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

WRIT PETITION NO. 5172 OF 2014

TATYABA THAKAJI SHELKE,
Age : 53 years, Occ : Nil,
R/o Babhulgaon, Tq.Rahuri,
Dist.Ahmednagar.

...PETITIONER

-VERSUS-

1 The Principal,
 Padmashri Dr. Vitthalrao Vikhe Patil
 Foundation's Technical College,
 MIDC, Viladghat,
 Tq. & Dist.Ahmednagar.

2 The Secretary,
 Padmashri Dr. Vitthalrao Vikhe Patil
 Foundation's Technical College,
 MIDC, Viladghat,
 Tq. & Dist.Ahmednagar.

3 The Deputy Director,
 Technical Education Department,
 Samangaon Road, Nashik.

...RESPONDENTS

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Advocate for Petitioner : Mr.Chavan Sudhir K.

AGP for Respondent No.3: Smt.S.D.Shelke.

Advocate for Respondents : Mr.Ashwin V. Hon for R/1 and R/2.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 20th August, 2015

Oral Judgment:

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner is aggrieved by the impugned order dated 23.04.2014 delivered by the School Tribunal in Miscellaneous Application No.23/2013.

3 The Petitioner claims to have been terminated on 22.05.2005. He has preferred the appeal before the School Tribunal on 30.10.2013 along with an application for condonation of delay of 07 years and 10 months in preferring the Appeal. By the impugned order, the Miscellaneous Application seeking condonation of delay has been rejected on the ground that the delay is not explained with documentary evidence and hence, there is no reason to condone the delay.

4 Shri Chavan, learned Advocate appearing for the Petitioner, relies upon the judgment of this Court dated 02.08.2012 in the matter of *Azhar Khan s/o Azizurraheman Khan v/s Education Officer (Secondary), Zilla Parishad, Aurangabad and others* in **Writ Petition No.5588/2012 (Aurangabad Bench)**. He specifically relies upon the observations of this Court and the directions issued in paragraphs 5 and 6.

5 Shri Chavan submits, on instructions, that the Petitioner shall not claim any back-wages from the date of his termination till the date of

the judgment of the School Tribunal in the appeal filed by the Petitioner, which is not registered in the light of the impugned order. He further submits, on instructions, that if the delay of 07 years and 10 months is condoned, the Petitioner shall file an undertaking supported with an affidavit before the School Tribunal that he shall not claim any back-wages from the date of his termination till the decision of the School Tribunal, within two weeks from the date of appearance before the School Tribunal.

6 Shri Chavan submits that if the Petitioner fails to file such an affidavit, the order in this Writ Petition be recalled and the impugned order dated 23.04.2014 rejecting the Miscellaneous Application be restored.

7 Shri Hon, learned Advocate has appeared on behalf of the contesting Respondent Nos.1 and 2. He submits that the delay of 07 years and 10 months was not properly explained. It is necessary that the Petitioner should have submitted acceptable reasons so as to convince the School Tribunal that the delay deserves to be condoned. In the absence of any specific reason, the delay ought not to be condoned, lest it is likely to set a wrong precedent.

8 He further submits that the Respondents are not willing to

accept the offer made by the Petitioner before this Court and the Respondents, therefore, pray that this petition be dismissed.

9 It is quite apparent that unless the delay is condoned, the Petitioner would be precluded from questioning the notice of termination dated 21.07.2005 and his subsequent termination dated 22.10.2005. He, therefore, would have no remedy to assail his permanent removal from employment.

10 This Court by order dated 02.08.2012 in the case of Azhar Khan (supra) has observed in paragraphs 5 and 6 as under:-

“5. *Correctness and truthfulness of the defence raised by respondent / management shall have to be tested at the time of rendering decision in the appeal on merit. The facts of the matter are self-speaking. It appears that after alleged oral termination of petitioner, daughter in law of Chairman of the institution is accommodated in his place. This circumstance in itself denotes that there is some substance in the contention raised by petitioner. At the same time, it cannot be overlooked that petitioner has approached the tribunal belatedly. However, appropriate directions can be issued so that the management, in the event of success of petitioner, shall not be required to bear the burden of paying backwages. Petitioner has tendered pursis duly signed by him and his advocate recording therein that petitioner shall not claim backwages for the period from 6-5-2005 till approaching the tribunal and also till the date of disposal of this petition. Thus, in the event of success of petitioner, he on his own accord has given up his claim in respect of*

backwages from the date of alleged oral termination till the date of disposal of this petition. Considering the pursis presented by petitioner, it can be directed to the tribunal to examine the contentions raised by petitioner in his appeal on its own merit. Petition, therefore, deserves to be allowed and the same is accordingly allowed.

6. *Order passed by the Presiding Officer, School Tribunal, Aurangabad, on 3-3-2011, rejecting the application presented by petitioner seeking condonation of delay, is quashed and set aside. Misc. Application No. 30/2009 presented by petitioner before the tribunal shall be deemed to have been allowed. It is clarified that petitioner shall not be entitled, in the event of his success, to claim backwages from the date of alleged oral termination till the date of disposal of this petition, in terms of pursis presented by him. Tribunal shall decide the appeal on its own merit and in accordance with provisions of law, after extending an opportunity of hearing to both the parties. Rule is accordingly made absolute. In the facts and circumstances of the case, there shall be no order as to costs.”*

11 In the light of the observations of this Court as above, it is clear that in a similar circumstance the offer made by the Petitioner that he would not claim the back-wages for the entire period till the disposal of his appeal by the Tribunal, was accepted.

12 In the instant case, the Petitioner had made an attempt to explain the reasons which caused the delay. No knowledge about limitation, has been stated to be one of the reasons. Oral requests being made to the Management so as to seek reinstatement on several occasions,

is another ground put forth. Illness of the Petitioner's father, who was an aged person and was under constant medical treatment, is yet another reason. His father subsequently passed away is also stated in the application. The above factors caused the delay and hence, the prayer for condonation of delay was put forth.

13 Considering the reasons cited and the statement made by the Petitioner for waiving of all back-wages till the date of decision in the Appeal by the School Tribunal, I am inclined to allow this Writ Petition considering the observations of this Court in paragraphs 5 and 6 reproduced above in Azhar Khan's case (supra).

14 In the light of the above and without laying down a precedent, this Writ Petition is partly allowed. The impugned order dated 23.04.2014 delivered by the School Tribunal is quashed and set aside. Miscellaneous Application No.23/2013 is deemed to be allowed and the School Tribunal shall proceed to register the Appeal preferred by the Petitioner.

15 Needless to state, the above order has been passed considering the statement of the Petitioner that he shall file an affidavit undertaking before the School Tribunal for waiving all back-wages till his

Appeal is decided by the School Tribunal.

16 In view of the same, the litigating sides shall appear before the School Tribunal on 11.09.2015.

17 The Petitioner shall file an affidavit undertaking on or before 24.09.2015 before the School Tribunal unequivocally declaring that he will be waiving all back-wages from the date of termination till the decision in Appeal by the School Tribunal.

18 In the event, such affidavit undertaking is not filed, this order shall stand recalled, this petition shall, therefore, stand rejected and the impugned order of the School Tribunal shall then stand restored resulting in dismissal of the said Appeal.

19 After the Petitioner complies with these directions, the School Tribunal shall decide the Appeal on its own merits and as expeditiously as possible and preferably on or before 30.09.2016.

20 This petition is, therefore, partly allowed and Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)