

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**MISCELLANEOUS APPLICATION NO.76/2017  
IN  
ORIGINAL APPLICATION STAMP NO.252/2017**

**DISTRICT: - AURANGABAD**

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Subhash s/o. Devrao Thale,  
Age : 62 years, Occu. : Pensioner,  
R/o. House No.25, Madhuraj  
Co-op. Housing Society, Aurangabad,  
Tq. & Dist. Aurangabad.

...APPLICANT

**V E R S U S**

- 1) The State of Maharashtra,  
Through its Principal Secretary,  
School Education Department,  
Mantralaya, Mumbai-32.
- 2) The Accountant General (A & E)-II,  
Maharashtra Nagpur  
Post Box No.  
Nagpur.
- 3) The Divisional Deputy Director  
Of Education, Aurangabad Division,  
Aurangabad.
- 4) The Principal,  
Government Public School,  
Aurangabad,  
Tq. & Dist. Aurangabad.

...RESPONDENTS

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APPEARANCE :Shri P.B.Salunke, Advocate holding for  
Shri V.G.Salgare, Advocate for Applicant.

:Shri M.P.Gude Presenting Officer for the  
respondents.

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CORAM : B. P. Patil, Member (J)

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DATE : 29<sup>th</sup> November, 2017  
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**J U D G M E N T****[Delivered on 29<sup>th</sup> day of November, 2017]**

By filing the present M.A., applicant has prayed to condone the delay of 2 years and 15 days caused in filing the O.A., challenging the impugned order dated 04-02-2014 directing the recovery of amount of excess payment of salary made to him because of wrong fixation of pay.

2. It is the contention of the applicant that respondents passed the order dated 04-02-2014 and directed recovery of amount of Rs.2,42,493/- from the pensionary benefits due to him. Accordingly, the said amount has been recovered at the time of his retirement. It is contention of the applicant that said order issued by the respondents is illegal and not maintainable. It is his contention that he was not responsible for wrong fixation of the pay scale and excess payment made to him, therefore, the said recovery cannot be made from him but the respondents have wrongly passed order dated 04-02-2014 and recovered the said amount illegally. It is his contention that such type of recovery is not permissible in view of the guidelines given by Hon'ble the Apex Court in the case of **State of Punjab V/s. Rafiq Masih**.

3. It is his contention that there is delay of 2 years and 15 days in filing the O.A. and challenging the order dated 04-02-2014 directing recovery of Rs.2,42,493/- from his pensionary benefits. It is his contention that his wife Sharada was suffering from cervical and lumbar spondylitis since 2 to 3 years and was taking Homeopathic treatment from Dr. A.S.Lahane. She was also taking allopathic treatment in the Synergy Clinic for Orthopedics and Plastic Surgery and she was advised to take complete bed rest since near about 2 and ½ years. Due to illness of his wife, he was not able to leave his home as he had to take care of his wife. Therefore, he could not able to file O.A. before the Tribunal within limitation and delay of 2 years and 15 days has been occurred in filing the O.A. As soon as his wife recovered from illness, he filed present O.A. alongwith M.A. for condonation of delay caused in filing the O.A. It is his contention that the O.A. can be decided on merit, and there are chances of his success in the said O.A. as similarly situated persons have got relief from the Tribunal. Therefore, he prayed to allow the M.A. and condone the delay caused in filing the O.A. by taking liberal view.

4. Respondent nos.3 and 4 have filed their affidavit in reply contending that the applicant has not shown

sufficient cause for condoning delay. It is their contention that the delay caused in filing the O.A. is inordinate and it has not been properly explained by the applicant. It is their contention that the applicant slept over his right for a long period. Therefore, he cannot claim condonation of delay caused in filing the O.A. It is their contention that there are laches and delay on the part of the applicant, therefore, M.A. for condonation of delay caused in filing the O.A. cannot be allowed. It is their contention that the amount has been recovered in the year 2014. The applicant has not challenged the said order either by filing representation with the respondents or by filing the O.A. before the Tribunal within prescribed period of limitation. There is delay of more than 2 years which has not been explained by the applicant by showing sufficient cause, and therefore, on this ground they prayed to dismiss the M.A.

