

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.437 OF 2018
IN
ORIGINAL APPLICATION NO.1151 OF 2017**

Shri Dinesh R. Sawant.)...**Applicant**

Versus

1. The Superintending Engineer.)
2. The State of Maharashtra.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 11.12.2018

JUDGMENT

1. This is an application made for condonation of delay of five years and three months caused in filing O.A.1151 of 2017, which pertains to the grant of appointment on compassionate ground.

2. The Applicant's father viz. Ramesh Sawant was Junior Clerk serving with Respondent No.1. Unfortunately, he died in harness in 1999. After his death, his mother applied for grant of appointment on compassionate ground on 20.09.1999. Accordingly, her name was included in waiting list for the appointment on compassionate ground. However, in 2004, her name came to be

deleted because of completion of 40 years of age in terms of Government Resolution dated 22.08.2005. Thereafter, on attaining the majority, the Applicant applied for appointment on compassionate ground on 19.10.2005 by way of substitution of his name in the name of his mother, whose name was deleted from the waiting list in 2004. Accordingly, the name of Applicant was taken in the waiting list. However, suddenly, by communication dated 27.09.2011, the Respondent No.1 informed the Applicant that he is not eligible for appointment on compassionate ground, as there is no provision of substitution of his name in place of his mother and his name came to be deleted. The Applicant contends that, due to financial constraints and serious illness of his mother, he could not take further steps in the matter. Ultimately, he approached M.L.A. from Mawal Constituency, District Pune who in turn sent letter to Hon'ble Minister on 09.08.2016. It seems that it was forwarded to the concerned authority. However, the Respondent No.1 by letter dated 27.09.2011 informed the Applicant that he is not eligible for appointment on compassionate ground and his name has been already deleted from the waiting list, which was already communicated to the Applicant on 27.09.2011.

3. In the aforesaid pleadings, the Applicant sought declaration that, there is no delay in fact in filing the O.A. seeking appointment on compassionate ground, as it is within one year from the communication dated 21.03.2017. However, in alternative, he prayed to condone the delay of 5 years and 3 months.

4. On the above pleadings, the Applicant sought to contend that, on account of illness of mother and financial constraints, he could not approach this Tribunal within the period of limitation of one year. He, therefore, requested for condonation of delay of 5 years and 3 months caused in filing the application.

5. The Respondents opposed the application *inter-alia* denying that the Applicant was prevented by any sufficient cause from making an application to

the Tribunal within limitation. The Respondents contend that there is total inaction and negligence on the part of Applicant. In fact, the rejection of his application dated 19.10.2005 was rejected by order dated 27.09.2011 which has been already communicated to the Applicant. Therefore, the application to this Tribunal ought to have been made within one year from the date of receipt of the communication. Instead the Applicant approached M.L.A. and in that context, he was again communicated by letter dated 21.03.2017 confirming his rejection which was already communicated to the Applicant by letter dated 27.09.2011. Such representation does not give fresh cause of action to the Applicant. The story sought to be made out by the Applicant is after-thought and no case is made out to condone the delay. On these pleadings, the Respondents prayed to reject the application.

6. The point arises for determination.

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| (A) | Whether the Applicant is entitled to declaration that the O.A. filed seeking appointment on compassionate ground is within limitation ? | No |
| (B) | Whether the Applicant has made out sufficient cause to condone the delay ? | No |

7. As to Point Nos.(A) and (B) :- Shri A.V. Bandiwadekar, learned Advocate for the Applicant made two-fold submission. His first contention is that the limitation starts from letter dated 21.03.2017, and therefore, this application being filed within one year from the receipt of communication is well within time. In alternative, he canvassed that the Applicant could not take immediate steps in the matter due to financial constraints and illness of his mother. He, therefore, sought to contend that, taking pragmatic and justice oriented approach, the delay deserves to be condoned. He placed reliance on the Judgment of Hon'ble Supreme Court in **(2014) 2 SCC (L & S) 595 (Esha Bhattacharjee Vs. managing**

Committee of Raghunathpur Nafar Academy & Ors. and the Judgment of Hon'ble Bombay High Court in **2018 (1) Mah.L.J.185 (Dr. Ashok R. Mehta Vs. Shree Tirthankar Co.)**.

8. Per contra, Mr. A.J. Chougule, learned Presenting Officer strongly opposed the application contending that the Applicant has admittedly received first communication dated 27.09.2011 rejecting the application of the Applicant, and therefore, the limitation starts from the receipt of communication dated 27.09.2011. He further canvassed that the representation made subsequently will not give fresh cause of action. The communication dated 21.03.2017 cannot be treated as a date of cause of action, as it was mere communication in pursuance of his representation made letter to M.L.A. In this behalf, he placed reliance on the Judgment of Hon'ble Supreme Court in **(1989) 4 SCC 582 (S.S. Rathore Vs. State of Madhya Pradesh)**.

