

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

WRIT PETITION NO. 11934 OF 2016

- 1 Yuvak Vikas Shikshan Prasarak Mandal,
Pimpaldari, Tq.Gangakhed,
District Parbhani.
Through its Secretary,
Gangadhar s/o Digambarrao Mundhe,
Age : 65 years, Occupation : Pensioner,
working as Secretary, Yuvak Vikas
Shikshan Prasarak Mandal,
Pimpaldari, Tq.Gangakhed,
District Parbhani.
R/o in front of Prerna School,
Chate Colony, Gangakhed,
Tq.Gangakhed, District Parbhani.

- 2 Yuvak Vikas Shikshan Prasarak Mandal's
Adhyapak Vidyalaya, Udhavrao Patil
Chouk, Himayatbag, Harsool Road,
Aurangabad.
Through its Principal.

...PETITIONERS

-VERSUS-

- 1 Adinath s/o Abarao Ghule,
Age : 43 years, Occupation : Service,
R/o ED-4-6-Ed, Sector N-1,
Bharatmata Nagar, HUDCO,
Aurangabad.
- 2 The Deputy Director of Education,
Aurangabad Division, Aurangabad.

...RESPONDENTS

**WITH
WRIT PETITION NO.11935 OF 2016**

- 1 Yuvak Vikas Shikshan Prasarak Mandal,

Pimpaldari, Tq.Gangakhed,
District Parbhani.
Through its Secretary,
Gangadhar s/o Digambarrao Mundhe,
Age : 65 years, Occupation : Pensioner,
working as Secretary, Yuvak Vikas
Shikshan Prasarak Mandal,
Pimpaldari, Tq.Gangakhed,
District Parbhani.
R/o in front of Prerna School,
Chate Colony, Gangakhed,
Tq.Gangakhed, District Parbhani.

- 2 Yuvak Vikas Shikshan Prasarak Mandal's
Adhyapak Vidyalaya, Udhavrao Patil
Chouk, Himayatbag, Harsool Road,
Aurangabad.
Through its Principal.

...PETITIONERS

-VERSUS-

- 1 Ravikumar s/o Pralhadrao Jaybhave,
Age : 40 years, Occupation : Service,
R/o Dhabhade Super Market,
Bharatmata Nagar, HUDCO,
Aurangabad.
- 2 The Deputy Director of Education,
Aurangabad Division, Aurangabad.

...RESPONDENTS

**WITH
WRIT PETITION NO.11938 OF 2016**

- 1 Yuvak Vikas Shikshan Prasarak Mandal,
Pimpaldari, Tq.Gangakhed,
District Parbhani.
Through its Secretary,
Gangadhar s/o Digambarrao Mundhe,
Age : 65 years, Occupation : Pensioner,
working as Secretary, Yuvak Vikas
Shikshan Prasarak Mandal,

Pimpaldari, Tq.Gangakhed,
District Parbhani.
R/o in front of Prerna School,
Chate Colony, Gangakhed,
Tq.Gangakhed, District Parbhani.

- 2 Yuvak Vikas Shikshan Prasarak Mandal's
Adhyapak Vidyalaya, Udhavrao Patil
Chouk, Himayatbag, Harsool Road,
Aurangabad.
Through its Principal.

...PETITIONERS

-VERSUS-

- 1 Suryabhan s/o Hanumant Murkute,
Age : 40 years, Occupation : Service,
R/o Plot No.A-1B, E/D-Sector,
Bharatmata Nagar, HUDCO,
Aurangabad.
- 2 The Deputy Director of Education,
Aurangabad Division, Aurangabad.

...RESPONDENTS

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Advocate for Petitioners : Shri Anand P. Bhandari with Shri R R Bangar.
Advocate for Respondent No.1 : Shri Bhosale Santosh B.
AGP for Respondent 2 : Shri N.T.Bhagat.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th December, 2016

Oral Judgment :

- 1 Rule. Rule made returnable forthwith and by the consent of
the parties, all these petitions are heard finally together.

2 In all these petitions, the Petitioner/ Management is aggrieved by the order dated 05.10.2016 delivered by the School Tribunal in Miscellaneous Application Nos.10/2016, 09/2016 and 11/2016 by which the delay of about three years has been condoned.

3 I have considered the strenuous submissions of Shri Bhandari, learned Advocate for the Petitioner/ Management and Shri Bhosale, learned Advocate on behalf of the Respondents/ Employees. The learned AGP submits that in the matters of condonation of delay, the Education Department has nothing to say at this stage.

