

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4578 OF 2004

Nalini Suresh Kulkarni

... Petitioner

Vs.

Maharashtra Bhatkya Vimukta Jati

S.P. Mandal and Ors.

... Respondents

....

Mr. A.A. Garge for the Petitioner.

Mr. A.S. Karwande for the Respondent No.1.

Ms. M.S. Bane 'B' Panel Counsel for the Respondent No. 3.

...

CORAM : A.A. SAYED, J.

DATE : 16 DECEMBER 2016

P.C.:

1 This Petition is filed challenging the order dated 1 July 2003 of the School Tribunal, Mumbai. Paragraph Nos. 19 and 20 of the impugned order read as follows:

19. As per provision under Section 9 (2) of the MEPS Act 1977 an appeal in the matter of supersession or reduction in rank is to be preferred within 30 days. Respondent No. 1 appointed Respondents No. 4 as Head of Respondent No. 1 appointed Respondent No. 4 as Head of Respondent No. 2 school w.e.f. 13.6.1997. The appellant was aware and had a knowledge of the same. Therefore present appeal ought to have filed on or before 12.8.1997. Admittedly present appeal has been filed by the appellant on 16.2.1999. Thus appeal has been filed by appellant after about 610 days and according to appellant one year six months. Thus delay has been caused in filing the appeal is unreasonable without explaining the same long delay.

20. *As application for condonation of delay of 610 days is rejected it seems that the delay caused in filing the appeal has not been condoned. As such appeal being barred by time cannot be entertained as application for condonation of delay is rejected. Therefore appeal being barred by time is liable to be dismissed.*

2 The Appeal was filed challenging the supersession of the Petitioner. In view of the law laid down by the learned Single Judge of **Secretary Shora Education Society, Wani Vs. Presiding Officer, School Tribunal Aurangabad and Others, 2002 (2) Mh.L.J. 752** the matter would be required to be remitted to the School Tribunal for consideration afresh. In paragraph 10, 11 and 12 of the aforesaid judgment the learned Single Judge held as follows;

10) It is a continuing legal right and can come to an end only when it is considered by the appropriate Authority/Tribunal/Court and cannot be taken away by putting a rider of limitation. Hence the Legislature, has not included the case of supersession in the ambit of sub-section (2) of section 9 of the Act.

11) It is necessary to keep in mind while construing the statute that, nothing is to be added to or taken from a statute unless there are adequate ground to justify the inference that the Legislature intended something, which it omitted to express. While applying this analogy in regard to question in issue it is very difficult to infer without adequate grounds that the Legislature inadvertently omitted to insert the word

“supersession” in view of body of sub-section (2) of section 9 of the Act, on the other hand, in view of language used, the scheme of the Act and object to be achieved there are adequate grounds to justify the inference that the Legislature intended to extend application of sub-section (2) of section 9 only to cover the contingencies mentioned in sub-section 1(a) and never intended to include cases of supersession within the scope of sub section (2) of the section 9 of the Act. It is, therefore, difficult for me to accept the contention raised by learned Counsel for the Petitioner.

12) Though there is no limitation prescribed under the statute for filing appeal to the Tribunal in case of supersession by the Management while making appointment to any post by promotion, general doctrine of delay and laches would apply in this regard. It is the general rule that whenever limitation is not prescribed for filing appeal or revision, the aggrieved person is required to prefer the same within reasonable time.

(emphasis supplied)

4 In view of the above, the matter is remanded to the School Tribunal, Mumbai to consider the Application for condonation of delay afresh in light of the law laid down in the aforesaid judgment. All contentions of the parties are kept open.

5 The parties shall appear before the School Tribunal, Mumbai on 9 January 2017 at 11.00 am.

(A.A. SAYED, J.)