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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2435 OF 2016

Harishankar Singh	...Petitioner
V/s.	
Anandilal & Ganesh Poddar Society & Ors.	...Respondents

Mr.N.V. Bandiwadekar for the Petitioner.

Ms.Anupama Shah for the Respondent Nos.1 and 2.

Mr.A.D. Kango, A.G.P. for Respondent Nos.3 and 4.

CORAM : R.D. DHANUKA, J.
DATE : 28TH MARCH, 2016.

P.C. :-

1. Rule. Learned counsel for the respondents waive service.
The petition is heard finally by consent of parties.
2. By this writ petition filed under Articles 226 and 227 of the Constitution of India the petitioner has impugned the order dated 8th January, 2016 passed by the Presiding Officer, School Tribunal thereby rejecting the application for condonation of delay of 1226 days in filing an appeal.
3. Some of the relevant facts for the purpose of deciding this writ petition are as under :

The petitioner is M.A. B.Ed. On 1st August, 2006 the petitioner was appointed as a Lecturer in Economics in the respondent no.2 – school. The approval to the said appointment was granted by the Deputy Director of Education on 18th December, 2006. On 18th June, 2007, the petitioner was appointed as full time Shikshan Sevak for three years for the subjects of Economics and Environment. The petitioner worked on the said post till 2011-2012. The respondent no.2 submitted a proposal of the petitioner every year to the respondent no.3 for seeking approval to the said post. The respondent no.3 however, refused to grant approval to the petitioner on the ground that the post on which the petitioner was appointed was a baseline post.

4. On 7th December, 2011, the petitioner was orally asked not to work in the college. The petitioner thereafter made representation to the Deputy Director of Education on 12th December, 2011. The Deputy Director of Education passed seven orders directing the respondent nos.1 and 2 to submit the proposal of the petitioner for approval. The directions issued by the Deputy Director of Education were not complied with by the respondent nos.1 and 2. In the meeting held in the chamber of the Deputy Director of Education in the month of March, 2012, the Principal of the respondent no.1 made a statement that since the post on which the petitioner was appointed

was not a sanctioned post, if in future the said post is sanctioned by the Government, the petitioner would be appointed to the said post.

5. On 21st May, 2014, the State Government passed a resolution sanctioning the additional post insofar the subjects Environment and Economics are concerned. Based on such resolution, the petitioner once again made a representation to the Deputy Director of Education. On 31st July, 2014, the Deputy Director of Education directed the respondent nos.1 and 2 to submit the proposal of the petitioner for sanction. Despite the said order, the respondent nos.1 and 2 did not submit any proposal for sanction. The petitioner accordingly once again made a representation to the respondent no.3 and also to the respondent nos.1 and 2. Since the respondent nos.1 and 2 did not submit any proposal inspite of the last representation made by the petitioner on 23rd March, 2015, the petitioner filed an appeal before the Tribunal on 16th April, 2015 and applied for condonation of delay. The said application for condonation of delay was vehemently opposed by the respondent nos.1 and 2 on various grounds.

6. The learned Presiding Officer of the School Tribunal passed an order on 8th January, 2016 rejecting the said application filed by the petitioner for condonation of delay of about 1226 days. This order of the School Tribunal is impugned in this writ petition filed

under Articles 226 and 227 of the Constitution of India.

7. Mr.Bandiwadekar, learned counsel for the petitioner invited my attention to various representations made by the petitioner before the respondent no.3 as well as before the respondent nos.1 and 2 and the orders passed by the respondent no.3 directing the respondent nos.1 and 2 to submit the proposal of the petitioner for approval and directing the respondent nos.1 and 2 to allow the petitioner to resume the for duty. He submits that the respondent nos.1 and 2 however, neither challenged the said orders passed by the Deputy Director of Education nor permitted the petitioner to resume for duty and did not submit any proposal as directed by the respondent no.3 for approval.

