

---

**(2008) 03 DEL CK 0169**

**In the Delhi High Court**

**Case No : Writ Petition (Civil) No. 2285 of 2008**

Usha Sahai

APPELLANT

Vs

Delhi School Tribunal and Others

RESPONDENT

---

**Date of Decision : 24-03-2008**

**Acts Referred:**

Constitution of India, 1950 — Article 133, 134A, 226  
Delhi School Education Act, 1973 — Section 8(3)  
Civil Procedure Code, 1908 (CPC) — Section 100

**Citation : (2008) 8 ILR Delhi 200**

**Hon'ble Judges : Sudershan Kumar Misra, J**

**Bench : Single Bench**

**Advocate : H.K. Shekhar, for the Appellant; Nemo, for the Respondent**

**Final Decision : Dismissed**

---

## **Judgement**

Sudershan Kumar Misra, J.—Petitioner is aggrieved by the order dated 22.11.2007 of the Delhi School Tribunal, whereby, the application of the petitioner for condensation of delay in filing the appeal against the termination of her service on 14.5.2004 has been dismissed. It would appear that the petitioner's service was terminated on 14.5.2004. The termination order was admittedly received by the petitioner on 18.5.2004 in the United States of America where she was staying at that time. After receiving this order on 18.5.2004, the petitioner returned to India on 11.8.2004. The period of limitation available to the petitioner for filing the appeal in question against the termination of her service was 90 days. For computing the period of limitation, time started running from 18.5.2004. On her return to India on 11.8.2004, at least 6 days were still available to the petitioner to file her appeal. However, the appeal came to be filed only on 25.11.2004. In her application for condensation of delay, the petitioner has merely stated that;

she returned to India on 11.8.2004 and with the intention to file an appeal against the respondents and collected all documents and datas about the

statement of the school for filing the case/appeal at appropriate forum.

She further stated as follows:

That the appellant is able to collect all the datas on 17.11.2004 and contacted his lawyer thereby, so, she was not able to file the appeal within time.

2. No further particulars are disclosed in the application. Learned Tribunal has gone into the question of condensation of delay. It has found that the appellant has failed to show which documents were collected by the appellant after admittedly having arrived in India on 11.8.2004. It is also noted that no copy of any application seeking these documents has been placed on the record; and that the non filing of such an application makes it impossible to ascertain the exact date on which these documents were applied for; or even whether these documents were sought from the school, or from any other authority. In other words, the learned Tribunal has concluded that the plea of the petitioner seeking condensation of delay is bereft of material particulars. The Tribunal has dealt with this aspect in the following terms:

merely, an averment that the Appellant took three months to collect the documents, without there being any other substantial proof, will not entitle the Appellant to claim condensation of delay even without giving the sufficient cause to claim the same.

3. Learned Counsel has also urged that since a substantial question of law is involved in the case that by itself was sufficient ground for the Tribunal to condone the delay. He states that this Court ought to have interfered in the exercise of writ jurisdiction for this ground alone. According to him, once, "a substantial question of law", is shown to exist, that in itself constitutes sufficient ground for the condensation of delay and, in such a case, no further duty is cast upon the petitioner to explain the delay. To accept this proposition amounts to exempting all appeals before the Education Tribunal in which, "a substantial question of law", is claimed to arise, from the rigour of the limitation prescribed u/s 8(3) of the Delhi School Education Act. I am afraid I do not see any such exemption to Section-8(3) prescribing limitation of 90 days for preferring an appeal before the Tribunal. A perusal of Section-8(3) also shows that while an employee is given a right to prefer an appeal; there is nothing to indicate therein that appeals involving, "a substantial question of law", stand on a different footing than appeals not involving any such question. The expression, "substantial question of law", is to be found in Section 100 of Civil Procedure Code. In addition, Article 133 of the Constitution of India, that confers appellate jurisdiction on Supreme Court of India in appeals from High Courts in regard to civil matters, also states - an appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under Article 134-A that the case involves, "a substantial question", of law of general importance. To my mind, the scope and purport of these provisions can, by no stretch of imagination, be read

into the jurisdiction being exercised by the Delhi School Tribunals constituted under the Delhi School Education Act.

4. Even otherwise, the argument advanced by the Counsel for the petitioner to the effect that the jurisdiction to condone delay ought to have been exercised on the sole ground that a "substantial question of law" is involved in the case or, in other words, the mere existence of a substantial question of law can be termed as a cause sufficient to condone the delay, is too broad a proposition and cannot be countenanced at law. From the impugned order, I find that the petitioner relied on the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , but the Delhi School Tribunal held it to be not applicable to the facts of the case. In that case, the Supreme Court observed that a liberal approach is adopted to determine whether sufficient cause exists or not 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 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) That 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 malafides. 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.

This decision spells out the approach to be adopted and suggests that a liberal approach should be adopted in deciding whether there exists sufficient cause for condoning delay, specially when substantial justice & technical considerations are pitted against each other. In such a case, substantial justice is to be preferred & the term "sufficient cause" is to be interpreted liberally. However, nowhere does it suggest that the mere existence of a substantial question of law can be taken, ipso facto, as a sufficient cause to condone any delay whatsoever, regardless of the circumstances surrounding the delay.

The aforesaid decision in Katiji's case (supra) was also analyzed by a Full Bench

of Gujarat High Court in Municipal Corporation of Ahmedabad Vs. Voltas Limited and Others, , wherein the Court observed that the only principle laid down in the said decision is that, on account of these factors, a liberal approach is required to be adopted by a Court in deciding an application for condensation of delay. It was further observed that, "we are unable to locate there from any principle laid down to the effect that these six factors (whether considered individually, collectively or in combination of other facts) when factually established in a given case for condensation of delay, would itself constitute sufficient cause for condensation." It was also observed that, "the phrase sufficient cause involves only questions of fact to be considered by the Court dealing with the application for condensation of delay, and in considering sufficiency of the cause, no question of principle is involved."

The Gujarat High Court also examined the question whether merits of the substantive matter, in respect of which condensation of delay is sought, is the only criterion to decide the sufficiency of the cause, and/or whether it is a predominant factor, or merely a relevant factor, even if the delay is not satisfactorily explained. It held as follows;

To our mind, this submission puts the cart before the horse. The substantive matter in respect of which delay is sought to be condoned has no existence in law, so far as the the Court is concerned, until the delay is condoned. In fact, until the delay is condoned the Court cannot take cognizance of the merits or otherwise of the substantive matter. In this limited context, the application for condensation of delay created a jurisdictional barrier against the consideration of the substantive matter on merits.

6. The above observations clearly contemplate that if there is a substantial question of law involved in a case then the term "sufficient cause" for condensation of delay has to be interpreted liberally & not that the mere existence of a substantial question of law in itself will be a sufficient cause to condone the delay. In other words, even if it is assumed for a moment that there exists a substantial question of law; some material and relevant particulars spelling out the unavoidable circumstances that prevented the petitioner from availing his remedy within the time prescribed must be reliably demonstrated. This, I am afraid, has not been done. I might add that the right to file an appeal has been conferred by the Delhi Schools Education Act. It is a statutory right; Therefore follows that the scope and amplitude of this right can be validly spelt out by the said statute. If the right to file appeal is made available by that statute for 90 days; then, it follows that after the expiry of that period the right to file the appeal stands extinguished.

7. In this view of the matter, and since I do not find any perversity or illegality in the impugned order, Therefore without going further into the question whether the Tribunal is even empowered to condone the delay; I do not consider it a fit case for interference in exercise of writ jurisdiction under Article 226 of the Constitution of India, the writ petition is dismissed.