

Sequeira

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

WRIT PETITION NO. 9807 OF 2011.

Shri Suresh Shamrao Chavan .. Petitioner
Vs.
The President /Secretary
Maharni Shantadevi Gaikwad & ors. .. Respondents

Mr.Abhijit Adagule, for the Petitioner.
Mr.V.K.Bodhare i/b Mr.A.M.Joshi, for Respondent Nos.1, 2 and 4.
Mr.A.D.Kango-Assistant Government Pleader, for Respondent No.3.

***CORAM: N.M.Jamdar, J.
Friday 4 September, 2015***

P.C.:

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for final disposal in view of the order passed on 7 March 2012.

2. The Petitioner was working with the Respondent-management as a peon. In spite of his holding position where he does not have sufficient financial means, he had to approach this Court twice, just to get his appeal heard on merits.

3. The Petitioner filed an appeal before the School Tribunal in the year 2005. It was his case that he was appointed on 2 July 2001 on the post of peon in place of one Ramesh Koli, who was promoted. His promotion was challenged by another employee-one Ravindra Atigre and during the pendency of the appeal also the

Petitioner continued to work and thereafter he was told orally not to report to duty in view of the pendency of the appeal. It was Petitioner's case that the Respondent-management had also forwarded a proposal in his favour to the Education Authorities. The Petitioner thereafter came to know that another person i.e. Respondent No.4, came to be appointed in the vacant post which the Petitioner was earlier working and thereafter he filed an appeal challenging his oral termination and appointment of Respondent No.4. In the appeal Petitioner filed an application for condonation of delay. In the application for condonation of delay, he set out reasons as to why there was a delay in filing the appeal. The reason given was that the Petitioner relied on the assurance of the Respondent-management that his oral termination was only in view of the pendency of appeal filed by Mr.Ravindra Atigre, and after the appeal is disposed, he will be considered for appointment and only when he came to know on 10 January 2005 that Respondent No.4 was appointed in his place and that he filed an appeal and therefore, there was a delay.

4. The School Tribunal by order 26 July 2007 rejected the application for condonation of delay. Thereafter the Petitioner filed the Writ petition No.6172 of 2007 which was allowed by order dated 10 October 2008 holding that the Tribunal had not considered the application for condonation of delay on merits and restored the application for fresh consideration. The School Tribunal thereafter heard the parties again, by impugned order

dated 17 September 2011 rejected the application for condonation of delay.

5. It is not disputed that the Petitioner was working with the Respondent-management for some period of time. The fact of filing the appeal by Mr. Atigre challenging the promotion of Shri Koli is also not in dispute. There is no written order of termination of the Petitioner. In the circumstances, the theory put forth by the Petitioner that in view of the pendency of the appeal he was not to be continued in service cannot be said to be an unbelievable one. The School Tribunal however, in spite of reminding itself that in the matter of condonation of delay, merits of the main appeal are not to be looked at has done precisely that. The School Tribunal perused all the documents which have been filed on record and has gone in legality of the appointment of the Petitioner itself. The School Tribunal has even considered whether there was a backlog for reserved category. The School Tribunal also went into the merits of the claim to hold that the termination itself was legal and valid. With these findings which have been rendered by the School Tribunal, the entire appeal itself has been dismissed on merits. Such course was not warranted at all.

6. As regards the case made out by Petitioner for condonation of delay, the School Tribunal as stated above misdirected itself in spite of correcting by this Court in Writ petition No. 6172 of 2007. Considering the fact that the alleged oral termination of the

Petitioner has occurred on 1 January 2004 and that Petitioner has already approached this Court twice no useful purpose will be served by directing the School Tribunal again to reconsider the application on merits. Therefore, I have considered the contentions raised by the Petitioner in the application for condonation of delay to ascertain whether they constitute a sufficient cause.

7. The theory put forth by the Petitioner that it is because of the pendency of the appeal, he was asked not to report to duty cannot be discarded as fanciful one. The basic facts such as his appointment, pendency of the appeal, appointment of Respondent No.4, proposal of the Respondent-management are not disputed. Therefore, with these foundational facts being established inference in favour of the Petitioner in respect of delay caused can be drawn therefore, I am of the opinion that this is a fit case where the appeal of the Petitioner needs to be heard on merits. The prejudice if any, to the Respondent can be off-set by making it clear that, in case the School Tribunal comes to the conclusion that the Petitioner is entitled to back wages, the period of delay would be kept in mind by the School Tribunal. To my mind this direction would balance the equities of the case.

8. In the circumstances, the Petition deserves to be allowed and is accordingly allowed. **Rule** is made absolute in terms of prayer clause (b). No order as to costs.

(N.M.Jamdar, J.)