

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9711 OF 2013

RANI LAXMIBAI SHIKSHAN SANSTHA AND ANOTHER
VERSUS
HANMANT SHAMRAO SHINDE AND ANOTHER

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Advocate for Petitioners : Shri Gunale V.D.
Advocate for Respondent 1 : Shri Rudrawar S.G.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: January 14, 2016

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PER COURT :-

1. The petitioners are aggrieved by the order dated 21.6.2013, delivered by the School Tribunal, Latur, by which the Misc. Application No.36 of 2011, seeking condonation of delay has been allowed subject to costs of Rs.2,000/-.

2. Grievance of the petitioner is that the name of the respondent No.1 employee was struck off the rolls of the institution in the year 2005. He, therefore, stood terminated since the management has concluded that he has abandoned his employment. There was no oral termination on 24.7.2004. The first respondent should have, therefore, challenged his termination from service dated 12.2.2005, as the petitioner had published a public notice in Daily Prajawani on 5.2.2005. As the respondent did not report for duties within seven days, the management struck his name off the roll on the ground of abandonment, on 12.2.2005.

3. Further grievance is pointed out on the ground that from 2004 onwards till 15.10.2011 on which he preferred the appeal, respondent No.1 has caused a delay of 7 years and 51 days in preferring the appeal. Besides engaging the petitioner management in correspondence, respondent No.1 had no intention of reporting for duties. He slept over the cause of action and hence the delay of 7 years and 51 days can be termed to be inordinate.

4. Shri Gunale has strenuously criticized the impugned order on the ground that the Tribunal has failed to note that the management had published notices in news papers calling upon respondent No.1 to report for duties. His failure to do so indicates that he has no intention of reporting for duties. Law should not assist a sleeping litigant. The trial Court failed to note that mere correspondence with the employer cannot be a ground for condonation of delay.

5. Shri Gunale has relied upon the judgment of the Apex Court in the case of Basawaraj and another Vs. Special Land Acquisition Officer, dated 22.8.2013 [(2013) 14 SCC 81]. He has also relied upon the judgment of this Court in the matter of Kamalbai Vs. Ganpat [2007 (1) B.C.R. 51] and the judgment of the Delhi High Court in the case of Democratic Builders Vs. Union of India [AIR (Delhi) 1993 132].

6. Shri Rudrawar, learned Advocate appearing on behalf of respondent No.1 has referred to voluminous documents from Page No. 9 to 51, which he

has placed on record, pursuant to the order of this Court dated 7.8.2015 passed in Civil Application No.8829 of 2015. He has referred to each of those documents to indicate that the petitioner management has consistently kept respondent No.1 at bay. He was not permitted to report for duties. He was kept engaged before the Education Officer. Despite orders of the Education Officer to permit him to mark his attendance coupled with the direction to the management to forward his salary bills, the management has taken a stand that the name of the respondent No.1 is struck off the rolls from 12.2.2005 on the ground of abandonment of service.

7. He further submits that he was rendered to starvation by the conduct of the petitioner. In spite of several directions by the Education Officer, the petitioner failed to abide by such directions and did not allow the first respondent to report for duties. According to him, since this act of the respondent has occurred from 24.7.2004 and is a continuous cause of action, he was left with no alternative but to approach the School Tribunal alleging "otherwise termination" with effect from 24.7.2004.

8. I have considered the submissions of the learned Advocates as have been recorded herein above

9. Ordinarily, an application for condonation of delay has to be considered liberally, provided the delay caused is neither deliberate nor

inordinate. If laches are not attributed to the conduct of the employee, the application for condonation of delay could be entertained based on the reasons cited before the Court.

10. Rule 16(3) of the the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules" for short) reads as under:-

" In the case of a permanent employee who, without sufficient cause, fails to apply for leave within 7 days from the date of absence, it shall be treated as breach of discipline and he shall be liable for suitable disciplinary action after due inquiry. A permanent employee who is absent from duty without leave continuously for a period exceeding three years, shall be deemed to have voluntarily abandoned his Services."

11. It is not in dispute that respondent No.1 was a permanent employee of the petitioner. If such an employee fails to apply for leave within 7 days from the date of his absence, it has to be treated as a breach of discipline and the employer can initiate disciplinary action against him after conducting an enquiry under Rules 36 and 37. In the event he is absent from duties without leave, continuously for a period exceeding three years, he is deemed to have voluntarily abandoned his service.

12. The Supreme Court in the matter of Novartis India Ltd. Vs. state of West Bengal and others [AIR 2008 SC (Suppl) 836], has concluded that abandonment of service is a charge based on unauthorized absenteeism

which needs to be proved by conducting a domestic enquiry.

