

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 7785 OF 2013

Mr Shamsuddin Abbas Pattekari. ... Petitioner.

V/s.

The President/Secretary,
Deshbhakt Padmashree Ratnappa Kumbhar
Education Society and Ors. ... Respondents.

Mr. M.S. Topkar for the Petitioner.
Mr. Satyajeet Rajeshirke for Respondents 1 and 2.
Mr. Shrishail Sakhare for Respondents 4 to 7.
Ms. Vaishali Nimbalkar, AGP for Respondent 8.

CORAM : N.M. JAMDAR, J.

DATE : 18 DECEMBER, 2015.

P.C. :-

By order dated 21 December 2013 the notices were issued to the Respondents. The notices were served on 14 August 2014. The matter was adjourned at the request of the learned Counsel for the Respondents. Thereafter, by order dated 9 October 2014 parties were put to notice that the Petition will be disposed off finally at the admission stage. By order dated 12 December 2014 the Respondents were directed to file their reply a week

before a returnable date and the matter was adjourned to 16 January 2015. On 16 October 2015 the matter was adjourned as none appeared for the Respondents. On 17 October 2015 none appeared for the Respondents and again time was sought on behalf of the Respondents and the Respondents were directed to pay cost. As on today only the Respondent Nos. 1 and 2 have filed their reply. The learned Counsel for Respondent Nos. 4 to 7 had not appeared on various dates neither any reply is filed.

2. In view of the order passed on 9 October 2014, the Petition is taken up for final disposal.

3. The Respondent No.4 was appointed in the Respondent No.3 – School as a Peon on 27 July 1994. The Respondent – Management terminated his services with effect from 15 January 1999. Respondent No.4 challenged the termination before the School Tribunal, Kolhapur in Appeal No. 28 of 2000. The School Tribunal considered the Appeal filed by the Respondent No.4 and by order dated 22 July 2009, the Appeal was allowed and the Respondent – Management was directed to reinstate the Respondent No.4 with continuity of service and 50% back wages. The Respondent – Management challenged the order by way of Writ Petition which Petition was dismissed on 26 November 2009. After the order of the School Tribunal, the Education Officer revoked the approval of the Petitioner and the Petitioner filed Writ Petition No. 1495 of 2010. This Writ Petition was dismissed as

withdrawn by order dated 16 September 2000. Thereafter, the Petitioner filed an Appeal No. 38 of 2010 before the School Tribunal on 16 December 2010. The Petitioner took out an application for condonation of delay which was rejected by the impugned order dated 8 April 2013. The Tribunal held that the Petitioner had not made out sufficient cause for condonation of delay.

4. I have heard the learned Counsel for the parties.

5. The cause of action pleaded by the Petitioner is his termination from services which according to him arose on 5 January 2010. The Petitioner had filed a Writ Petition in this Court which was dismissed as withdrawn on 16 January 2010 and the Appeal thereof has been filed on 18 December 2010. The School Tribunal has noted that the Writ Petition was prosecuted on wrong advice. The learned Counsel for the Respondents has sought to contend that no liberty is granted to file an Appeal by this Court and the Petition was dismissed. But the Petition was not dismissed on merits but as withdrawn.

6. The authority to examine the action of termination at the first instance is the School Tribunal. Therefore, the Tribunal has rightly noted that the period for which explanation is necessary is the one after the dismissal of the Petition. This period is of three months. It is stated by the Petitioner that he had

requested the management for reinstatement. Delay of three months cannot be considered as an inordinate delay.

7. The Apex Court has in various decisions has clarified that there is a difference between delay of small duration and delay of inordinate nature, and different parameters of scrutiny are required for these two types. In the present case it is quite likely that the Petitioner was wrongly advised to file a Writ Petition. After Petition was withdrawn, he has filed the Appeal within three months. It will be too hyper technical approach to dismiss his application for condonation of delay. It is also not that the application has to be dismissed or allowed in toto but the Appellant cannot be always put to conditions and equities can be balanced.

8. In the facts and circumstances the equities can be balanced by directing imposition of cost and clarifying that in case the Petitioner succeeds and is held to be entitled to certain monetary benefits, the period of delay can be considered by the Tribunal. This order will adequately protect the interest of the Respondents.

9. Accordingly, the Writ Petition is allowed in terms of prayer clause (a). The Appeal filed by the Petitioner stands restored to file subject to the Petitioner paying cost of Rs.10,000/- to the Respondent – Management within four weeks. It is in case

the Petitioner succeeds in his challenge and question of any monetary benefits arise, it will be open to the School Tribunal to consider the factum of delay in approaching the School Tribunal. All contentions of parties are kept open, including the contentions of the Respondents that the Petitioner is precluded from agitating its case on merits, in view of withdrawal of this Writ Petition.

(N.M. JAMDAR, J.)