MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

BENCH AT AURANGABAD

MISC. APPLICATION NO. 148/2016
WITH
ORIGINAL APPLICATION NO. 167 OF 2016

DIST. : BEED

Kamel s/o Kashif Inamdar
(wrongly named as Inamdar
Kasid Mohiyoddin s/o Rafiyuddin),
Age. 28 years, Occ. : Nil,
r/o Sheikh Wada,
At post Neknoor, Tq. & Dist. Beed. -- APPLICANT

V E R S U S

1. The Collector, Beed,
   Dist. Beed
   (copy to be served on C.P.O.,
   M.A.T., Aurangabad)

2. The Superintending Engineer,
   Jayakwadi Project Circle,
   Aurangabad.

3. The Executive Engineer,
   Majalgaon Canal Division no. 7,
   Gangakhed, Dist. Parbhani.

4. The Deputy Executive Engineer,
   Majalgaon Canal Division no. 7,
   Gangakhed, Dist. Parbhani. -- RESPONDENTS

APPEARANCE :- Shri K.G. Salunke, learned Advocate for the applicant.

: Smt. Resha S. Deshmukh, learned Presenting Officer for the respondent no. 1.

: Shri G.N. Patil, learned Advocate for respondent nos. 2 to 4.

CORAM : Hon'ble Shri B.P. Patil, Member (J)

DATE : 14th June, 2018

O R D E R

1. The applicant has prayed to condone the delay of 2 years and 11 months caused in filing the O.A. by filing the present misc. application.

2. It is contended by the applicant that his father viz. Shri R.K. Inamdar was serving as a Clerk in the office of res. no. 4 the Deputy Executive Engineer, Majalgaon Canal Division no. 7, Gangakhed, Dist. Parbhani. He died on 21.5.1997 while in service. The applicant and his mother are the legal heirs of the deceased employee. The applicant was minor at the time of death of his father and he attained the age of majority in the year 2005. Thereafter he moved an application on 12.6.2005 with the respondents to appoint him on compassionate ground, but the res. no. 4 rejected the said application by the order dtd. 13.3.2012. Thereafter, the applicant moved representation on 24.5.2012 with the res. no. 4 with the same request, but that representation was not considered by the res. no. 4. Thereafter he again moved another application with the respondents with the same request. The said application of the applicant was under consideration, but

the respondents have not taken any decision on the said representation and therefore he has approached the Tribunal by filing O.A. no. 167/2016 and prayed to quash the order of res. no. 4 dtd. 13.3.2012. It is the contention of the applicant that since he approached the respondents by filing representations after rejection of his earlier application on 13.3.2012 and his representation was under consideration, he could not file the O.A. within stipulated time and therefore there is delay in filing the O.A. It is his contention that the delay was not intentional and deliberate. It is his contention that there is merit in the O.A. and therefore he prayed to condone the delay by allowing the M.A.

3. Respondent nos. 2 to 4 by filing their affidavit in reply contended that the father of the applicant died on 21.5.1997. The applicant filed application for getting appointment on compassionate ground on 12.7.2005. Res. no. 3 forwarded a proposal of the applicant to the Collector, Beed by letter dtd. 30.8.2005 as the Collector, Beed is the competent authority to maintain the list of the candidates eligible for appointment on compassionate ground. After verification of the documents, Collector, Beed found that mother of the applicant was in service and therefore he rejected the claim of the applicant on 15.4.2006

and communicated the said decision accordingly. It is their contention that the applicant has not challenged the said order and he kept mum for a quite long time. He ought to have challenged the order dtd. 15.4.2006 but in spite of that he filed another application on 24.5.2012 with the res. no. 4. The res. no. 4 forwarded his application to the res. no. 2. The applicant has not made application within one year from the date of attaining the majority and therefore his application dtd. 12.7.2005 came to be rejected by the Collector Beed by order dtd. 15.4.2006. The said order has not been challenged by the applicant and therefore the said order has attained the finality. In spite of rejection of earlier application of the applicant he started making representations again and again which were forwarded by the res. no. 4 to the higher authorities. The res. no. 4 by communication dtd. 13.3.2012 informed the applicant that his earlier applications have been rejected as per G.R. dtd. 26.10.1994. Not only this, but the said fact has also been communicated to the Marathwada Building Transportation and Irrigation Employees Federation, Majalgaon, Dist. Beed by letter dtd. 24.11.2015 by the res. no. 2. It is their contention that the applicant has not challenged the initial order of rejection dtd. 15.4.2006. The limitation for filing the O.A. commences from that date. The applicant kept mum for more than

9 years and delay of more than 9 years has been caused for filing the O.A. The applicant has not counted the delay correctly. It is their contention that the delay is inordinate and it has not been properly and satisfactorily explained by the applicant. It is their contention that mere filing of representations is not sufficient to reckon limitation period afresh from that date. It is their further contention that the period of limitation will not be saved because of subsequent representations filed by the applicant. There is delay and latches on the part of the applicant. Therefore, they prayed to reject the M.A.

