

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.11525 OF 2015

Anand Education Society,  
Gulmohar Road,  
Ahmednagar, Through Chairman

PETITIONER

VERSUS

The State of Maharashtra and  
others

RESPONDENTS

Mr.R.R.Mantri, Advocate for the petitioner.  
Mr.R.N.Dhorde h/f Mr.V.R.Dhorde, Senior Advocate for respondent  
No.4.  
Mr.V.S.Badakh, AGP for respondent No. 1.  
Smt.S.N.Zaware, Advocate for respondent Nos. 2 and 3.

( CORAM : RAVINDRA V. GHUGE, J.)

DATE : 25/01/2016

PER COURT :

1. The petitioner is aggrieved by the judgment and order dated 31/10/2015 by which Appeal No.48/2015 filed by respondent No.4 / appellant and which was registered on 31/07/2015, has been allowed ex-parte within 3 (three) months.

2. Mr.Mantri submits that respondent No.4 had preferred an appeal, belatedly. The petitioner was a signatory to the written say filed for opposing the condonation of delay application. Thereafter the delay was condoned. However, the concerned Advocate did not

intimate the petitioner about the result of the application for condonation of delay.

3. Mr.Mantri submits that a person unknown to the petitioner reached the School Tribunal, Solapur and collected the papers on behalf of the petitioner/Management. Some Advocate was appointed. The Authority given to the said Advocate appears to be of a person who was a contesting party on the change reports between 2 groups. Consequentially, the petitioner went unrepresented before the School Tribunal, which allowed the appeal in 3 months time.

4. Mr.Mantri has further canvassed a host of factors on the merits of the matter with regard to the disciplinary proceedings conducted against respondent No.4 and with regard to the earlier grounds of litigation between the petitioner and respondent No.4.

5. Mr.Dhorde, the learned Senior Advocate points out that the application for condonation of delay filed by respondent No.4 was duly opposed by the petitioner who is before this Court. It is unbelievable that after the written say was filed by the petitioner on 03/07/2015, the petitioner lost sight of the matter. Responsibilities do not alone lie on an Advocate with regard to the court proceedings.

The litigant has to be alert and diligent.

6. He further submits that after the written say was filed and the application for condonation of delay was allowed, the appeal was registered. Proper notice was issued to the petitioner. Copy of the RPAD envelope issued by the School Tribunal would indicate that despite intimation, the petitioner did not collect the copy from the post office. He clarifies that the common procedure followed is that the Postman delivers the letter to the addressee. If for some reason, the addressee is unavailable, an intimation is given and it is then the responsibility of the addressee to collect the document from the post office. Hence the postal remark 'unclaimed'.

7. In the light of the above, he reiterates that the petitioner was aware of the communication from the School Tribunal and hence a person representing the petitioner approached the School Tribunal and personally collected the papers from the School Tribunal. Service is, in the eyes of law, therefore, complete.

8. He then draws my attention to the impugned order to support his contention that the same is not ex-parte. Advocate Mr. D.L. Japkar appeared on behalf of respondent No.1/the President,

representing the petitioner.

9. He, therefore, submits that if there are two factions in the Society and if they are busy battling it out before the Joint Charity Commissioner by virtue of 2 change reports, it is neither the fault of respondent No.4 / appellant nor the School Tribunal itself since the appellant and the School Tribunal are unconcerned with the internal squabbles as long as the proceedings before the Tribunal are concerned. If the internal squabbles impact the service conditions of the appellant, she has every right to bring such factors before the Tribunal for redressal of her grievances.

10. He further states that if the petitioner was diligent enough, it should have kept a close contact with the Advocate who represented their case while opposing the application for condonation of delay. If due diligence was shown, the controversy raised by the petitioner would not have existed. Respondent 4, therefore, ought not to suffer rigours of litigation on account of the wrong doings of the petitioner / Educational Society.

11. Mr.Dhorde, therefore, seriously opposes the prayer for a remand and submits that since no grounds have been raised before

the School Tribunal, this petition in the supervisory jurisdiction of this Court cannot be entertained.

12. In the alternative, he submits that if this Court is inclined to remand the matter, the entire back wages of respondent No.4 from 2012 be deposited before the School Tribunal.

13. Mr.Dhorde has further canvassed a host of factors with regard to the merits of the matter as like the submissions of Mr.Mantri. I am not adverting to their other submissions and contentions, except those which have been reproduced hereinabove since I am inclined to remand the matter to the School Tribunal for a fresh hearing.