4 Though Shri Bhandari has taken me through the voluminous record, the order passed by the learned Division Bench of this Court in Writ Petition No.6850/2013 filed by these three Respondents/ Employees would have an impact on the result of these three petitions.

5 By order dated 15.03.2016, the learned Division Bench noted the statement of these Respondents/ Employees that they desire to withdraw the petition and avail of an alternate remedy. For the sake of clarity, the order dated 15.03.2016 is reproduced as under:-

"1. *Learned counsel appearing for petitioner, on instructions seeks leave to withdraw the petition with liberty to avail of the remedy available in law. Leave*

- granted. The writ petition stands disposed of as withdrawn with liberty as prayed for.*
2. *The Tribunal, dealing with the matter, may consider the time spent by the petitioner in prosecuting the remedy before this Court, while considering an application for condonation of delay in presenting the appeal."*

6 In Writ Petition No.6850/2013, these Employees had put forth the prayers for demanding specific pay scales as were granted to them and certain allied grievances. The issue of oral termination was not the subject matter of adjudication before the learned Division Bench. Considering the time consumed in Writ Petition No.6850/2013 from 2013 till 15.03.2016, when the learned Division Bench passed its order, it was observed that the time spent before this Court would be a ground for considering the condonation of delay, if any.

7 The Honourable Supreme Court in the matter of the *Collector, Land Acquisition, Anantnag v/s Mst.Katiji*, **AIR 1987 SC 1353** and in the matter of *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*, **(2013) 12 SCC 649**, has concluded that if the delay is properly explained and if the same is neither deliberate nor inordinate, the same has to be considered liberally. It is settled law that if laches are not attributed to the conduct of the claimant and if the claimant does not acquire any undue advantage by causing the delay, the application for

condonation of delay is to be entertained.

8 There is no dispute that these Respondents were before this Court for almost three years. On 15.03.2016 the learned Division Bench permitted the Respondents to withdraw the petition and take recourse to an available remedy. Within six weeks from the order of the learned Division Bench, these Respondents have approached the School Tribunal. In this backdrop, without taking into account the contentions of the Petitioner about a fraud being played by the Respondents, which can be looked into while deciding the appeals on their merits, I am of the view that the delay has been rightly condoned by the School Tribunal.

9 However, it cannot be ignored that the delay caused by a litigant in approaching an appropriate forum ought not to lead to a disadvantage to the opponents, inasmuch as the said litigant cannot take undue advantage of the delay caused. In the instant cases, in the event, the Respondents/ Employees succeed in the appeals against the alleged oral termination dated 01.03.2013, they would naturally claim full back wages with continuity even for the period 01.03.2013 till 23.04.2016 when the appeals were lodged. If this is permitted, it would amount to giving undue latitude to the claimants who would be eventually drawing an advantage even for the period of delay. This aspect has not been

considered by the School Tribunal and therefore, requires consideration in these petitions.

10 The learned Advocate for the Respondents/ Employees, on a specific instructions from the three Respondents/ Employees present in the Court and which has been confirmed twice, submits that these three Respondents/ Employees, as on date, are not willing to report for duties. When asked as to whether, these Respondents/Employees would desire to file an affidavit to that extent, these Respondents/ Employees have instructed the learned Advocate in the Court that the requirement of an affidavit is not necessary and their statement can be recorded.

11 The learned Advocate for the Respondents/ Employees further makes a statement that if the Management is desirous of granting regular pay scales to these Employees, they would report for duties on a given date and would not claim back wages from 01.03.2013 till the date they would join on an assurance of being granted regular pay scales and continuity. I am not required to deal with this aspect since the employees and the Management, are at liberty to settle the dispute before the School Tribunal.

12 Shri Bhandari, on instructions, submits that the scale as is

permitted by the MEPS Act, 1977 and the Rules applicable, shall always be made available to the Respondents/ Employees.

13 In the light of the above, these Writ Petitions are partly allowed. The impugned orders of the School Tribunal dated 05.10.2016 to the extent of condonation of delay are sustained. However, in order to balance the equities and in the light of the law laid down by the Honourable Supreme Court, the School Tribunal shall note that these three Respondents shall not be entitled to claim back wages for the period 01.03.2013 till 29.04.2016 as they have lost their right to claim such back wages considering the delay that has been caused by them in approaching the School Tribunal on 29.04.2016. Continuity of service would be open to be considered by the School Tribunal.

14 Needless to state, this Court has not considered the rival claims as regard the alleged oral termination and has not dealt with the merits of the appeals.

15 Rule is made partly absolute in the above terms.