4. Heard Shri K.G. Salunke, learned Advocate for the applicant, Smt. Resha S. Deshmukh, learned Presenting Officer for the respondent no. 1 and Shri G.N. Patil, learned Advocate for respondent nos. 2 to 4.

5. Admittedly father of the applicant Shri R.K. Inamdar was working with respondents as a Clerk. He died on 21.5.1997 while in service. Admittedly the applicant was minor at that time. As per the documents placed on record the date of birth of the applicant is 17.5.1987. He attained the age of majority on 17.5.2005. Admittedly the applicant moved an application for appointment on compassionate ground due to death of his father

by filing application on 12.6.2005 with the res. no. 4. The same came to be rejected by the Collector, Beed on 15.4.2006. There is no dispute about the fact that the mother of the applicant was serving as a Teacher and his application was rejected on the ground that his mother was serving as a Teacher and their financial position was sound. Admittedly the applicant has not challenged the order passed by res. no. 4 on 15.4.2006 thereby rejecting his application dtd. 12.6.2005. Admittedly the applicant filed the applications / representations on 24.5.2012 & 8.1.2013 to the res. no. 4 after lapse of considerable time and the said applications were forwarded by the res. no. 4 to the higher authority. The said applications came to be rejected by the respondents and order in that regard has also been communicated to the applicant. Admittedly thereafter the applicant made several representations with the respondents with similar request.

6. Learned Advocate for the applicant has submitted that the application of the applicant came to be rejected on 13.3.2012 and thereafter the applicant filed several representations with the respondents to consider his claim and the said applications were forwarded by the res. no. 4 to the higher authorities and, therefore, the applicant was hoping that his claim would be considered by the

respondents. Because of the said fact he has not challenged the order dtd. 13.3.2012 within the prescribed period of limitation before this Tribunal. He has submitted that the respondents have not taken appropriate decision on his representation and therefore the applicant has filed the present O.A. It is his further submission that the delay caused in filing O.A. was not deliberate, willful and intentional on the part of the applicant. It is his submission that there is merit in the contention of the applicant and it is just to decide the O.A. on merit to give substantial justice to the applicant. Therefore he prayed to allow the O.A.

7. In support of his submission learned Advocate for the applicant has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others** reported in **AIR 1987 S.C. 1353**, wherein in para 3 it is observed as follows :-

> ***"3. The legislature has conferred the power to condone delay by enacting S. 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:-

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 stepmotherly 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."

8. He has further placed reliance on the judgment of the Hon'ble Supreme Court in the case of **N. Balakrishnan Vs. M. Krishna Murthy** reported in **(1998) 7 SCC 123**, wherein in it is observed as under :-

"The 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 in not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the right 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. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. The law of limitation thus founded on

public policy. It is enshrined in the maxim interest reipublicae up site finis litium, (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right 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.

(para 10 and 11)

Condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. 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. A court knows that

refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. The words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. (para 9, 13 and 12)"

9. He has also placed reliance on the judgment in the case of **Sonerao Sadashivrao Patil and another Vs. Godawaribai w/o Laxmansingh Gahirewar** reported in **1999 (2) Mh. L.J. 272** wherein it is observed as under :-

"The primary function of a Court is to adjudicate the disputes between the contesting parties and to advance substantial justice. The rules of limitation are not made to harm the valuable rights of the parties. The discretion is given to the Court to condone delay and admit the appeal in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. If the spirit behind the empowerment of discretionary power on the Court is taken into consideration, it is beyond doubt clear that the Court is required to adopt liberal approach in the matter of interpretation of the' phrase "sufficient cause". This concept is adequately elastic to enable the Court to apply law in a meaningful

manner. The requirement of explanation of every day's delay does not mean that a pedantic approach should be taken. The courts are required to adopt rational common sense approach. The Courts are required to take pragmatic approach while interpreting the concept of sufficient cause. Too much rigour of the law is not justice but the denial of it. It is to be born in mind the maxim, "Summum Jus Summa Injuria". Extreme law is extreme injury. In the matter of condonation of delay, the duration of delay is insignificant. The Court has to take into account whether there is acceptable explanation or pardonable explanation."

10. Learned P.O. has submitted that the applicant has suppressed the material facts while approaching this Tribunal. He has submitted that the applicant has moved an application for getting appointment on compassionate ground immediately after attaining the age of majority in the year 2005 by filing the application dtd. 12.6.2005. He has submitted that the said application of the applicant came to be rejected by the Collector, Beed by the order dtd. 15.4.2006 and it was communicated to the applicant accordingly, but applicant has not challenged the said order and therefore it has become final. He has submitted that the applicant kept mum for long period and thereafter on 24.5.2012 he

again moved an application with the res. no. 4 claiming the same relief. The said application of the applicant was forwarded by the res. no. 4 to the higher authority. He has submitted that the said application of the applicant came to be rejected and the decision has been informed to the applicant by the respondents by communication dtd. 13.3.2012. He has submitted that in spite of that the applicant has not challenged the said order for long time and started making representations after representations to the respondents with the same request. Since earlier applications of the applicant have been rejected on merit, the respondents have not replied to the said applications made by the applicant and therefore the same cannot be a ground to condone the delay caused in filing O.A. He has submitted that the applicant has intentionally and deliberately made delay in filing the O.A. The delay is of 9 years since rejection of his first application by the order dtd. 15.4.2006 passed by the res. no. 4. The said delay is inordinate and it has not been explained by the applicant by showing sufficient cause and, therefore, in the absence of sufficient cause the delay cannot be condoned.