9. In **Esha Bhattacharjee** (cited supra), the Hon'ble Supreme Court laid down the following principles to be borne in mind while considering the application for condonation of delay.

(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.
- xiv) 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.
- xv) 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.
- xvi) 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.
- xvii) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner required to be curbed, of course, within legal parameters."

10. In fact, in the aforesaid case, there was delay of more than seven years which has been condoned by Hon'ble High Court, but Hon'ble Supreme Court quashed the order of condonation of delay. However, the principles laid down would apply as guiding principles.

11. Whereas, in **Dr. Ashok Mehta's** case, there was delay of 54 days and the explanation given by the Applicant that, though the matter was entrusted to Advocate, he did not take steps immediately for filing revision with ultimate delay of 54 days. The explanation has found satisfactory and the delay was condoned. The principle laid down in the Judgment is, length of delay is not relevant and acceptability of explanation is only criteria to be borne in mind while considering the delay.

12. Delay cannot be condoned as a matter of course where sufficient cause is not shown or there is inaction or negligence on the part of Applicant. There is no denying that the Court must take pragmatic view while considering the application for condonation of delay, so as to decide the matter on merit, if explanation is plausible and convincing. As such, the term 'sufficient cause' has to be construed liberally. What constitutes 'sufficient cause' depends upon the facts and circumstances of the case, and there is no straitjacket formula. If, it is found that there is no negligence on the part of Applicant and cause shown for the delay is bonafied, then normally, the delay deserves to be condoned, exercising discretion judiciously.

13. Now, coming to the facts of the present case. There is no denying that the Applicant has received rejection of his application by communication dated 29.09.2011. Whereas, the present O.A. has been filed on 13.12.2017. As such, the application has been filed after the delay of 6 years, 2 months and 16 days. The Applicant's contention that the limitation starts from last communication dated 23.01.2017 is misconceived and not at all accepted. The cause of action

accrued to the Applicant in the year 2011 itself. However, he did not take timely action. Mere filing of representation through MLA will not give fresh cause of action, as the Applicant sought to contend. For this purpose, a reference may be made to the decision in **S.S. Rathore's** case (cited supra) by the learned P.O. The ratio laid down in this authority is that, mere filing of representation will not give fresh cause of action to the Applicant and right to sue accrues when the order of final rejection has been communicated to the Applicant. This being the position, it cannot be said that the O.A. filed on 13.12.2017 is within time. No such declaration to that effect can be given.

14. In so far as the ground of illness of mother and financial constraints are concerned, it is significant to note that the Medical Papers placed on record at Pages 59 to 78 does not relate to the illness of mother. It pertains to some ailment of Applicant's sister, brother and himself. Page 59 is the copy of disability Certificate of Pravina Ramesh Sawant (sister of Applicant), Page 60 is the Medical Certificate of 2017 in respect of treatment of his brother Mahesh Ramesh Sawant in 2013, Page 61 is the copy of Medical summary of Dinesh Ramesh Sawant in respect of Head Injury caused in 2010, Pages 63 to 76 and 79 to 86 are the copies of Medical Certificates / summary of treatment in respect of Sonali Ramesh Sawant showing the treatment in 2012-2013 whereas Page 78 is Discharge Card dated 31.03.2010 in respect of treatment of Applicant. As such, the Applicant's contention that, on account of mother's illness, he could not make an application within time is contrary to the documents placed on record. Even assuming for a moment that, his family members were under treatment for some period, as shown in the Certificates that itself is not enough to condone the delay of six years. Periodical treatment for some days in 2013 can hardly be accepted to condone the delay of six years from 2011 to 2017. This being the position, the ground of illness does not inspire any confidence much less to condone the delay of six years. There is no such serious illness of a longer period

whereby it can be said that the Applicant was prevented from taking necessary steps in the matter. Bonafides are lacking.

15. On the contrary, there is total inaction and negligence on the part of Applicant to take necessary steps within the period of limitation provided in law. As such, even if one adopt liberal approach, it is not possible to condone the delay of six years, as it is not at all explained properly much less sufficiently.

16. As such, the application for condonation of delay lacks bonafide. There is huge and inordinate delay of six years and the grounds mentioned in the application, as discussed above, cannot be termed as 'sufficient cause' to condone the delay of six years. The negligence and inaction on the part of Applicant is clearly visible and obvious from the record. Suffice to say, even on the touchstone of principles laid down in the Judgments (cited supra) relied by the Applicant's Counsel, no case is made out to condone the delay.

17. In view of above, I record negative findings on Point Nos. (A) and (B). Resultantly, the Misc. Application is devoid of any merit and deserves to be dismissed.

18. M.A.No.437 of 2018 is hereby dismissed. Consequently, the O.A. No.1151 of 2017 being not made within limitation also stands dismissed. No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 11.12.2018

Dictation taken by :

S.K. Wamanse.