13. The petitioner alleges that the first respondent is not reporting for duties from 24.7.2004. Respondent No.1 contends that the petitioner has prevented him from marking his attendance and reporting for duties. The petitioner contends before this Court that the first respondent was removed from service by striking off his name from the muster roll with effect from 12.2.2015.

14. This is in contradiction to Rule 16(3) which could permit an employer to construe abandonment of service after three years of continuous absence. Nevertheless, the ratio laid down by the Apex Court in the Novartis case (supra), mandates a domestic enquiry, prior to arriving at the conclusion that the employee has abandoned his service. On this count alone, the action of the employer can be, *prima facie*, said to be illegal.

15. The first respondent has placed on record voluminous correspondence with the employer. With the assistance of the learned Advocates, I have gone through the entire correspondence between the petitioner and the first respondent. It would serve the purpose, rather than describing each and every letter / document in this order, by referring to the dates of the correspondence entered into by the first respondent with the petitioner management which are as under:-

27.7.2004, 2.8.2004, 3.8.2004, 14.8.204, 23.8.2004, 7.12.2004,

1.2.2005, 5.2.2005, 10.2.2005, 28.2.2005, 3.3.2005, 25.7.2005, 19.7.2005, 29.7.2005, 5.2.2005, 10.5.2005, 11.8.2005, 19.9.2005, 20.9.2005, 14.8.2006, 27.8.2006, 21.8.2006, 23.8.2006, 15.9.2006, 13.6.2008, 24.6.2008, 4.8.2008, 21.8.2008, 10.8.2008, 2.8.2010, 10.8.2010, 26.8.2010 and 13.9.2010.

16. Record reveals that the Education Officer summoned the petitioner as well as the first respondent for hearing. Record also reveals that the petitioner management tried to dodge the hearing before the Education Officer, thereby delaying the hearing. Finally, the petitioner participated in the hearing on 10.9.2008, pursuant to which, the Education Officer concluded that respondent No.1 is not terminated and had made every effort to remain present on duties. Consequentially, the Education Officer passed an order directing the petitioner to allow the first respondent to mark his presence, perform his duties and to forward all his salary bills from 24.7.2004.

17. Even after passing the above stated order, the Education Officer even went to the extent of warning the petitioner that if they do not allow respondent No.1 to report for duties and do not send his salary bills for clearance, the grants to the school would be stopped. It appears that the petitioner management has ignored all these warnings and orders of the Education Officer. Correspondence indicates that the first respondent continued to pursue the management, but in vain. Finally, he preferred an

appeal before the School Tribunal.

18. The Apex Court in the case of Basawaraj (supra), has noted in paragraph Nos.9 and 15 as under:-

“9. Sufficient cause is the cause for which Defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: Manindra Land and Building Corporation Ltd. v. Bhootnath Banerjee and Ors.: AIR 1964 SC 1336; Lala Matadin v. A. Narayanan : AIR 1970 SC 1953; Parimal v. Veena @ Bharti : AIR 2011 SC 1150; and Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai AIR 2012 SC 1629.)

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15. *The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."* (Emphasis is supplied).

19. This judgment cited by the petitioner actually assists respondent No.1. The entire record considered as above, would indicate the efforts put in by respondent No.1, coupled with the directions issued by the Education Officer. It is apparent that the employee was neither negligent, nor inactive.

20. In the light of the ratio laid down by the Apex Court in the case of Basawaraj (supra), I do not find that the view taken by this Court in the

matter of Kamalbai (supra), and the view taken by the Delhi High Court in Democratic Builder's case (supra), would assist the petitioner.

21. The Apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has observed while dealing with the application for condonation of delay, 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.

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."*

22. Similarly, the Apex Court has held that the intention behind causing the delay ought to be scrutinized and if a litigant does not benefit from causing a delay, the doors of the Court should not be closed. It is also held by the Apex Court that the Court must ensure that justice is done to a litigant who has suffered a legal injury and technicalities should not result in keeping such a litigant away from his challenge to the legal injury.

23. In the light of the above, I do not find that the School Tribunal, who has considered the entire correspondence between the two sides over a period of almost six years, has committed any error in allowing the application. Costs have been imposed on the first respondent.

24. It is, however, revealed that on the one hand the petitioner has taken a stand that the respondent has been removed from service on 12.2.2005 as he has abandoned employment and on the other hand, respondent No.1 contends that he was kept away from work. The Education Officer also has concluded that the petitioner is disallowing respondent No.1 from reporting for duties. These aspects deserve to be considered by the School Tribunal in the event the first respondent succeeds in the

appeal, which would give rise to the issue of backwages. The school Tribunal shall, therefore, decide this issue on its own merits, after considering the rival contentions as well as the available documentary evidence.

25. This petition is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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