

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 6561 OF 2015

- 1 Shivaji Tarun Mandal,
Jalkot, Taluka Tuljapur,
District Osmanabad
Through its Presedent.
- 2 Parwati Kanaya Prashala,
Jalkot, Taluka Tuljapur,
District Osmanabad
Through its Headmistress.
...Petitioners...

Versus

- 1 Ravikiran Mahadeo Ghante,
Age 36 Years, Occu. Nil,
R/o. Nandgaon, Taluka Tuljapur,
District Osmanabad.
- 2 The Education Officer [Secondary],
Zilla Parishad, Osmanabad.
...Respondents...

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Shri S. S. Jadhavar, Advocate for petitioners.

Shri D. A. Madke h/f Shri S. Y. Mahajan Advocate for
respondent No. 1.

Shri D. V. Tele, AGP for respondent No.2.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 03.02.2016

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] The petitioners are aggrieved by the order dated 16.3.2015 delivered by the School Tribunal, Solapur, by which delay of 7 years and 11 months has been condoned and the appeal preferred by the respondent no.1 – original appellant has been registered.

3] Grievance of the petitioners is that the grounds set out in the application for condonation of delay are neither proper nor acceptable. The respondent no.1 claims to have been terminated. The respondent no.1 was not holding the requisite qualifications for being continued in employment. He was working on a post reserved for a backward class. He did not possess caste validity certificate. He was working purely as a temporary employee.

4] It is further submitted that the respondent no.1 acquired the caste validity certificate under the Act of 2001 only in 2011. He acquired D.Ed. qualification in 2013 and, therefore, he raised a claim in 2014. The said claim is mischievous and does not deserve to be

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entertained.

5] Shri Jadhavar further submits that even otherwise if it is presumed that the appeal can be allowed, the respondent no.1 cannot be reinstated in service since there are no posts available and he is not qualified to be continued in employment. It is, therefore, submitted that the impugned order be quashed and set aside.

6] Shri Mahajan, learned Advocate for the respondent no.1, has supported the impugned order. He submits that the circumstances in which the delay was caused was properly explained before the School Tribunal. The respondent no.1 has been working from 1.7.2002 till 28.8.2006 when the petitioners refused to allow him to sign the Muster Roll on the plea that he does not have a caste validity certificate. The respondent no.1, therefore, pursued the claim for caste validity and finally succeeded in getting his claim validated.

7] He further submits that the issue is as to whether there is a termination in the eyes of law or not and whether such a termination or otherwise removal from service would amount to taking away the right of the

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respondent no.1 to work. On grounds of delay, the respondent no.1 ought not be thrown out at the threshold of litigation since he would lose an opportunity to question his unlawful termination.

8] Shri Mahajan further submits that the respondent no.1 has filed an affidavit duly sworn on 3.2.2016. It is specifically stated in the said affidavit that he shall not claim any benefit, except notional benefit of continuity of service for the entire period of delay in the event the appeal filed by him is allowed by the School Tribunal.

9] I have considered the submissions of the learned Advocates.

10] It is trite law that in matters of condonation of delay, unless laches or mischievous conduct is attributed to the applicant, the delay aspect should be dealt with liberally. In the instant case, no laches are attributed to the conduct of the respondent no.1.

11] The contention of the petitioners is that the respondent no.1 voluntarily abandoned his service. This aspect needs to be gone into by the School Tribunal in the light of the ratio laid down by the Apex Court in the

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case of *Novartis India Ltd. v. State of West Bengal and others* (**AIR 2008 SC 836**). However, in order to ensure that this aspect is gone into, delay caused will have to be condoned if it does not appear to be deliberate or willful and the applicant – respondent no.1 herein has not gained any undue advantage by causing delay.

12] The respondent no.1 has in fact demonstrated his *bona-fides* by stating on an affidavit that he would not claim any monetary benefit from the date of termination till the date on which the appeal is registered. The said affidavit placed on record is marked as Exhibit X for identification.

13] The Apex Court in the case of *Collector, Land Acquisition, Anantnag v. Mst.Katiji* (**AIR 1987 SC 1353**) has observed as under:-

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

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3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

14] Considering the fact situation and the law as is laid down by the Apex Court, I do not find that the

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impugned order of the School Tribunal deserves to be interfered with. However, the same is being slightly modified by recording the statement of the respondent no.1 that he shall not claim any monetary benefits from the date of termination till the date on which his appeal is registered by the School Tribunal in the event his appeal is allowed. However, he shall be entitled for notional continuity of service. In the event there is no post available at the time of the decision of the School Tribunal and if the appeal is allowed, the case of the respondent no.1 could then be considered for being declared as surplus and further absorption strictly in accordance with the rules applicable.

15] In the light of the above, this petition is partly allowed to the extent of the modification as above and Rule is made partly absolute in the above terms. There shall be no order as to costs.

(RAVINDRA V. GHUGE, J.)