facts of the case in hand, more particularly, the order

of removal has resulted in effecting the right to livelihood of the petitioner and it is not a

case that the petitioner has played fraud / misrepresentation; it is not a case of gross

negligence and substantial justice being paramount and pivotal and there is no dispute

on the proposition as advanced by the learned counsel for the respondent no.1 that

ignorance of law is no excuse for not filing the appeal at appropriate time and also the

factum that the petitioner had never concealed the fact of issuance of order dated October 14, 2013 before the High Court as the said factum has been noted by the Writ

Court in its order dated October 31, 2013 and in Para 3 of order dated July 11, 2014,

this Court is of the view that the present petition needs to be allowed by setting aside the

impugned order. Accordingly, the impugned order dated April 4, 2016 of the Delhi School Tribunal is set aside. The delay of 430 days in filing the Appeal No. 17/2015 is

condoned. The writ petition is allowed.

12. The parties shall be at liberty to file an application before the Delhi School Tribunal for revival of appeal and adjudication of the same on merit.

13. No costs.