

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9632 OF 2016

SUYOG SEVA PRATISHTHAN
VERSUS
SUDHIR BABANRAO DESHMUKH AND OTHERS

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Advocate for Petitioner : Shri P.M.Nagargoje
h/f Shri R.J.Godbole
Advocate for Respondent 1 : Shri D.J.Patil
AGP for Respondent 4 : Shri P.N.Kutti

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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 27, 2016

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PER COURT :-

1. The petitioner is aggrieved by the order dated 24.2.2016, by which, the School Tribunal has condoned the delay of 263 days.
2. I have heard the strenuous submissions of the learned Advocates for the petitioner, respondent No.1 and the learned AGP for respondent No.4.
3. The first respondent / employee has preferred an Appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the MEPS Act" for short) before the School Tribunal, Aurangabad. He has claimed oral termination w.e.f. 11.7.2013. He has filed Misc. Application No.7 of 2014 for seeking condonation of delay.

4. The petitioner's grievance is that there are no reasons assigned by the appellant in support of his application for condonation of delay. In the absence of justifiable grounds, a delay cannot be condoned. Reliance is placed on the judgment of the Honourable Supreme Court in the matter of P.K.Ramchandran Vs. State of Kerala [AIR 1998 SC 2276] and in the matter of Collector of Central Excise, Madras Vs. A. Md. Bilal and Company [1999 AIR SCW 4740].

5. The application for condonation of delay indicates that the appellant was working in the institution. The School was transferred to another management. The case of the appellant is that he was not allowed to sign the muster roll and join duties at the place where the school has been transferred and that amounts to oral termination.

6. The School Tribunal has considered this aspect. The petitioner has contended that when the appellant is taking education for his Bachelor in Arts degree, he cannot be in employment with the petitioner. In my view, this would relate to the merits of the claim of the appellant. The nature of his duties, the duration of his employment and allied issues under the said Act, would be subject matter of adjudication by the School Tribunal.

7. In my view, it needs to be seen as to whether reasons for the delay have been assigned, whether the appellant derives any advantage by delaying his matter and whether laches can be attributed to his conduct. I find from the record that he used to report for duties at the place where the School was transferred and he was disallowed from joining. After he realized that the management is not in a mood to allow him to perform his duties, he has approached the School Tribunal and consequentially, the delay of 263 days is caused.

8. In the P.K.Ramchandran case (supra), the Honourable Apex Court has concluded that there was no explanation for the delay of 565 days. In the Collector of Central Excise case (supra), the Honourable Apex Court concluded that there was no explanation for the delay of 502 days. In the instant case, the delay is of 263 days and in my view, the appellant has tendered the reasons and explanation for the delay.

9. The Honourable Supreme Court in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has held in paragraph No.3 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."*

10. As such, neither has the appellant attempted to take disadvantage of the delay, nor can he be permitted to take any disadvantage. Keeping this in view, this petition is partly allowed

only to the extent of observing that in the event the appellant succeeds before the School Tribunal and is entitled for reliefs consequent thereto, the Tribunal shall deprive the appellant of the backwages / monetary benefits only for the period of delay of 263 days. This shall not amount to a break in service.

11. With these directions, the impugned order of the Tribunal dated 24.2.2016 stands modified.

(RAVINDRA V. GHUGE, J.)

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