

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

WRIT PETITION NO. 5950 OF 2015

Shaikh Khairunissa Shaikh Ahmed,
Malegaon, Dist. Nashik.

... Petitioner

v/s

The Khatoon Minority,
Women Social, Welfare & Educational
Society, Malegaon, Dist. Nashik, & ors.

... Respondents

Mr.N.R.Bubna for the petitioner.

Mr.Anilkumar Patil for Resp. Nos.1 and 2.

Mr.A.D.Kango, A.G.P. for Resp. nos.4 and 5.

CORAM: N.M. JAMDAR, J.

DATED : 22 DECEMBER 2015

P.C.:

By order dated 4 September 2015, parties were put to notice that the Petition will be disposed of finally at the admission stage and the Petitioner was permitted to serve private notice. The Petitioner has filed affidavit of service stating that all the respondents are served.

2 Accordingly, the petition is taken up for final disposal.

3 By the impugned order dated 24 February 2015, the School Tribunal, Nashik, has dismissed the Misc. Application No.1 of 2014 filed by the Petitioner for restoration of her Appeal No.19 of 2010.

4 The Petitioner was appointed as an Assistant Teacher with the Respondent School on 10 June 1997. On 24 March 1999, her services were terminated with effect from 29 April 1999. She challenged her termination by Appeal No.15 of 1999, which was allowed and the Respondents were directed to reinstate her. The Petitioner was accordingly reinstated. Thereafter she was suspended on 6 October 2006 and terminated by order dated 20 June 2007. The School Tribunal, Nashik, allowed the appeal. The Respondent challenged the order by filing the writ petition, which was disposed of permitting the Respondent to hold an enquiry. The services of the Petitioner were terminated on 6 May 2010 and the Petitioner challenged the said order by way of an Appeal No.19 of 2010. The appeal was dismissed on 10 December 2013.

5 Thereafter the Petitioner took out an application for restoration which application has been dismissed by the impugned order.

6 I have heard learned counsel for the parties.

7 The learned counsel for the Petitioner sought to justify the conduct of the Petitioner and the applicant of not remaining present when the appeal was dismissed. Learned counsel for the

Respondent supported the impugned order.

8. The School Tribunal has noted that, on some dates the advocate for the Petitioner was not present and the applicant had also remained absent. The Tribunal noted that the advocate did not take any effort for argument on the appeal on given dates and no effective hearing was done. Learned counsel for the Petitioner submitted that, both the advocates as well as the Petitioner have tendered their sincere apology for not remaining present and have executed an affidavit, to that effect, which the learned counsel tenders today. The fact that, if the appeal is not restored, substantial prejudice will be caused to the applicant as her challenge to her termination will be foreclosed forever, cannot be lost sight of. At the same time, it is necessary to inculcate a sense of discipline in the members of Bar as well as amongst the litigants, to attend the dates assigned diligently, and not seek needless adjournments, which is causing pile up of dockets in Courts, which in turn, affect the process of justice. Since both the Petitioner and the advocate have tendered their apology to this Court as well as to the School Tribunal, it is not necessary to precipitate the matter further. Copy of the affidavit filed by the Petitioner as well as the advocate shall be placed on the file of the School Tribunal, by the Petitioner. As far as the prejudice to the Respondent is concerned, which can be offset by imposition of cost.

9. Accordingly, accepting the apology tendered, as stated above, the writ petition is allowed in terms of prayer clause (a).

10. Appeal No.19 of 2010 filed by the Petitioner stands restored to file, to be disposed of on merits, subject however to payment of cost of Rs.5,000/- to be paid to the Respondent Nos.1 and 2, within a period of six weeks from today.

11. The Petitioner will place copy of the affidavits filed in this Court on the file of the School Tribunal, Nashik, in Appeal No.19 of 2010.

(N. M. JAMDAR, J.)