5. Heard Shri P.B.Salunke, Advocate holding for Shri V.G.Salgare Advocate for Applicant and Shri M.P.Gude Presenting Officer for the respondents. Perused documents placed on record by the parties.

6. Learned Advocate for the applicant has submitted that the impugned order dated 04-02-2014 directing recovery of amount of Rs.2,42,493/- from the pensionary

benefits of the applicant had been issued by the respondent no.3, and accordingly, amount has been recovered from his pensionary benefits. He ought to have challenged the said order on or before 03-02-2015 but he could not challenge the said order within stipulated time because of illness of his wife who was suffering from cervical and lumbar spondylitis and was under treatment. He has submitted that wife of the applicant was ill for 2 and ½ years and she was bed ridden, and therefore, the applicant had to take care of his wife and family. Because of the said reasons he could not able to approach the Tribunal. He has submitted that reasons given by the applicant are just and reasonable to condone the delay. He has attracted my attention towards the copies of the medical certificates issued by Dr. Lahane issued on 08-02-2017 certifying that wife of the applicant, namely, Sharada was under his treatment for cervical and lumbar spondylitis from 22-04-2016. He has also attracted my attention to another medical certificate issued by Synergy Clinic for Orthopedics and Plastic Surgery, Aurangabad stating that she was under treatment as OPD patient w.e.f. 22-08-2016 onwards.

7. Learned Advocate for the applicant has submitted that the applicant has a meritorious case and his claim can

be decided on merit. He has submitted that in many cases of similarly situated persons this Tribunal has condoned the delay and considered the cases on merit. He has placed reliance on the order passed by the Tribunal in M.A.No.436/2016 decided on 31-08-2017. He has submitted that considering the said aspect and the principle laid down by the Hon'ble Supreme Court in the case reported in [**AIR 1987 SC 1353**] as quoted in the M.A., it is just and proper to allow the application. Therefore, he prayed to allow M.A. and condone the delay caused in filing the O.A.

8. Learned P.O. has submitted that the medical certificates produced by the applicant show that the wife of the applicant was suffering from cervical and lumbar spondylitis and she was taking treatment from the year 2016 onwards on the OPD basis. He has submitted that certificates produced by the applicant do not show that she was bed ridden and was unable to move from bed. He has submitted that the applicant has not produced documents on record to show that since 04-02-2014 i.e. from the date of impugned order he was prevented by sufficient cause to approach the Tribunal. He has argued that in the absence of sufficient cause, the delay cannot be condoned. He has

further argued that merely because this Tribunal has allowed the earlier applications the present application for condonation of delay caused for filing O.A. cannot be allowed. He has submitted that the order regarding condonation of delay has to be based on sufficient legal parameters. He has submitted that no sufficient explanation has been given by the applicant for approaching this Tribunal at belated stage. He has submitted that illness of wife of the applicant is not a sufficient cause which prevented the applicant to approach the Tribunal, and therefore, he prayed to reject the O.A.

9. Learned P.O. has placed reliance on the decision of Hon'ble the Apex Court in Civil Appeal No.6974 of 2013 and 6975 of 2013 in the case of **Basawaraj & Anr. V/s. The Spl. Land Acquisition Officer.**

10. I have gone through the documents on record. The impugned order has been issued on 04-02-2014 directing recovery of amount of Rs.2,42,493/- and the said amount has been recovered accordingly from the pensionary benefits granted to the applicant. The applicant ought to have challenged the order on or before 03-02-2015 but he kept silent. He filed M.A. along with O.A. on 14-02-2017 and there is delay of 2 years and 10 days in filing the O.A.

The applicant produced medical certificates regarding illness of his wife Sharada of the year 2016. Said medical certificate shows that wife of the applicant was treated on OPD basis. She was neither admitted in the hospital nor she was bed ridden and therefore it cannot be said that he was not able to leave the home as he was to take care of his wife. Not only this but there is nothing on the record to show that since issuance of the order dated 04-02-2014, the applicant was prevented to approach the Tribunal by sufficient and just cause. Unless the applicant gives satisfactory explanation for not approaching the Tribunal within the prescribed period of limitation, the delay cannot be condoned. The applicant has slept over his rights from 04-02-2014. There was lack of bonafide on the part of the applicant in approaching the Tribunal. Therefore, delay of more than 2 years cannot be condoned.

