

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5722 OF 2014

The Secretary
Sadguru Jangli Maharaj Education
Society Kapuskhed, Taluka Walwa
Dist. Sangli and anr.

.. Petitioners

vs.

Anandrao B. Nikam and anr.

.. Respondents

Mr. Sugandh Deshmukh for the Petitioners.

Mr. Umesh Pawar for Respondent No.1.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 8 January 2015.

Date of Pronouncing the Judgment: 13 January 2015.

JUDGMENT :-

1] The petitioners-school management questions the order dated 30 December 2013 made by the School Tribunal condoning the delay in preferring the appeal by respondent No.1 against the termination effected on 4 October 2010.

2] Mr. Deshmukh, learned counsel for the petitioners assailed the Tribunal's order, primarily on the following grounds:

a] That the delay in the present case was of two years and ten months, whereas respondent No.1 applied for condonation in respect of a period of only one year and six months. For the

balance period, there is neither any explanation nor sufficient cause shown. Therefore, the impugned order is vulnerable;

b] There is no explanation whatsoever in respect of the delay for the period between 4 October 2010 and 15 July 2011. In absence of any explanation whatsoever, the Tribunal has erred in condoning the delay. The approach of the Tribunal is contrary to the decision of the Division Bench of this court in case of *Mathuradas Mohta College of Science, Nagpur vs. R.T. Borkar & ors.*¹;

c] During the period between 4 October 2010, i.e., date of alleged termination and 25 February 2012, i.e., the date of filing of the appeal, the petitioner has already appointed some other person to the post which was earlier held by respondent No.1. In such circumstances, applying the doctrine of laches, the School Tribunal ought not to have condoned the delay in preferring the appeal.

3] Mr. Umesh Pawar, learned counsel for respondent No.1 submitted that the Tribunal having accepted the explanation

1 1997 (2) Mh.L.J. 168

furnished by respondent No.1 as sufficient and exercised the discretion in the matter of condonation of delay, this Court ought not to disturb the same. Learned counsel further submitted that the material on record indicates that respondent No.1, from the date of his termination, had approached various authorities with pleas of reinstatement. In such circumstances, sufficient cause has been shown in respect of the delay in preferring the appeal.

4] Having heard the rival contentions and perused the record, in my judgment, no case is made out for interference with the impugned order, by which the Tribunal has condoned the delay in filing the appeal against the termination order dated 4 October 2010.

5] The record indicates that respondent No.1 after suffering termination on 4 October 2010, approached the School authorities with plea for reinstatement. It is the case of respondent No.1 that he was assured reinstatement and relying upon such assurances, refrained from taking legal recourse. Further, by application dated 15 July 2011, respondent No.1 made a complaint to the Social Welfare Officer. Thereafter respondent No.1 approached the

Government Labour Officer, Sangli seeking his intervention in the matter. The proceedings before the Government Labour Officer, Sangli were held on 14 November 2011, 12 December 2011, 3 January 2012, 9 January 2012 and finally on 18 January 2012, when the Labour Officer recorded that no settlement was possible. Soon thereafter, i.e., on 25 February 2012 respondent No.1 has preferred the appeal. Respondent No1 has asserted that he has made several representations to the School, for which he does not have the endorsement of receipts. However, looking to the circumstances and in particular that respondent No.1 had nothing to gain by delay, it does appear probable that such representations were indeed made by respondent No.1. Besides, this is a case where termination is alleged to have been brought about without any written order. Respondent No.1 was not permitted to continue with his duties, possibly under some oral directives. In such a situation, some reasonable time can be conceded in favour of the employee concerned, particularly because it is never clear whether termination in such a situation is final or otherwise. During the period of ambiguity, it is not uncommon that pleas to rejoin duties are made to the school management before rushing to adopt statutory remedies as may be available. Therefore, upon over all consideration of the

material on record, if the School Tribunal has chosen to accept the cause shown as satisfactory, there is no reason to interfere with the exercise of such discretion. This is not a case where it can be said that the discretion has been exercised arbitrarily or capriciously. This is not a case where there is absolutely no explanation or cause shown for the delay. There is no necessity to explain each days delay with some meticulous precision.

6] In case of *N.Balakrishnan vs. M. Krishnamurthy*², the Supreme Court has held that once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the Superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of jurisdiction was on wholly untenable grounds or arbitrary or perverse. Further, it is a different matter when the first Court refuses to condone the delay. In such case, the Superior Court would be free to consider the cause shown for the delay afresh and come to its own finding even untrammelled by the conclusion of the lower Court. The reason for such different stance is that the primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the Court in

2 (1998) 7 SCC 123

different situations is not because on the expiry of such time a bad cause would transform into a good cause. In every case of delay, there may be some lapse on the part of the litigant concerned. That alone is not sufficient to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or is not put forth as a part of dilatory strategy, the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the Court should lean against acceptance of the explanation.

7] Applying the aforesaid principles, in my opinion, this is clearly not a case where explanation offered by respondent No.1 smacked of any mala fides or was put forth as a part of any dilatory strategy. In fact, this was not even the case set out by the petitioners before the School Tribunal. Since upon over all considerations of the material on record, the Tribunal has chosen to positively exercise the discretion and condone the delay, no case is made out to warrant any interference.

8] There is no substance in the contention that the delay in the present case was in fact of two years and ten months. In support of this contention, the petitioners placed reliance on the circumstance that the application for condonation of delay was filed on 29 October 2013. The date on which the application for condonation of delay came to be filed may not be strictly speaking relevant. There is no dispute that the termination in this case was effected (allegedly) on 4 October 2010 and the appeal against the same has been preferred on 25 February 2012. Therefore, respondent No.1 was only required to explain the delay during this period and not beyond. The submissions of learned counsel for the petitioners virtually proceeded on the basis that there exists some requirement that each days delay must be explained. Fortunately, that not being legal position, the submission made by and on behalf of the petitioners cannot be entertained. Learned counsel for respondent No.1 rightly placed reliance upon the decision of the Supreme Court in case of *Collector Land Acquisition, Anantnag vs Katiji*³, in this regard.

9] The decision of this Court in case of *Mathuradas Mohta College of Science (supra)*, lays down that where there is absolute absence on

3 AIR 1987 SC 1353

the part of the appellant to explain the delay or to furnish cause to the satisfaction of the Tribunal, then the Tribunal would have no jurisdiction to entertain the appeal. In the present case, it cannot be said that there was any absolute absence on the part of respondent No.1 to explain the delay or to furnish cause to the satisfaction of the Tribunal. In fact, the Tribunal in the present case, upon consideration of the material on record, has recorded satisfaction that there was sufficient cause to condone the delay. The discretion exercised by the Tribunal can by no means be described as arbitrary or perverse. Therefore, no case is made out for interference of the impugned order.

10] This petition is, accordingly, dismissed. In the facts and circumstances of the present case, there shall be no order as to costs.

(M. S. SONAK, J.)

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