8. It is submitted that the Government ultimately passed a resolution thereby sanctioning an additional post insofar as subjects Environment and Economics are concerned and thus in view of such a resolution passed by the Government, the respondent nos.1 and 2 ought to have appointed the petitioner to one of such post. He submits that in view of the representations made by the petitioner from time to time on which the orders were passed by the Deputy Director of Education, which were neither challenged nor implemented by the respondent nos.1 and 2 and thus the petitioner was ultimately required to file an appeal. He submits that the delay

thus caused in filing the appeal was due to pendency of the representations made by the petitioner and in view of the respondent nos.1 and 2 not complying with the orders passed by the Deputy Director of Education. He submits that though these documents were forming part of the record of the School Tribunal, the School Tribunal has passed an order rejecting the application for condonation of delay mechanically overlooking the representations made by the petitioner and the orders passed by the Deputy Director of Education.

9. Ms.Shah, learned counsel appearing for the respondent nos.1 and 2 on the other hand relied upon the reasons recorded by the School Tribunal. She submits that the petitioner was not appointed by the respondent nos.1 and 2. She submits that the orders passed by the Deputy Director of Education were not binding upon the respondent nos.1 and 2. She submits that the learned Presiding Officer of the School Tribunal has rightly rejected the application for unexplained delay of 1226 days in filing the appeal and thus this Court cannot interfere with the order passed by the learned Presiding Officer of the School Tribunal. She submits that there was no school committee meeting held for the appointment of the petitioner to fill up the post in the respondent no.2 school.

10. Insofar as various submissions urged by the respondent nos.1 and 2 about the validity of the appointment of the petitioner on

the ground that he was not appointed by the respondent nos.1 and 2 nor was there any meeting of the school committee proposing to appoint the petitioner on any post is concerned, these issues on merits and cannot be gone into in this writ petition in view of the fact that this petition arises out of the impugned order of the School Tribunal rejecting the application for condonation of delay and such issue can be raised by the respondent nos.1 and 2 before the School Tribunal.

11. Insofar as the application for condonation of delay filed by the petitioner is concerned, a perusal of the record clearly indicates that between November, 2011 and 5th March, 2015, seven orders came to be passed by the Deputy Director of Education after considering the representations made by the petitioner directing the respondent nos.1 and 2 to allow the petitioner to resume for duties and to submit a proposal for appointment of the petitioner to the Deputy Director of Education for sanction. The respondent nos.1 and 2 however, neither submitted any proposal for sanction of the petitioner nor complied with those directions issued by the respondent no.3. A perusal of the record further indicates that though the Principal of the respondent no.1 school who had attended a meeting with the Deputy Director of Education has submitted that if the said post is sanctioned by the Government, the respondent no.1

may appoint the petitioner subject to compliance with the other formalities, respondent nos.1 and 2 did not appoint the petitioner. The petitioner was thus required to file an appeal before the School Tribunal on 16th April, 2015. The last order passed by the Deputy Director of Education was on 5th March, 2015, which was conveyed by a letter dated 16th March, 2015. The last representation made by the petitioner was on 23rd March, 2015.

12. A perusal of the record clearly indicates that the petitioner did not file an appeal before the School Tribunal in view of the representations made before the respondent no.3 on which seven orders came to be passed by the Deputy Director of Education but not complied with by the respondent nos.1 and 2. I have also perused the application for seeking condonation of delay filed by the petitioner before the School Tribunal and the documents annexed to the appeal memo which were admittedly on record before the School Tribunal.

13. A perusal of the order passed by School Tribunal clearly indicates that the application for condonation of delay which was rejected on the ground that the documents on which the petitioner sought to rely upon for justifying the delay in filing the appeal were not annexed to the application for condonation of delay but were annexed to the appeal memo. In my view, the order passed by the School Tribunal is over looking the documents relied upon by the

petitioner which were forming part of record. It was not the case of the respondent nos.1 and 2 that the orders passed by the Deputy Director of Education were not received by the respondent nos.1 and 2. In my view, the petitioner had thus satisfactorily explained the delay in filing the appeal before the School Tribunal. The Presiding Officer of the School Tribunal was not justified in rejecting the application for condonation of delay. I therefore, pass the following order :-

- i). The impugned order passed (below Exhibit 1) by the School Tribunal on 8th January, 2016 rejecting the application for condonation of delay (Exhibit 1) is set aside. The delay in filing the appeal is condoned.
- ii). The Learned Presiding Officer shall decide the appeal in accordance with law and on its own merits.
- iii). All the contentions of both the parties are kept open.
- iv). Rule is made absolute in aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)