

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9342 OF 2015

Kamlakar Magan Baisane,
Age 36 years, Occ. Service
R/o Bhagwati Nagar, Plot No.17,
Near Bhoi Society, Deopur,
District Dhule.

..Petitioner

Versus

1. Public Education Society,
through its Chairman,
Deopur, Dist. Dhule.

2. The Head Master,
Kai. S.R. Patil Madhyamik
Va Ucchamadhyamik Vidhyalay,
Walwadi (Wadibhokar),
Tq. and Dist. Dhule.

3. The Education Officer (S),
Zilla Parishad, Dhule.

..Respondents

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Advocate for Petitioner : Shri Deshmukh Sachin S.
AGP for Respondent 3 : Shri Shelke V.G.
Respondents 1 & 2 : Served

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 01, 2015

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PER COURT :-

1. Heard.

2. While issuing notice to the respondents on 15.9.2015, it was made clear that this matter is likely to be heard finally at admission stage on the returnable date 15.10.2015.

3. Office report indicates that respondent Nos.1 and 2 have been served with Court notice. Learned AGP has appeared on behalf of respondent No.3.

4. Despite the above, respondent Nos.1 and 2 have chosen not to enter an appearance through an Advocate or in person. It is in these circumstances that I have heard the learned Advocate for the petitioner and the learned AGP.

5. The petitioner has been terminated on 18.3.2014. Order of termination dated 18.3.2014 was served upon the petitioner on 22.3.2014. He has preferred an Appeal under Section 9 of the the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 ("the said Act" for short), along with Misc. Application No.19 of 2014 seeking condonation of about 84 days' delay in filing the appeal. By the impugned order dated 29.6.2015, the Misc. Application has been rejected by the School Tribunal.

6. Shri Deshmukh, learned Advocate for the petitioner indicates from paragraph Nos.12 to 17 that the School Tribunal has taken an unusual view. Merely because the applicant met the Chairman of the respondent - Institution and relying on his words has delayed the filing of the appeal, has been taken to be an untrue stand. Shri Deshmukh, further submits that the School Tribunal has concluded that a short span of time by way of limitation

period of 30 days has to be viewed rigidly and condonation of delay in filing an appeal should not be ordinarily permitted.

7. Learned AGP appearing on behalf of the Education Officer submits that the issue of condonation of delay was between the petitioner and the adversarial parties. The Education Officer is unaware about the reasons set out by the petitioner in his application.

8. I have considered the submissions of the learned Advocates for the respective sides.

9. There appears to be no dispute that the order of termination is dated 18.3.2014. Same has been served on 22.3.2014. Ordinarily, the Appeal should have been preferred on/or before 17.4.2014 or even by considering the date of service of the order, on or before 21.4.2014. Appeal has been filed on 13.6.2014. The delay appears to be of 52 days beyond the 30 days of limitation

10. The Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has observed while dealing with the application for condonation of delay, as under :-

" 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."*

11. In my view, the School Tribunal, Nasik has lost sight of the fact that condonation of delay is ordinarily to be permitted if the delay caused is neither inordinate nor deliberate and laches are not attributable to the conduct of an applicant. These are vital aspects which would dis-entitle an applicant seeking condonation of delay. Another aspect to be looked into is as to whether the applicant would gain any advantage by deliberately delaying the filing of his proceedings as has been scrutinized by the Apex

court in the Collector, Land Acquisition's Judgment (supra). The School Tribunal has not applied its mind to any of these aspects

12. Considering the fact that the delay caused in this case is neither inordinate nor deliberate, refusing to condone delay would virtually amount to closing the doors of litigation on the applicant / petitioner. The School Tribunal has taken a pedantic view rather than resorting to a pragmatic approach. The petitioner would be rendered remediless and the legality and validity of his order of termination dated 18.3.2014 would never stand judicial scrutiny, if the delay is not condoned.

13. Considering the above, the petition is allowed. The impugned order dated 29.6.2015 is quashed and set aside. Misc. Application No. 19 of 2014 stands allowed.

14. The School Tribunal shall register the appeal preferred by the petitioner forthwith and issue notices to the respondents and deal with the said appeal in accordance with Section 9 of the said Act.

(RAVINDRA V. GHUGE, J.)

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