

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5617 OF 2015

MAHATMA PHULE SHIKSHAN SANSTHA, JALNA AND ANOTHER
VERSUS
GOPICHAND JANARDHAN BARSale AND ANOTHER

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Advocate for Petitioners : Shri Panpatte V.S.
AGP for Respondent 2 : Smt. Shelke S.D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 17, 2015
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PER COURT :-

1. I have heard the learned Advocate for the petitioner for quite some time. Grievance is that the School Tribunal, by its order dated 3.1.2015, passed in Misc. Application No. 21 of 2013, has condoned the delay of 155 days caused at the behest of respondent No.1 employee in preferring the Appeal for challenging his termination dated 17.6.2013.

2. The petitioner submits that the ground put forth by the first respondent was that he was unwell and because of his illness, he could not file the appeal within limitation as prescribed under Section 9 of the MEPS Act. The petitioner produced documents before the School Tribunal to indicate that the Medical Certificate that was cited by the first respondent was issued by a Doctor on the request of the employee. It is, therefore, stated that a false medical certificate was produced and the first respondent has, therefore, approached the School Tribunal with tainted hands.

3. It is further stated that the employee / respondent No.1 was never appointed by the petitioner / Management in any of its Schools. False Muster Rolls have been produced on record. First respondent has indulged in forgery. He has not approached the Tribunal with clean hands. The delay of 155 days is inordinate and the impugned order, allowing the application, deserves to be set aside and the application deserves to be rejected.

4. The petitioner relies upon the order passed by this Court dated 27.8.2013, in Civil Application No.8217 of 2013 in Second Appeal (St) No. 1649 of 2013. This Court (Coram : K.K.Tated, J.) has declined to condone the delay of 209 days on the ground that a false medical certificate was produced to support the contention that the applicant therein was confined to his bed and was unable to move, which precluded him from filing the Second Appeal within limitation. This Court relied upon the photographs of the applicant indicating that he had attended a marriage ceremony on a particular date, which fell in the period of his purported illness. Shri Panpatte, learned Advocate, therefore, submits that the impugned order deserves to be quashed and set aside.

5. I find from the order dated 27.8.2013, cited by the petitioner, that the only reason put forth by the applicant in the said case was that he had met with an accident and was unable to walk. His illness was attributed to the entire period of 209 days of delay caused. Having gone through the facts emerging from the record in the case in hand, I do not find that the view taken by this Court in the cited order would apply to the case of the

petitioner.

6. The employee in this case has caused a delay of 155 days for challenging his termination. It is said that he fell ill and produced the medical certificate to support his illness from 30.7.2013 till 29.8.2013, which is a period of 30 days. It is recorded by the Tribunal that the illness of the employee from 30.7.2013 till 10.8.2013 alone is disputed by the petitioner. As such, the issue is of 11 days of illness. The Tribunal has considered the several representations made by the petitioner from Exhibits A, 4/1, 4/2, 4/3, 4/4 and 4/5 which include copies of the Muster Roll and other documents indicating his employment.

7. Though the petitioner contends that the employee was terminated on 17.6.2013, the contention put forth before the School Tribunal by the employer was that he worked till 29.7.2013. As such the dispute as regards his illness is for a period of 11 days only from 30.7.2013 till 10.8.2013.

8. I find that the School Tribunal relied upon the representations put forth by the employee to the petitioner / Management as well as to the Education Officer, pursuing the cause of action and making out his grievance before the concerned authority.

9. The Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has laid down guidelines while dealing with the application for condonation of delay,

which are;

" 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."

10. Barring the grievance of the petitioner of a false medical certificate submitted to cover a period of 11 days out of 155 days, in my view, would

not dis-entitle the employee from seeking condonation of delay. Since, the said employee has suffered permanent loss of employment, he derives no advantage by deliberately delaying his appeal.

11. In the event the delay is not condoned, the employee would not be in a position to challenge / question his termination and permanent loss of employment before any Court and would be rendered remediless. The contention of the petitioner that he was never appointed in its employment is a matter of the merits of the dispute and all disputed questions between the petitioners and the employee can be gone into by the Tribunal while dealing with his appeal.

12. In the light of the observations of the Apex Court in the case of Collector, Land Acquisition Anantnag (supra), I do not find that the delay of 155 days could be termed as inordinate.

13. In the above backdrop, I do not find that the impugned order of the School Tribunal, dated 3.1.2015, could be termed as being perverse or unsustainable.

14. In view of the ratio laid down by the Apex court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and others, [AIR 1964 SC 447] and in the case of Surya Dev Rai Vs. Ram Chander Rai [2003(6) SCC 682], I do not find that the impugned order can be said to have caused grave injustice to the petitioner.

15. The petition is devoid of merits and is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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