11. I have gone through the decision of the Hon'ble Apex Court in the case of **Basawaraj & Anr. V/s. The Spl. Land Acquisition Officer** in Civil Appeal No.6974 of 2013 and 6975 of 2013, wherein it is observed as follows:

*"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by*

*extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/ benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a Judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.*

*(Vide: **Chandigarh Administration & Anr. v. Jagjit Singh & Anr.**, AIR 1995 SC 705, **M/s. Anand Button Ltd. v. State of Haryana & Ors.**, AIR 2005 SC 565; **K.K. Bhalla v. State of M.P. & Ors.**, AIR 6 Page 7 2006 SC 898;*

and **Fuljit Kaur v. State of Punjab**, AIR 2010 SC 1937).

9. *Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court*

*has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.*

*(See: **Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee & Ors.**, AIR 1964 SC 1336; **Lala Matadin v. A. Narayanan**, AIR 1970 SC 1953; **Parimal v. Veena @ Bharti** AIR 2011 SC 1150; and **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai** AIR 2012 SC 1629.)*

10. In **Arjun Singh v. Mohindra Kumar**, AIR 1964 SC 993 this Court explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only **so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned**, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide: **Madanlal v. Shyamlal**, AIR 8

*Page 9 2002 SC 100; and Ram Nath Sao @ Ram Nath Sahu & Ors. v. Gobardhan Sao & Ors., AIR 2002 SC 1201.)"*

It has been further observed in the said judgment as under:

*"12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "dura lex sed lex" which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.*

*13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not*

*been agitated unexplainably and have from lapse of time become stale.*

*According to Halsbury's Laws of England, Vol. 24, p. 181:*

*"330. Policy of Limitation Acts. The courts have expressed at least three differing reasons supporting the existence of statutes of limitations namely, (1) that long dormant claims have more of cruelty than justice in them, (2) that a defendant might have lost the evidence to disprove a stale claim, and (3) that persons with good causes of actions should pursue them with reasonable diligence".*

*An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence' or laches.*

*(See: **Popat and Kotecha Property v. State Bank of India Staff Assn.** (2005) 7 SCC 510; **Rajendar Singh & Ors. v. Santa Singh & Ors.**, AIR 1973 SC 2537; and **Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project**, (2008) 17 SCC 448).*

14. In **P. Ramachandra Rao v. State of Karnataka**, AIR 2002 SC 1856, this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in **A. R. Antulay v. R.S. Nayak**, AIR 1992 SC 1701.

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory

*provisions and it tantamounts to showing utter disregard to the legislature.*

*16. In view of above, no interference is required with impugned judgment and order of the High Court. The appeals lack merit and are, accordingly, dismissed."*

12. Principles laid down in the abovesaid decision are most appropriately applicable in the instant case. The applicant has not explained the inordinate delay caused for filing the O.A. by giving just and sufficient reasons. Therefore, same cannot be condoned.

13. Learned Advocate of the applicant has relied on the judgment of the Tribunal in O.A.No.436/2016 and submitted that as this Tribunal has condoned delay in other matters, present application may also be allowed. But in view of the principle laid down by the Hon'ble Supreme Court in the above stated decision, wrong order/decision in favour of a particular party does not entitle any other party to claim benefits on the basis of wrong decision. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same

irregularity or illegality or for passing a similarly wrong order. Therefore, in view of the said principle order passed by the Tribunal in the M.A.No.436/2016 will not be useful to the applicant. Therefore, I do not find substance in the submissions advanced by the learned Advocate of the applicant in that regard.

14. Considering the abovesaid decision, in my opinion, there is no sufficient cause to condone the delay caused for filing the O.A. There is no merit in the M.A. Consequently, it deserves to be dismissed.

15. In view of the above facts and circumstances of the case, M.A. stands dismissed with no order as to costs. As the M.A. is dismissed, O.A.St.No.252/2017 does not survive.

**(B. P. Patil)**  
**MEMBER (J)**

**Place : Aurangabad**  
**Date : 29-11-2017.**