

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7659 OF 2015

SUDHIR RAMESHWAR PAWAR
VERSUS
OSMANABAD ZILLA SWATANTRA SAINIK SAMITI & ANR

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Advocate for Petitioner : Shri P.G.Tambde h/f Shri S.S.Jadhavar
AGP for Respondent 2 : Shri S.P.Sonpawale
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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 22, 2016
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PER COURT :-

1. Despite service on respondent No.1 no appearance has been entered from 28.3.2016.

2. I have heard the learned Advocates for the petitioner and the learned AGP on behalf of respondent No.2.

3. A short issue has been raised for the consideration of this Court. Appeal No.86 of 2011 has been dismissed in default on 28.3.2014. Application for restoration bearing No. 59 of 2014 was filed with the delay of 3 months and 6 days. The School Tribunal, Solapur has concluded that if the delay is casually condoned, purpose of limitation would not be served. Considering the law laid down by the Honourable Supreme Court in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2

SCC 107], and Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [(2013) 12 SCC 649], the Tribunal should have considered as to whether laches were attributable to the conduct of the petitioner and whether he would stand to gain any advantage by allowing his Appeal to be dismissed in default. No such findings have been arrived at by the Tribunal.

4. In the light of the above and for the reasons set out in the Misc. Application No. 59 of 2014, this petition is partly allowed. The impugned order dated 28.3.2016 is quashed and set aside and Misc. Application No.59 of 2014 stands partly allowed, on the condition that in the event the petitioner succeeds in this appeal, he shall not gain any monetary benefit for the period from 1.4.2014 till the date of this judgment, which is the period when the appeal was dismissed in default. Appeal No.86 of 2011 stands restored.

5. The litigating sides shall appear before the School Tribunal on 13.12.2016. Though formal notice need not be issued to the petitioner and the Education Officer, the Tribunal would issue notice to respondent Nos.1 and 2 in the Appeal since it has failed to appear in this proceedings and the institution is unrepresented in this proceedings.

(RAVINDRA V. GHUGE, J.)

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