

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 2212 OF 2015

Karmaveer Shikshan Sanstha
Chincholi (Mali) Through its
President & another

... Petitioners

VERSUS

Vinod s/o Prabhu Wadvale
& another

... Respondents

.....
Mr. Vivek J. Dhage , Advocate for petitioners
Mr. Hiraji Gaikwad, Advocate for respondent No. 1
Mr. V.G. Shelke, A.G.P. for respondent No. 2
.....

CORAM : RAVINDRA V. GHUGE, J.

DATE : 2nd MARCH, 2015

PER COURT :

1. I have heard Shri Dhage, learned Advocate for the petitioners, Shri Gaikwad learned Advocate on behalf of respondent No. 1/ teacher and learned A.G.P. appearing on behalf of respondent No. 2.

2. Grievance of the petitioners is as follow :-

a] Appeal No. 15 of 2010 has been filed by the first respondent on 28-06-1990 before the School Tribunal.

b] Contention is of oral termination dated 25-06-2010.

c] The petitioners filed their written say on 17-07-2010. placing on record the resignation of the first respondent dated 27-04-2010 and thereby contending that there is no cause of action and if at all there is any cause of action, the appeal is barred by limitation.

d] After four years, on 10-07-2014, the first respondent filed an application seeking amendment in the appeal memo for introducing the challenge to the resignation dated 27-04-2010.

e] The petitioners filed their say on 21-08-2014 opposing the said application.

f] By the impugned order dated 07-01-2015, the application for amendment has been allowed.

3. Contentions of the petitioners are that the challenge to the resignation through application dated 10-07-2014 by itself is a belated challenge and as such issue of limitation on challenging the resignation after more than four years needs to be kept open before the School Tribunal.

4. Further grievance is that once the petitioners had taken a stand that the respondent No. 1 was not terminated but had voluntarily resigned, he could have made the application for amendment with promptitude, instead of, filing it after four years. By the passing of the impugned order, the School Tribunal is

likely to preclude the petitioners from raising these two vital grounds which are decisive to the out come of the appeal.

5. Learned Advocate for the first respondent has vehemently supported the impugned order. It is contended that by permitting the respondent/ employee to amend the appeal would not mean that the contentions put forth by the first respondent stand allowed. Contentions of the petitioners vis-a-vis contentions of the first respondent would be considered in their totality and the School Tribunal would thereafter decide the appeal on its own merits. Though there has been some delay in preferring the application, the same has been allowed only to ensure that the respondent is given every opportunity in his defence. He, therefore, submits that the impugned order need not be interfered.

6. Having considered the submissions of the rival sides, it no doubt clearly appears that after the petitioners submitted their say on 27-07-2010 contending that the first respondent voluntarily resigned on 27-04-2010, application for amendment was filed on 10-07-2014. Challenge to the resignation is raised belatedly after passage of about four years and three months.

7. However, since the petitioners have come up with the defence of a voluntary resignation tendered by the first

respondent, the said employee has sought to put forth his defence on the theory of resignation through the amendment. In these peculiar circumstances, ends of justice would be met by keeping the two issues of cause of action in relation to the resignation, as well as delay in questioning the resignation, open.

8. In the light of the above, this petition is disposed off with a direction to the School Tribunal to decide appeal No. 15 of 2010 as expeditiously as possible and preferably on or before the 31st day of March, 2016. The first respondent makes a statement that the application for interim relief would now not be pressed on account of passage of five years and instead the appeal could be decided finally.

9. The School Tribunal shall also note that the two issues as regards the delay in preferring the appeal and the delay in challenging the resignation, are kept open and the School Tribunal shall decide the said issues along with all other issues by considering the rival contentions of the litigating sides on their own merits.

(RAVINDRA V. GHUGE, J.)