

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5633 OF 2015

THE PRESIDENT, MARATHWADA PRADESH
SCHEDULED TRIBE, VIMUKTA JATI AND
BACKWARD CLASS SEVASANGH, PARBHANI

PETITIONER

VERSUS

VIJAYA W/O GOVINDRAO NANDEDKAR
AND ANOTHER

RESPONDENTS

Mr.A.A.Mukhedkar, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/07/2015

PER COURT :

1. I have heard Mr.Mukhedkar, learned Advocate for the petitioner for quite some time.

2. The petitioner is aggrieved by the order dated 18/04/2015, passed by the School Tribunal, Latur in Appeal No.53/2014 preferred by respondent No.1.

3. Grievance is that, application Exh.17 filed by the petitioner / Management seeking dismissal of the appeal for being delayed by 12 days, has been rejected by an erroneous conclusion. It is submitted that Section 9 of the M.E.P.S.Act enables the terminated employee or

an aggrieved person to file an appeal before the Tribunal within 30 days.

4. Respondent No.1/employee was terminated on 11/08/2014 after conducting a full fledged domestic enquiry and by following the due procedure laid down in the M.E.P.S.Act and the Rules framed thereunder. A registered letter / envelope containing the termination order was posted on 11/08/2014. Contention of the petitioner is that the remark "*unclaimed*" indicates the refusal of the respondent in accepting the order of termination.

5. In the above backdrop, before filing its written statement, the petitioner preferred application Exh.17 dated 16/04/2015 praying for dismissing the appeal on the ground of maintainability. By the impugned order, the Tribunal has rejected the application. Mr.Mukhedkar vehemently submits that the only ground on which application Exh.17 was rejected is that the remark of the postal authorities on the envelope, which was returned to the petitioner, does not bear the signature of the Postman. This is an erroneous conclusion since the signature of the Postman is seen on the reverse side of the envelope. He, therefore, submits that the impugned order deserves to be quashed and set aside.

6. Having considered the submissions of the petitioner, I have gone through the petition paper book with the assistance of the learned Advocate. It is not in dispute that respondent No.1 / Assistant Teacher was terminated on 11/08/2014. It is also not in dispute that she preferred the appeal on 24/09/2014 which is delayed by 12 days considering the date of termination. It is also not in dispute that the envelope containing the termination order has been returned unserved to the petitioner.

7. I find from the copy of the envelope placed on record that the remark "unclaimed" appearing on the front side of the envelope does not bear the signature of the Postman. On this ground alone, the contention of the petitioner stands negated. The tribunal has rightly so concluded in paragraph No.13 of the impugned order.

8. On the reverse side of the envelope, the postal remark appears to be "intimated on 12/08/2014". There seems to be an initial below the said remark. However, it appears from application Exh.17 that this issue of the postal remark on the reverse side of the envelope was never raised by the petitioner. The only ground raised by the petitioner was that the envelope has been returned "unclaimed" and

therefore it tantamounts to a refusal on the part of respondent No.1 / addressee. In this fact situation, the conclusion of the School Tribunal in paragraph No.13 is not erroneous.

9. Be that as it may, the Tribunal has observed in paragraph No.14 of the order that the petitioner / employer tried to re-serve the said notice through R.P.A.D. which was posted on 20/08/2014. This was not disputed by the petitioner before the Tribunal. It is also not disputed that the petitioner has produced a copy of this notice / letter dated 20/08/2014 at Sr.No.1 in the list Exh.4 before the Tribunal. Postal record indicates that the employee was intimated on 22/08/2014 and the said envelope was then served upon her on 26/08/2014. She preferred her appeal on 24/09/2014 within 30 days from the date of receipt of the letter dated 20/08/2014.

10. In the light of the above, it is apparent that the petitioner did not raise any issue about the remark "intimated on 12/08/2014" before the Tribunal. Since the petitioner restricted its contention to the remark "unclaimed", the Tribunal proceeded on the pleadings in Exh.17 and rightly concluded that there was no signature of the Postal Authority below the said remark. Nevertheless, the letter dated 20/08/2014 issued by the petitioner indicates that it desired to

serve respondent No.1 with the order of termination. By their own conduct, they preferred to re-issue the letter. Said letter was served on 26/08/2014 upon respondent No.1 who filed her appeal thereafter within 30 days. The petitioner, therefore, cannot approbate and reprobate on the same line.

11. I do not find any error in the impugned order. The petition sans merits and therefore stands rejected.

(RAVINDRA V. GHUGE, J.)