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

WRIT PETITION NO. 6308 OF 2014

Shri Vithal Shivsharan Birajdar

Age : 44 years

Occupation : Nil

Residing at -

C/o S.S.Harkare, Plot No.302

Mallikarjun Nagar, Hotgi Road

Solapur – 413 003

.. Petitioner

Versus

1. Bharat Vikas Shikshan Prasarak
Mandal

Having its Office at-
Bhavani Peth, Maddi Vasti
Solapur
(Through its Secretary)

2. The Headmaster
Bharat Vikas Vidyalaya
Maddi Vasti, Bhavani Peth,
Solapur

3. The Administrative Officer
Solapur Mahanagarpalika
Prathmik Shikshan Mandal
Navi Peth, Solapur.

4. State of Maharashtra
Dept. of School Education
Mantralaya-Mumbai
(Through its Secretary).

.. Respondents

Mr.Subhash Langote i/b Mr.Vishnu Anna Madane, for the Petitioner.
Mr.Jagdish G.Reddy (Aradwad), for Respondent Nos.1 and 2.
Mr.A.R.Metkari-Assistant Government Pleader, for Respondent
Nos.4 and 5.

CORAM: N.M.Jamdar, J.
Friday 8 January, 2016

Oral Judgment :

Rule. Rule made returnable forthwith. Respondents waive service. Taken up for final disposal by consent. Heard learned counsel for the parties.

2. By the impugned order the School Tribunal Solapur, has rejected the application filed by the Petitioner for condonation of delay in filing the appeal against his termination. The School Tribunal has held that the termination was effected on 23 August 2006 hence appeal was filed and there was delay of more than six years which was not explained and therefore, the application deserves to be dismissed.

3. The learned counsel for the Petitioner submitted that under Section 9(2) of the Maharashtra Employees' of Private Schools (Condition of Service) Regulation Act, 1977 communication of the order is necessary for counting the limitation period. In the application, the Petitioner has categorically averred that though initially he was prevented from signing the muster roll upon making a complaint to the Administrative Officer, the Petitioner was permitted to sign the muster roll. Thereafter the Petitioner was

kept hanging by not communicating any specific decision and it is only by a letter dated 8 February 2012 that the Petitioner had been communicated that his services were terminated from 31 July 2008. The Petitioner has categorically asserted that he had not received the letter dated 31 July 2008 stated to be sent by Respondent-Management regarding his termination. To these categorical factual assertions there is no reply filed by the Respondent-Management in the School Tribunal. In absence of any controversies for the purpose of condonation of delay these factual assertions ought to have been considered by School Tribunal as uncontroverted. If these assertions are held to be correct then there is no delay of six years as held by the School Tribunal. But delay is of approximately one year and 10 months as the appeal was filed on 4 December 2013. Considering the plight of the Petitioner as narrated by him in the application, which is not controverted this is not a case of dismissal of the appeal only on the ground of delay and the Petitioner deserves to be given a chance to urge his case on merits.

4. However, it is made clear that the above mentioned findings are only for the purpose of giving an opportunity to the Petitioner to urge his case on merits and the question as to the factual position from 23 August 2006 till the date of filing of the appeal, will be considered on its own merits in the appeal.

5. Accordingly, the Writ petition is **allowed**. **Rule is made absolute** in terms of prayer clause (b). The Appeal filed by the

Petitioner in the School Tribunal Solapur, stands restored to file to be disposed of on merits without being influenced by the observations made in this order. Parties shall appear before the School Tribunal on 29 January 2016.

(N.M.Jamdar, J.)