

(2013) 09 BOM CK 0174

In the Bombay High Court

Case No : Writ Petition No. 2839 of 2013

Prashant

APPELLANT

Vs

The State of Maharashtra, The Project Officer, Shri. Sant
Dnyaneshwar Shikshan Mandal and The Head Master

RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2014) 1 ALLMR 283 : (2014) 1 BomCR 291 : (2014) 2 MhLj 272

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : Kiran M. Nagarkar, for the Appellant; T.S. Lodhe, A.G.P. for Resp.
Nos. 1, 2 and Mr. M.M. Bhokariker, Advocate for Resp. Nos. 3, 4, for the
Respondent

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. With consent of the parties heard finally. This writ petition takes exception to the judgment and order dated 18th March, 2012 passed by the Divisional Commissioner, Tribal Development, Nashik Division, Nashik.

2. It is the case of the petitioner that, the petitioner is/was working as Assistant Teacher in Shri. Sant Dnyaneshwar Shikshan Mandal, Bhusawal, Tq. Bhusawal, District Jalgaon, as a Shikshan Sevak since the year 2005. It is further case of the petitioner that, show cause notice was issued on 13th March, 2012 to the petitioner. It appears that, the process of inquiry committee is being continued from 26th June, 2012 to 15th October, 2012 and the inquiry committee had given report on 16th October, 2012. The services of the petitioner, in pursuant to the said report, are terminated vide order dated 20th October, 2012. Being aggrieved, the petitioner filed appeal before the Divisional Commissioner, Tribal Development, Nashik Division, Nashik. By the impugned communication/order dated 18th March, 2013, the said appellate authority dismissed the appeal on the ground of limitation. Hence this writ petition.

3. The learned Counsel appearing for the petitioner invited my attention to the pleadings and grounds taken in the petition and submits that, if the length of delay is perused, there was few days delay in filing the appeal. However the appellate authority has taken very drastic approach and without adjudicating appeal on merits rejected the same on the ground of delay.

4. On the other hand, the learned A.G.P. appearing for the respondent Nos. 1 and 2 and the learned Counsel appearing for the respondent Nos. 3 and 4 vehemently opposed the prayer in the petition. The learned A.G.P. appearing for the respondent Nos. 1 and 2 invited my attention to the affidavit in reply filed on behalf of them and submits that, there is no merit in the petition and same may be rejected.

5. The learned Counsel appearing for the respondent Nos. 3 and 4 also invited my attention to the affidavit in reply filed on behalf of the said respondents and submits that, the petition may be rejected.

6. I have heard the learned Counsel appearing for the parties at length, with their able assistance perused the entire material on record. Upon careful perusal of the averments in the application for condonation of delay which was filed by the petitioner herein, alongwith appeal before the appellate authority, the reasons which are stated in the application should have been accepted by the appellate authority. By delaying in filing the appeal, the petitioner has not gained any undue advantage.

7. In the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , in paragraph 3, the Apex Court observed:

3 The legislature has conferred the power to condone delay by enacting S. 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

(1) Ordinarily a litigant does not stand to benefit by lodging an appeal late;

(2) Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that cause would be decided on merits after hearing the parties.

(3) "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hours delay, every seconds delay? The doctrine must be applied in a rational common sense pragmatic manner.

(4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay in fact he runs a serious risk.

(6) It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

8. In the facts of the present case, the petitioner has not benefited in any manner by delaying in filing appeal. On the contrary, he is out of employment and therefore, he has not gained any undue advantage by not filing the appeal within time. If length of delay is considered, there is no inordinate delay in filing the appeal. It appears that, the services of the petitioner were terminated on 20th October, 2013. He received the said termination order on 25th October, 2012 and thereafter, the appeal is presented in the month of February, 2013. Therefore, there appears few days delay in filing the appeal. The appeal is a valuable right of the party and such right cannot be taken away by adopting hyper-technical approach. Therefore, in the facts and circumstances of this case, the writ petition deserves to be allowed. The impugned order/communication dated 18th March, 2013 passed by the Divisional Commissioner, Tribal Development Department, Nashik Division, Nashik is quashed and set aside. The application filed by the petitioner herein, for condonation of delay before the Divisional Commissioner, Tribal Development Department, Nashik Division, Nashik stands allowed. As a result, the appeal is restored to its original file. The appellate authority is directed to hear and decide the said appeal on merits, as expeditiously as possible, preferably within period of three months from today. The writ petition is allowed to above extent and same stands disposed of. Rule made absolute in above terms.