

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6631 OF 2015

Deepak Jagannath Suryawanshi,
Age-33 years, Occu-Nil,
R/o.Kurhe Khurd,
Tal.Amalner, Dist. Jalgaon

PETITIONER

VERSUS

1. Shantai Bahuuddeshiya Shaikshanik
Sanskrutik Krida Mandal,
Sane Nagar, Amalner,
Tal.Amalner, Dist. Jalgaon,
Through its President,
2. The Head Master,
Mata Bijasani Prathamik wa Madhyamik
Anudanit Ashram Shala, Anturli,
Anturli, Tal.Amalner, Dist.Jalgaon,
3. The Project Officer,
Tribal Development Project,
Yawal, Tal.Yawal,
Dist.Jalgaon

RESPONDENTS

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Mr.Girish Rane, Advocate for the petitioner.
Mr.M.S.Sonawane, Advocate for respondent Nos.1 and 2.
Mrs.Y.M.Kshirsagar, AGP for respondent No.3.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 06/07/2015

ORAL JUDGMENT :

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

2. The petitioner is aggrieved by the order dated 21/02/2015 delivered by the School Tribunal, by which the Misc.Appl.No.34/2014, seeking condonation of delay of 12 days, has been rejected.

3. I have heard Mr.Rane, learned Advocate for the petitioner and Mr.M.S.Sonawane at length on behalf of respondent No.1 and 2. Learned AGP appears for respondent No.3.

4. I have every reason to be astonished by the conclusions drawn by the School Tribunal, which I would be adverting to in the later part of this judgment.

5. Section 9 of the M.E.P.S.Act enables an aggrieved party to prefer an appeal within 30 days from the date of knowledge of the cause of action. Section 9 reads as under :-

“Section 9 - Right of appeal to Tribunal to employees of private schools.

(1) Notwithstanding anything contained in any law or contract for the time being in force, ¹[any employee in a private school, -

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the

order passed by the Management; or

(b) who is superseded by the Management while making an appointment to any post by promotion,

and who is aggrieved, shall have a right of appeal and may appeal against any such order or supersession to the Tribunal constituted under section 8.];

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July, 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be :

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of

the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of ²[five hundred] rupees which shall not be refunded and shall be credited to the Consolidated Fund of the State.”

6. It is not in dispute that the petitioner was unwell and did not report for duties from 14/01/2014 till 17/08/2014. He reported for duties on 27/08/2014 and was orally terminated as the respondent Management refused to allow him to report for duties. He preferred an appeal on 10/10/2014, by which the appeal suffered 12 days delay. By the impugned order dated 21/02/2015, Misc.Appl.No. 34/2014, seeking condonation of delay, has been rejected.

7. Mr.Rane submits that apparently the delay of 12 days appears to have been caused. The petitioner was absent from 14/01/2014 till 17/08/2014 about which grievance is not being made by the respondent as he was absent due to illness. The Tribunal has taken a hyper technical stand and declined to condone the delay. The petitioner is rendered unemployed because of the impugned termination and is rendered remediless on account of the impugned order.

8. Mr.Sonawane has strenuously supported the impugned order. Contention is that if the petitioner had recovered from illness on 17/08/2014, he should have immediately reported for duties. He waited for the respondent / Management to issue him several letters calling upon him to report for duties. He should have explained his illness and should have submitted necessary documents to indicate his illness. The delay of 12 days is an issue which comes later on since the petitioner has to explain why he could not prefer an appeal within 30 days as prescribed by Section 9 of the M.E.P.S.Act. He, therefore, prays for the dismissal of the petition with costs.

9. I have considered the submissions of the learned Advocates, who have taken me through the petition paper book.

10. While considering an application for condonation of delay, the Court is usually expected to take into account the factors put forth by the applicant. It should also consider whether the delay is inordinate and unexplained. So also, it needs to be considered whether the applicant has approached the Court with tainted hands and whether laches are attributable to his conduct. In the event, the delay is not inordinate and laches are not attributable to the applicant, it should be looked into whether the applicant would be

rendered remediless if the condonation of delay application is rejected.

11. After considering the impugned order, I find that the Tribunal has failed to apply its mind to these factors. In the instant case, the delay is not inordinate. The petitioner himself has declared that he was unwell from 14/01/2014 till 17/08/2014 and was therefore absent, thereby indicating that he is not alleging termination from 14/01/2014, in as much as he is not claiming any service benefits including wages for the said period.

12. This case also reveals that there are no laches attributable to the conduct of the petitioner and it does not appear that he has put forth a mischievous claim. He does not benefit from causing delay in preferring his appeal. He cannot question his oral termination dated 27/08/2014, if the impugned order is sustained and would therefore be rendered remediless.

13. I am astonished by the impugned order for the reason that the Tribunal has concluded that the petitioner should explain each day's delay properly and to the satisfaction of the Tribunal. Such an approach is not only unrealistic and unreasonable, but pedantic in

nature.

14. The Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst.Katiji, AIR 1987, SC 1353, has laid down the Law in paragraph Nos. 3 onwards, which reads thus :-

" 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."

(Emphasis is supplied)

15. In the light of the above, I find that the impugned order is unsustainable and erroneous. In view of the ratio laid down by the Apex Court in the case of Syed Yakoob Vs.K.S.Radhakrishnan and others, reported at AIR 1964 SC 477 and the judgment of the Apex Court in the case of Surya Dev Rai Vs. Ram Chander Rai, reported at 2003(6) SCC 682, the impugned order would cause grave injustice to the petitioner, who would be rendered remediless if it is not set aside.

16. This petition is, therefore, allowed. The impugned order dated 21/02/2015, passed by the School Tribunal is quashed and set aside. Misc.Appl.No.34/2014 stands allowed and the delay of 12 days stands condoned. The Tribunal is directed to register the appeal.

17. Rule is therefore made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)