

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

WRIT PETITION NO. 12217 OF 2016

- 1 Sanskruti Samvardhan Mandal's  
Shardanagar, Sangroli,  
Taluka and District Nanded.  
Through the Secretary,  
Pandharinath s/o Yadavrao Shinde,  
Age : 72 years, Occupation : Secretary,  
Sanskruiti Samvardhan Mandal.
- 2 Shri Chhatrapati Shivaji High School &  
Junior College, Shardanagar,  
Sangroli, District Nanded.  
Through the Head Master/ Principal  
Vitthal s/o Gangaram Jathore,  
Age : 54 years, Occupation : Service.

...PETITIONERS

-VERSUS-

- 1 Balaji s/o Shankarrao Hente,  
Age : 32 years,  
Occupation : At present Nil,  
R/o Ratoli, Taluka Naigaon (Kh),  
District Nanded.
- 2 The Deputy Director of Education,  
Latur Division,  
Taluka and District Latur.

...RESPONDENTS

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Advocate for Petitioners : Shri Mandlik P.V., Senior Advocate a/w Shri  
Mandlik Pratap P.

Advocate for Respondent No.1 : Shri R.K.Ashtekar.

AGP for Respondent 2 : Shri N.T.Bhagat.

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**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 14<sup>th</sup> December, 2016**

Oral Judgment :

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

2                The Petitioner is aggrieved by the order dated 24.06.2016 by which the application Exhibit 29 filed by Respondent No.1/ Appellant seeking condonation of delay of 529 days, has been allowed subject to the costs of Rs.2000/- .

3                I have heard the strenuous submissions of Shri Mandlik, learned Senior Advocate appearing for the Petitioner, Shri Ashtekar, learned Advocate appearing for Respondent No.1/ Appellant and the learned AGP on behalf of Respondent No.2.

4                I find that there are peculiar facts in this case and the impugned order passed by the School Tribunal, Latur dated 24.06.2016 being equally peculiar and astonishing.

5                There is no dispute that the Appellant has preferred his appeal on 16.08.2014 for challenging the communication dated

31.07.2014 issued by the Headmaster of the School informing him that the Management has passed the resolution dated 30.07.2014 and he has been terminated during his probation period as a Shikshan Sevak. After the Appellant challenged the letter of discontinuance/ termination dated 31.07.2014, the Petitioner/ Management filed it's Written Statement on 21.11.2015 after receiving the notice contending that the resolution terminating Respondent No.1/ Appellant is dated 30.07.2014 and though he has challenged the communication of the termination dated 31.07.2014, the appeal does not deserve to be entertained as he has not challenged the resolution dated 30.07.2014.

6           After gathering the knowledge from the Written Statement dated 21.11.2015, the Appellant amended his appeal and assailed the resolution dated 30.07.2014. Being apprehensive that the delay of 529 days has been caused in moving the application for amendment, the Appellant preferred an application Exhibit-29 seeking condonation of delay of 529 days.

7           When the Appellant has challenged the order of termination dated 31.07.2014 under the signature of the Headmaster, if he were to succeed, naturally the resolution which is the basis of the impugned order of termination, would also be set aside as a "*fait accompli*".

8           It appears that the Appellant, out of a sheer apprehension, has filed the application for condonation of delay. There can be no dispute that the appeal is filed on the 16<sup>th</sup> day from the letter of termination dated 31.07.2014. As such, it was filed on the 17<sup>th</sup> day after the resolution was passed by the Management on 30.07.2014.

9           It is trite law that the amendment made in the plaint or complaint or in the appeal memo, based on new information received from the Respondent through the Written Statement/ Reply, relates back to the filing of the suit or complaint or appeal, as the case may be, unless the Court observes otherwise.

10          In my view, the Presiding Officer of the School Tribunal, Latur has failed to apply his mind to these facts and has failed in concluding that the amendment would relate back to the date of the filing of the appeal and as such, there was no delay at all. This is not the first time that such an order has been passed by the same Presiding Officer, keeping in view the orders passed below Exhibits-28, 51, 59 and 61 in Appeal No.20/2015 which was subject matter of adjudication of this Court in Writ Petition Nos.11936/2016 and 12143/2016 (*The President, Mahatma Phule Education Society vs. Babu Nagappa Phulari*). This Court has come across

such observations even in those orders in the said proceedings by the same Presiding Officer.

11           In the light of the above, this Writ Petition is disposed of by concluding that in the peculiar facts as recorded above, there was no delay caused. The amount of Rs.2000/- which has been deposited pursuant to the impugned order, in fact, amounts to unnecessarily taxing the Appellant. Respondent No.1/ original Appellant is at liberty to withdraw the said amount of Rs.2000/- with accrued interest. Rule is discharged.

12           Shri Ashtekar fairly states that the said amount along with accrued interest, if any, would be donated to the District Legal Aid Services Committee at Latur. The statement is accepted.

*kps*

**(RAVINDRA V. GHUGE, J.)**