

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5566 OF 2014

Pinjari Shaikh Kutbuddin Shaikh Salauddin,
Age-38 years, Occu-Nil,
R/o Varkhedi village,
Tq. and Dist. Dhule

PETITIONER

VERSUS

1. Anjuman Forog-E-Taleem,
(A Registered Public Trust)
Through its President,
363, Sardar Marg, Maulavi Gunj,
At Post Dhule, Dist. Dhule,

2. The President,
Anjuman Forog-E-Taleem,
363, Sardar Marg, Maulavi Gunj,
At Post Dhule, Dist. Dhule,

3. The Head Master,
National Urdu High School,
Azad Nagar, Post Dhule,
Tq. and Dist. Dhule,

4. The Deputy Director of Education,
Nashik Region, New Administrative
Building, Divisional Commissioner Officer,
Nashik Road, Post Nashik,
Dist. Nashik,

5. The Education Officer (Secondary),
Zilla Parishad, Post Dhule,
Tq. and Dist. Dhule

RESPONDENTS

Mr.S.P.Shah, Advocate for the petitioner.
Mr.S.P.Brahme, Advocate for respondent Nos. 1 to 3.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 29/07/2016

ORAL JUDGMENT :

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

2. The petitioner/employee is aggrieved by the impugned order dated 20/03/2014 passed by the School Tribunal, Nasik by which Misc.Appl.No.18/2012, seeking condonation of delay in preferring an appeal for challenging the dismissal dated 17/06/2008, has been rejected.

3. I have considered the strenuous submissions of Mr.Shah for the petitioner and Mr.Brahme on behalf of the contesting respondent Nos. 1 to 3.

4. Mr.Brahme has vehemently submitted that the petitioner was charged with having committed a grave and serious misconduct, an offence as like of kidnapping of a girl student, outraging her modesty and illegal confinement. Though he has been acquitted in Cri.Case No.892/2007, the Management has conducted an independent disciplinary enquiry under Rule 36 and 37 of the MEPS Rules and after the charges were proved against him, he has been dismissed on

17/06/2008.

5. It is contended that though the petitioner is a teacher and therefore an educated individual, he has pretended ignorance of law and has intentionally approached a wrong Forum which is the Dy. Director of Education for challenging his dismissal on 11/08/2008. Surprisingly, respondent No.4 allowed his appeal on 11/01/2009. The Management filed WP No.1403/2009 for challenging the said judgment. The petition was allowed by this Court on 04/09/2012 and by quashing the judgment of respondent No.4, it concluded that the remedy available to the petitioner is only by approaching the School Tribunal u/s 9 of the MEPS Rules.

6. Mr.Brahme, therefore, submits that these facts do not exhibit innocence on the part of the petitioner. He has intentionally approached a wrong Forum and has attempted to gain advantage by doing so.

7. I find from the contentions of the learned advocates that there is no dispute as regards the date of dismissal 17/06/2008, appeal before respondent No.4 on 11/08/2008, appeal being allowed on 11/01/2009, WP No.1403/2009 being allowed by this Court on

04/09/2012 and the petitioner approaching the School Tribunal u/s 9 of the MEPS Act on 28/09/2012.

8. The Hon'ble Apex Court, in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] and in the matter of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [2013(12) SCC 649] has laid down the law that unless the delay caused by a litigant is intentional and deliberate and laches are attributable to his conduct, condonation of delay should be dealt with liberally.

9. From the above dates, it is apparent that in about 7 weeks of his dismissal, the petitioner had approached respondent No.4 and after this Court allowed the petition of the Management on 04/09/2012, he approached the School Tribunal on 28/09/2012.

10. In the light of the above, I find that the impugned order is perverse and erroneous. This petition is, therefore allowed. Impugned order dated 20/03/2014 is quashed and set aside.

11. It may, however, be noted that in the event the petitioner gains any success in his appeal, the School Tribunal may consider

depriving him of the back wages for the period of delay after hearing the litigating sides in the matter.

12. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)