

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7906 OF 2014

1. THE SECRETARY,
SHIVKRUPA SHIKSHAN PRASARAK
MANDAL, DAHIPHAL (WAD),
TAL.KAIJ, DIST. BEED,

2. THE HEAD MASTER,
BANKARANJA HIGH SCHOOL,
BANKARANJA, TALUKA KAIJ,
DIST. BEED

PETITIONERS

VERSUS

1. THE STATE OF MAHARASHTRA,
THROUGH ITS SECRETARY,
EDUCATION DEPARTMENT, MAHARASHTRA
STATE, MANTRALAYA, MUMBAI.

2. BHIMA S/O. MAHADEV KEDAR,
AGE-31 YEARS, OCCU-AGRICULTURIST,
R/O GAPPEWADI, TALUKA KAIJ,
DIST. BEED.

3. THE EDUCATION OFFICER (SECONDARY),
ZILLA PARISHAD, BEED,
DIST. BEED,

4. THE PRESIDING OFFICER ---- **(DELETED)**
SCHOOL TRIBUNAL, AURANGABAD

RESPONDENTS

Mr.R.T.Nagargoje h/f Mr.M.V.Nagargoje, Advocate for the petitioners.
Mrs.V.A.Shinde, AGP for respondent Nos. 1 and 3.
Mr.S.R.Kedar, Advocate for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 23/06/2015

ORAL JUDGMENT :

1. Respondent No.4 is the Presiding Officer, School Tribunal, Aurangabad. Leave to delete granted. Deletion be carried out forthwith.
2. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
3. The petitioners assail the impugned order dated 18/06/2014 delivered by the School Tribunal on the application for condonation of delay in Misc.Appl.No.9/2012.
4. By the said order, the delay caused in filing the appeal by respondent No.2, questioning his oral termination, has been allowed.
5. The petitioners submit that respondent No.2 has not been working since June 2010 as he himself preferred to remain away from employment. He was orally appointed in 2007. The appeal is preferred by respondent No.2 on 27/08/2012. As such, the delay of 2 years and 2 months has been caused in filing of the appeal. The employee was never orally terminated, much less on 15/06/2012.

6. Mr.Nagargoje further submits that the School Tribunal has casually allowed the application. The Tribunal should have first come to a conclusion as regards the date of actual termination. Respondent No.2 employee has stated a false date 15/06/2012 as his date of termination so as to enable him to seek condonation of delay caused in filing the appeal. The delay cannot be said to be of 14 days and the impugned order deserves to be quashed and set aside.

7. Mr.Kedar, learned Advocate has appeared on behalf of the contesting respondent No.2. He submits that he has mentioned the correct date of termination in the appeal memo. His application for condonation of delay is strictly based on the date of termination so mentioned. Delay is of only 14 days in preferring the appeal u/s 9 of the M.E.P.S. Act. Respondent No.2 shall stand on the footing of the date of termination mentioned. The petitioners are at liberty to prove that the respondent employee had stopped reporting for duties from June 2012, which will consequentially result in the dismissal of the appeal. The respondent employee is willing to face the contentions of the petitioners on its merits while prosecuting the appeal.

8. He further submits that the employee has produced the muster roll before the Tribunal to prove his employment as mentioned in the appeal. He had officiated as an examiner in 2011 and 2012 in the

H.S.C. examination by virtue of his employment with the petitioners. As a class teacher, he had represented the 9th standard class of the petitioners' school in the inspection carried out by the Strength Verification Committee in 2011.

9. He further submits that the above contentions are subject matter of the merits of the appeal and the Tribunal can decide the claim of the employee in the light of the contentions and averments set out in the appeal. He, therefore, submits that the merits of the matter are not to be gone into while deciding the application for condonation of delay.

10. I have considered the submissions of the respective sides. Needless to state, the issue is as regards condonation of delay. Respondent No.2 employee has succeeded in convincing the Tribunal that the delay is of only 14 days in the light of his date of termination mentioned in the appeal. In this backdrop, respondent No.2 / original appellant will now be precluded from changing his stand before the School Tribunal since he has mentioned a specific date while seeking condonation of delay and the impugned order has been passed in relation to the date of cause of action, as mentioned by the appellant.

11. In matters of condonation of delay, a realistic and reasonable approach is to be adopted. It needs to be seen as to whether a litigant

would be rendered remediless by refusal to condone the delay. Unless the delay is inordinate, not properly explained, lacks in acceptable reasons and laches are attributable to the conduct of the litigant, delay can be condoned.

12. In the instant case, the Tribunal has concluded that the delay was of only 14 days in view of the date of cause of action set out by respondent No.2 / employee. I have already held hereinabove that the respondent No.2 / employee would now be precluded from seeking any change in the date of cause of action.

13. Taking an overall view of the matter, I do not find that the impugned order reflects non application of mind. I do not see any perversity in the reasons assigned by the Tribunal. With the observations with regard to the cause of action as noted above, this petition is disposed of. Rule is discharged.

(RAVINDRA V. GHUGE, J.)