11. He has further submitted that the applicant cannot claim appointment on compassionate ground as of his right. He has

submitted that as there is inordinate delay of 9 years in filing the O.A. it cannot be condoned. Therefore he has prayed to reject the M.A.

12. In support of his submission learned P.O. has placed reliance on the judgment in the case of **Seema Hiralal Pawar Vs. State of Maharashtra and others** reported in **2016 (5) Mh. L.J. 341**, wherein the petitioner submitted application for appointment on compassionate ground after about 6 years and 2 months after attaining majority and 17 years after death of employee. It has been held in the said decision that the said application cannot be allowed after lapse of reasonable period. It has been observed that it is not a vested right, which can be exercised at any time in future. Consequently Hon'ble High Court dismissed the petition. In the circumstances, the learned P.O. has prayed to dismiss the M.A, considering the inordinate delay in filing the O.A.

13. On going through record, it appears that the father of the applicant died on 21.5.1997. At that time, the applicant was minor and he has attained the majority on 17.5.2005. After attaining the age of majority, he moved an application dtd. 12.6.2005, for appointment on compassionate ground. The said application came to be rejected by the Collector, Beed on 15.4.2006

as mother of the applicant was serving as a Teacher and their family has sufficient financial income. The said decision has been communicated to the applicant accordingly. The applicant has not challenged the said order till today and it has attained finality. The applicant has suppressed the said material fact in the O.A. and M.A. Not only this, but after lapse of more than 6 years, the applicant moved another applications on 24.5.2012 & 8.1.2013 claiming similar relief to res. no. 4, which has been forwarded by the res. no. 4 to the higher authority. Since his earlier application has been rejected in the year 2006 itself, the res. no. 2 rejected these applications and communicated decision to the applicant accordingly on 13.3.2012. Without challenging the said order within the prescribed period the applicant started making several representations with the respondents intentionally. He ought to have approached this Tribunal within one year. But he has not approached in time and therefore delay has been caused. In fact cause of action to file O.A. arose to the applicant in the year 2006 when his first application dtd. 12.6.2005 has been rejected by the Collector, Beed by the order dtd. 15.4.2006. The present O.A. is filed by the applicant on 29.2.2016 and there is delay of 9 years and 10 months in filing the O.A. and the applicant has not explained the said delay satisfactorily. No just ground has been

mentioned in the application for condoning the said delay. Therefore in absence of satisfactory reasons, in my opinion, it is not a fit case to condone the delay.

14. I have gone through the above cited decisions relied by the learned Advocate for the applicant. I have no dispute about the legal principles laid down in the said decisions. Considering the reasons / cause put-forth by the applicant for condoning the delay caused in the filing the O.A., in my opinion, the principles laid down in the said decisions relied by the applicant are not attracted in the present case. No doubt, as per Sec. 5 of the Limitation Act discretion is given to the Court / Tribunal to condone the delay, but said discretion is to be exercised to advance substantial justice on showing sufficient cause for condoning the delay by the applicant. In the present case the applicant was well aware of the fact that his earlier application filed in the year 2005 has been rejected on 15.4.2006. He has not challenged it and kept mum and only with an intention to create a new cause he moved subsequent representations. Not only this but in spite of rejection of his subsequent applications by the respondents by the order dtd. 13.3.2012, he has not filed O.A. within stipulated time. This shows mala-fideness on the part of the applicant. Therefore,

principles laid down in the aforesaid decisions, on which the learned Advocate for the applicant has placed reliance, are not attracted in the present case. Therefore, I do not rely on the said decisions.

15. On the contrary the decision relied on by the respondents in the case of **Seema Hiralal Pawar Vs. State of Maharashtra and others** (supra) is more appropriately applicable in the instant case considering the facts of the present case and facts in that matter. Therefore, in my opinion, present misc. application deserves to be rejected, as there is no reasonable ground to condone the delay. An inordinate delay caused for filing O.A. has not been explained by the applicant by showing sufficient cause. Consequently the misc. application deserves to be rejected.

16. In view of above discussion, the misc. application stands rejected. In view of rejection of misc. application the original application also stands dismissed. There shall be no order as to costs.

PLACE : AURANGABAD **(B.P. PATIL)**
DATE : 14.6.2018 **MEMBER (J)**