

(2015) 08 BOM CK 0330

In the Bombay High Court

Case No : Writ Petition Nos. 8538 and 8539 of 2015

Sanjay Sadashiv Jadhav

APPELLANT

Vs

Joint Director, Higher Education and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21
Limitation Act, 1963 — Section 5

Citation : (2015) 6 ABR 278 : (2016) 1 ALLMR 256 : (2016) 2 MhLj 126

Hon'ble Judges : R.V. Ghuge, J.

Bench : Single Bench

Advocate : R.D. Kadap h/f. Thombre S.S., for the Appellant; S.D. Shelke, V.A. Shinde, U.H. Bhogle, D.R. Korde and Gore R.V., for the Respondent

Final Decision : Allowed

Judgement

R.V. Ghuge, J.—Rule. Rule made returnable forthwith and heard finally by the consent of the parties. The Petitioners in all these petitions were the employees of Respondent No. 2/Institution and were working with Respondent No. 3/College till their termination dated 17.04.2012 communicated to them on 21.04.2012. The Petitioners are identically placed and the Respondents in all these petitions are the same.

2. The Petitioners are said to have been terminated by the order dated 17.04.2012 which was communicated to them by the Institution on 21.04.2012. These Petitioners approached the Division Bench of this Court in Writ Petition Nos. 4305/2012, 4307/2012 and 6672/2012. By order dated 30.10.2012, this Court disposed of the petitions by observing that the Petitioners have an alternate statutory remedy of approaching the University and College Tribunal (for short, hereinafter referred to as "Tribunal"). All the issues were kept open.

3. The Petitioners filed their Appeals before the Tribunal on 05.02.2013 along with the applications for condonation of delay. It was stated that the delay was of about 259 days. By the impugned order dated 03.08.2015, all Miscellaneous

Application Nos. 1/2013 to 07/2013 filed by these Petitioners for condonation of delay, were rejected and the delay was not condoned by the Tribunal.

4. The Petitioners submit that earlier they had preferred the Writ Petitions on or about 05.05.2012 before this Court. The same were disposed of by the order dated 30.10.2012. The Petitioners thus, lost about five months in this Court. It is hence submitted that delay of 259 days is neither deliberate nor inordinate. The circumstances on account of which the delay was caused, were set out in the miscellaneous applications. The Tribunal has rejected the said applications on the ground that the Limitation Act requires that the suits or proceedings instituted after the prescribed period of limitation, shall be dismissed. Section 5 of the Limitation Act vests the Court with a discretion to accept an appeal or application after the expiry of the prescribed period, if sufficient cause is shown.

5. It is further submitted that the Tribunal concluded that the Petitioners should have approached the Tribunal immediately after the Writ Petitions were disposed of by this Court. The reasons cited are not sufficient and are not satisfactory. The delay is not properly explained.

6. The Petitioners further submit that the Tribunal should have considered that all the Petitioners have lost their employment. Their grievance against their termination and continued unemployment could only be raised before the Tribunal. If the delay was not condoned, the Petitioners would be kept away from the Court of Law and would not be in a position to seek redressal of their grievance. It is, therefore, submitted that a strict view in the matters of condonation of delay ought not to have been taken and hence, these petitions deserve to be allowed.

7. Shri Gore, learned Advocate for Respondent Nos. 2 and 3, has strenuously supported the impugned order. It is stated that after the Division Bench of this Court disposed of the Writ Petitions, the Petitioners were made aware of the forum before whom they could present their grievance. The Appeals should have been filed within 30 days which is prescribed under the Maharashtra Universities Act, 1994. The Petitioners have slept over their rights and have intentionally caused the delay. This would have an effect on the backwages if eventually the Appeals are allowed.

8. Shri Gore, therefore, submits that the impugned order delivered by the Tribunal is supported with reasons. The Tribunal noted that the reasons put forth are not sufficient and hence, rejected all the miscellaneous applications. The impugned order is neither perverse nor erroneous.

9. In the alternative, it is submitted that in the event this Court comes to a conclusion that these petitions deserve to be allowed, each of the Petitioners be saddled with costs of Rs. 10,000/- for causing the delay and the costs be paid to Respondent No. 2.

10. I have considered the submissions of the learned Advocates who have taken

me through the impugned orders. It is not in dispute that these Petitioners had preferred the Writ Petitions before the Division Bench of this Court and which were disposed of on 30.10.2012 observing that an alternate remedy of approaching the Tribunal was available to the Petitioners. No doubt, the Petitioners, therefore, became aware of the forum before which they could challenge their termination. They could have acted with promptitude. However, the delay that is caused after the disposal of the Writ Petitions, can neither be said to be inordinate nor deliberate. A liberal approach is required to be adopted in the matters of condonation of delay.

11. In my view, the following factors are decisive in the matter of condonation of delay:

- (a) Whether, the Petitioners would be rendered remedy-less if their applications for condonation of delay are rejected?
- (b) Whether, the delay has been caused deliberately?
- (c) Whether, the delay can be said to be inordinate?
- (d) Whether, a pragmatic approach deserves to be taken in the matters of condonation of delay?
- (e) Whether, the litigant can be said to be in a position of deriving undue advantage by causing the delay in their matters?
- (f) Whether, laches are attributable to the conduct of the Petitioners?
- (g) Whether, a pedantic approach is to be avoided?

12. The Apex Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , has observed in paragraph 3 as follows:

"3. The legislature has conferred the power to condone delay by enacting Section 51 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:

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a 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 a 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 hour"s delay, every second"s 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 of 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.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step motherly treatment when the State is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

13. In the instant case, I do not find that laches are attributable to group the

conduct of the Petitioners. The delay is not too long so as to be termed as inordinate. The Petitioners derive no benefit out of causing the delay since they would infact put their interest in jeopardy.

14. Considering the above fact situation, I find that the impugned order passed by the Tribunal would result in causing grave injustice to the Petitioners. This Court is, therefore, required to cause an interference in the light of the ratio laid down by the Apex Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, and Surya Dev Rai Vs. Ram Chander Rai and Others, .

15. In the light of the above, these Writ Petitions are allowed in the following terms:

(a) The impugned orders dated 03.08.2015 delivered by the Tribunal are quashed and set aside. Miscellaneous Application Nos. 1/2013 to 07/2013 stand allowed.

(b) The Petitioners shall deposit costs of Rs. 2000/- (Rupees Two Thousand) each before the Tribunal within SIX WEEKS from today.

(c) Respondent No. 2 shall withdraw the said amount without conditions.

(d) The Tribunal shall register the Appeals preferred by the Petitioners.

(e) In order to avoid wastage of time, the litigating parties shall appear before the Tribunal on 21.09.2015. Formal notices, therefore, need not be issued to the litigating sides.

Rule is, therefore, made absolute in the aforesaid terms.