14. The impugned judgment is delivered by the School Tribunal within 3 months from the date of its registration. Since there was no written statement filed on behalf of the petitioner/Management, the Tribunal considered the earlier litigation pending between the parties in relation to Writ Petition No.2005/2008. It, therefore, considered the order of this Court dated 06/02/2009 which clearly permitted respondent No.4 / appellant to perform her duties as a Head Mistress.

15. The petitioner has come up with a case that an enquiry was conducted against respondent No.4 as per Rule 36 and 37 of the M.E.P.S. Rules. Had this aspect been brought to the notice of the Tribunal, the result could have been different.

16. Writ Petition No.2005/2008 and the order of this Court dated 06/02/2009 was in relation to a controversy as to the appointment of a Head Mistress. The earlier Head Master is said to have resigned and who later on initiated some proceedings for withdrawing the resignation. A teacher senior to respondent No.4 expressed inability to take over as the Head of the Institution. Said controversy, therefore, reached this Court and by order dated 06/02/2009, this Court permitted respondent No.4 to work as a Head Mistress.

17. Nevertheless, these factors are not in connection with any disciplinary proceedings allegedly conducted against respondent No.4, in as much as, the said protection granted by this Court would not insulate respondent No.4 from disciplinary proceedings, provided the process of law as laid down under the 1977 Act and the 1981 Rules is complied with.

18. The above issue of disciplinary action is unknown to the School

Tribunal since the petitioner did not file a written statement. In the light of the above, in my view, ends of justice would be met by ensuring that there is proper presentation of the respective cases of the litigating sides before the School Tribunal. In the event, a disciplinary enquiry has been conducted, the documents would speak for themselves before the Tribunal. In the event, no such enquiry is conducted, the Tribunal could then decide the appeal on its merits.

19. However, the grievance raised by Mr.Dhorde, learned Senior Advocate cannot be ignored that respondent No.4 is made to run from pillar to post only because the faction leading the petitioner today, whose charge report is accepted and subjected to a further appeal, which is pending, has a bias against respondent No.4. She is made to suffer rigours of litigation without any charge being proved against her.

20. In my view, considering that respondent No.4's monthly salary is approximately Rs.35,000/-, she deserves to be awarded with costs so as to endure the remand and the hearing of the appeal once again before the School Tribunal, which could be within a particular time frame.

21. In the light of the above, I pass the following order :-

- [a] This petition is partly allowed.
- [b] The impugned judgment of the School Tribunal dated 31/10/2015 is quashed and set aside.
- [c] Appeal No.48/2015 is remitted to the School Tribunal, Solapur to be decided as expeditiously as possible and preferably on or before 31/05/2016.
- [d] The litigating sides shall appear before the School Tribunal on 06/02/2016.
- [e] The petitioners shall deposit costs of Rs.1,00,000/- before the School Tribunal on or before 18/02/2016. After depositing the costs, respondent no.4 original appellant shall withdraw the said amount without any conditions and by producing a photo ID and a copy of the Permanent Account No. (Income Tax).
- [f] In the event costs are not deposited, the School Tribunal shall conclude that the petitioner is not interested in participating in Appeal No.48/2015 and in which case the impugned judgment dated 31/10/2015 shall stand restored.
- [g] The petitioners shall file its written statement with all documents including original enquiry papers and proof of service of documents on the appellant, on or before 18/2/2016. No adjournment would be sought.
- [h] After the above conditions are complied with, the School Tribunal shall proceed to decide the appeal on its own merits keeping in view the provisions of the 1977 Act and Rule 36 and 37 of the 1981 Rules.
- [I] The School Tribunal shall ensure henceforth that any litigating

side or a person claiming to be a litigating side, approaches the Tribunal for accepting notice suo-moto or service on behalf of any litigating side, a photo ID of the concerned representative shall be insisted alongwith a copy of his Election ID, which shall be placed on record in order to ensure that a stranger does not pose as a litigant as has been contended by the petitioner in this petition.

- (j) Needless to state, all the contentions on the merits of the cases of the litigating sides are kept open.
- (k) The Tribunal shall note that this Court has considered this petition only to the extent of the prayer for remand and has not dealt with the merits of the respective sides.

( RAVINDRA V. GHUGE, J.)