

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO.703 OF 2019
IN
ORIGINAL APPLICATION NO.1232 OF 2019**

1. Smt. Radha Kashinath Mundhe.)
Age : 56 Yrs., Occu.: Household,)

2. Shri Rakesh K. Mundhe.)
Age : 23 Yrs., Occu.: Private)
Business.)
)
Both R/o. Survey No.69/7,)
Rajnigandha CHS, Valhekarwadi,)
Chichwad, Pune - 33.)
Heirs and Legal Representatives of)
the deceased Government servant -)
Kashinath Baban Mundhe.)...**Applicants**

Versus

The Transport Commissioner.)
(M.S), Mumbai having office at)
Administrative Building, 4th Floor,)
Government Colony, Bandra (E),)
Mumbai - 400 051.)...**Respondent**

Mr. B.A. Bandiwadekar, Advocate for Applicants.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

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

DATE : 01.10.2020

Kurhekar

JUDGMENT

1. This is an application for condonation of delay of four years and three months made under Section 5 of Limitation Act.

2. Briefly stated facts are as under :-

The Applicants are legal representatives of deceased Kashinath, who retired from the post of Junior Auditor on 31.08.2011. Before his retirement, the departmental enquiry was initiated against him in 2002. The D.E. was continued even after retirement which culminated into final order passed on 18th September, 2014 whereby penalty of 10% permanent deduction of pension was imposed. Accordingly, pensionary benefits were released in favour of deceased Kashinath. Kashinath died on 10.11.2019. After his death, his legal representatives have filed O.A.No.1232/2019 challenging the order dated 18.09.2014 whereby the period of suspension of deceased Kashinath from 15.01.2001 to 31.08.2011 was treated as suspension period for all purposes along with application for condonation of delay.

3. Shri B.A. Bandiwadekar, learned Advocate for the Applicant submits that Applicants were unaware of the proceedings of D.E. and for the first time, they discovered the papers after death of Kashinath and approached the Tribunal. He, therefore, prayed for condonation of delay of 4 years, 3 months contending that in the matter of condonation of delay, the Tribunal should exercise discretion judicially in favour of legal representatives of deceased employee, so that they can get monetary benefits in the event the order of treating the period of suspension is modified in O.A.

4. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer strongly opposed the application contending that no sufficient cause is made out to condone the delay and there is total inaction on the part of deceased Kashinath to challenge the order of punishment as well as order dated

18th September, 2014 whereby the period of suspension has been treated as suspension period for all purposes.

5. Shri Bandiwadekar, learned Advocate for the Applicant referred to the decision of Hon'ble Supreme Court in **(2014) 2 SCC (L & S) 595 (Esha Bhattacharjee Vs. Managing Committee)** wherein 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 encapsulate 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.

Wadhwa

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."*

6. 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.

7. Now turning to the facts of the present case, admittedly, the deceased Kashinath during his life time did not challenge the order of punishment as well as the order of 18.09.2014 whereby the period of suspension was treated as suspension period for all purposes. The delay cannot be condoned as a matter of judicial generosity and existence of sufficient cause is condition precedent for condoning the delay. It is equally true what count is not the length of delay, but sufficiency of cause for the delay. In the present case, as stated above, the deceased Kashinath did not avail the remedy of challenging the order dated 18.09.2014 and it is after his death only, his heirs have approached the Tribunal. Material to note that the deceased Kashinath availed retiral benefits in terms of punishment as well as the order of treating suspension as a suspension period for all purposes. In other words, he was conscious and aware of the legal consequences of the orders passed against him but choose not to challenge the same during his life time. It is nowhere the case of the Applicants that on account of any disability or some reason, Kashinath during his life time could not avail the judicial remedy. On the contrary, he accepted the impugned orders and thereby acquiesced by not choosing to challenge the same. The period of limitation to challenge the orders was expired during the life time of Kashinath and had attained the finality.

8. In view of above, the Applicants' contention that they came to know about the impugned orders only after the death of Kashinath, and therefore, delay be condoned is devoid of any merit. The cause of action accrued to Kashinath in 2014 itself but he did not choose to avail legal remedy. As such, the impugned orders of punishment had attained finality having not challenged by deceased Kashinath during his life time. Therefore, it cannot be said that the Applicants have any surviving cause of action to challenge the impugned orders after lapse of four years in absence of any challenge to the same by Kashinath during his life time.

Mr. D. S. D. S.

9. As such, having applied the principles laid down by Hon'ble Supreme Court in ***Esha Bhattacharjee's*** case (cited supra), no case is made out to condone the delay and as there is no surviving cause of action in favour of the Applicant to challenge the impugned orders passed during life time of Kashinath which have attained finality applying the principle of 'acquiescence and estoppel'.

10. The totality of aforesaid discussion leads me to conclude that no sufficient cause is made out to condone the delay and application deserves to be dismissed. Hence, the following order.

ORDER

The Misc. Application No.703/2019 as well as Original Application No.1232/2019 are hereby dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 01.10.2020
Dictation taken by :
S.K. Wamanse.