

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6587 OF 2013

Jaykumar Appasaheb Balwan	..	Petitioner
VS.		
Swami Vivekanand Shikshan Sanstha, Kolhapur & Ors.	..	Respondents

Mr. S. A. Rajeshirke for Petitioner.
Mr. S. R. Ganbavale for Respondent Nos. 1 to 3.
Ms Vaishali Nimbalkar – AGP for Respondent No. 4.
Mr. Rahul Walvekar for Respondent No. 5.

CORAM : M. S. SONAK, J.
DATE : 12 FEBRUARY, 2015

P.C. :-

1] Rule. With the consent of and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] This petition is directed against the order dated 1 April 2013 made by the School Tribunal, declining to condone the delay of about 8 months and 29 days on the part of the petitioner, in preferring an appeal questioning his termination of the services w.e.f. 25 August 2011. There is no dispute that in the present case there is no order of termination dated 25 August 2011. However, it is the case of the petitioner that from this date, the petitioner was prevented from signing the regular muster roll. It is the case of the

petitioner that the petitioner was permitted to attend to duties even post 25 August 2011 and made to sign on a separate muster roll. The two sets of muster rolls have been produced on record. Although there is some dispute with regard to the entires in the second muster roll, pursuant to orders of this Court, the Head Master of the school has confirmed that the petitioner was permitted to sign on the second muster roll.

3] The case of the petitioner is that the petitioner had instituted writ petition no. 8040 of 2011 before this Court seeking benefit of the government resolution of the year 1982, in the matter of award of full salary and post to incumbent working as part time teachers in two institutions administered by one and the same management. This petition was admittedly disposed of on 11 January 2012. In terms of the directions of this Court, the petitioner was required to make a representation to the Deputy Director and the same was required to be decided by the Deputy Director within a time bound schedule. In the course of proceedings before the Deputy Director, the school management took the stand that the petitioner was not at all the regular employee of the school and that his appointment was restricted to only a part time employment in respect of only one of the institutions administered by the school management. According to the petitioner, this was made clear by the school management in

April of 2012. Therefore, the petitioner instituted the appeal before the School Tribunal on 24 May 2012 after the delay of about 8 months and 29 days.

4] The learned counsel for the respondent – school management as also the respondent no. 5 i.e. the employee who has been now appointed in the position of the petitioner, have vehemently opposed the present petition. At the outset, they pointed out that after the representation of the petitioner was rejected by the Deputy Director in pursuance of orders in writ petition no. 8040 of 2011, the petitioner simultaneous with the filing of the present petition instituted yet another petition in this Court. In the said petition, the petitioner has deliberately made out a case that he continues to be in service even in the year 2013 when the said petition was lodged. Further, the learned counsel pointed out that since the petitioner was pursuing the matters before this Court as also before the Authorities of the Education Department, nothing really prevented the petitioner from approaching the School Tribunal within the prescribed period of limitation. The learned counsels pointed out that rights have now been created in favour of the respondent no. 5, on account of delay on the part of the petitioner in approaching the School Tribunal and that it would be quite inequitable to disturb such rights. For all these reasons, the

learned counsels submitted that this petition should be dismissed.

5] The learned counsels further contended that in the month of February 2011 itself, the petitioner was informed that on account of there being no approval, his services cannot be considered for regularization or cannot be considered for appointment on part time post.

6] Having heard the learned counsels for the parties and perused the record, in my judgment, the petitioner has made out a case for condonation of delay. It is true that the petitioner could have been more diligent in the matter, particularly, in the wake of appointment of the respondent no. 5, nevertheless it cannot be said that the petitioner has been totally negligent or that the cause shown is in any manner malafide or put-forth as a dilatory strategy.

7] The records would indicate that writ petition no. 8040 of 2011 was disposed of on 11 January 2012. In view of the order made by this Court, it is the case of the petitioner that the petitioner was under the bonafide impression that if the Deputy Director of Education favourably considers the petitioner's representation, then, there may be no occasion to question the action of the school management in not permitting the petitioner to sign on the regular

muster roll w.e.f. 25 August 2011. Accordingly, the petitioner had diligently pursued his representation with the Deputy Director. It is in the course of the proceedings before the Dy. Director of Education that the school management took a categorical stand that the petitioner was not at all the regular employee of the school and therefore disentitled to the benefits of G.R. of 1982. This according to the petitioner happened sometime in April of 2012. Soon thereafter, the petitioner lodged the appeal before the School Tribunal along with the motion seeking condonation of delay.

8] The crucial question in this case is not whether the impression which the petitioner carried was right or wrong. The question is whether the impression was bonafide and plausible in the circumstances. The learned counsel for the respondents are right in their submission that since the petitioner was pursuing the matter before this Court as also the officers of the Education Department, nothing prevented the petitioner from approaching the School Tribunal within the prescribed period of limitation. However, this by itself indicates that the petitioner had absolutely nothing to gain by not approaching the School Tribunal and that he carried impression that if reliefs were to be granted to him by the Deputy Director, there would be no necessity of approaching the School Tribunal. Taking the facts as presented cumulatively, it does appear

that the petitioner carried a bonafide impression that relief from the Deputy Director of Education would obviate necessity of approaching the School Tribunal and that, in my judgment, constitutes a sufficient cause.

9] In every case of condonation of delay, there is bound to be some lapse on the part of the applicant. However, that by itself cannot be a reason to non-suit such an applicant. In the present case, the cause shown does not smack of any *malafides* or some sort of dilatory strategy. In such circumstances, it is necessary that the cause shown has to be considered in the background of attendant facts. Thus construed, it cannot be said that the petitioner has not made out any case or sufficient cause for condonation of delay.

10] There is however some substance in the contention of the learned counsels for the respondents that the petitioner ought to have reacted at least after the appointment of the respondent no. 5. Again, the petitioner's explanation is that he was pursuing the matter before the Deputy Director, which fact is borne from the record. In these circumstances, although it can be said that the petitioner has made out a case for condonation of delay, the same shall be subject to the petitioner paying costs in favour of the school management.

11] Accordingly, the impugned order dated 1 April 2013 is set aside. The delay in preferring the appeal before the School Tribunal is condoned. This shall be subject to the petitioner paying costs equivalent to one month's salary to the school management. This is because there is no dispute that the petitioner, even till date, continues as a part time employee in one of the schools administered by the school management.

12] It is clarified that this Court has not expressed any opinion on the merits of the matter i.e. on the issue as to whether or not the termination of the petitioner's services is proper or not. All issues in this regard are kept specifically open.

13] It is further clarified that the mere fact that this Court has condoned the delay in filing of the appeal or the fact that the appeal is now restored to the School Tribunal, shall not be a ground for the State Education Authorities to withhold approval for the appointment of the respondent no. 5, if otherwise the respondent no. 5 is entitled to such approval, in law. This shall of course be subject to order dated 28 November 2013 passed in writ petition no. 6272 of 2011.

14] The parties to appear before the School Tribunal on 2 March 2015 at 11.00 a.m. for further directions. The School Tribunal to

ensure that costs are received by the school management before proceeding to decide the petitioner's appeal on merits. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

15] All parties to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)

Chandka