

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6492 OF 2013

Smt. Jaya Manik Mane .. Petitioner
vs.
The State of Maharashtra & Ors. .. Respondents

Mr. V. K. Bodhare i/b. Mr. A. M. Joshi for Petitioner.
Mr. S. D. Rayrikar – AGP for State – Respondent Nos. 1 and 2.
Mr. M. Topkar for Respondent Nos. 3 and 4.

CORAM : M. S. SONAK, J.
DATE : 20 JUNE 2016

P.C :

- 1] Heard the learned counsel for the parties.
- 2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the order dated 2 May 2011 made by the Divisional Welfare Officer / Appellate Authority. By the impugned order, the Appellate Authority has declined to condone the delay on the part of the petitioner in instituting an appeal against the termination of her services.
- 4] Mr. Topkar, the learned counsel for the respondent nos. 3 and 4 has submitted that the present petition was instituted almost one

year after the impugned order was made. That apart, the appeal instituted by the petitioner seeks to challenge the termination of her services vide order dated 1 May 1998. Mr. Topkar has submitted that several opportunities were granted to the petitioner, even in the matter of institution of appeal before the correct authority. However, the petitioner has failed to avail the same. There is no explanation for the inordinate delay and therefore, there is no case made out to interfere with the impugned order.

5] Having heard the learned counsel for the parties and perused the record, in my judgment, it would be appropriate if the impugned order is set aside, delay is condoned and the petitioner is granted liberty to contest the termination of her services on merits, by at least one authority.

6] The services of the petitioner were terminated by order dated 1 May 1998. The petitioner preferred an appeal before the School Tribunal being appeal no. 66 of 1998. The said appeal was however dismissed as being barred by law of limitation on 30 January 2002. As against the said order, the petitioner instituted writ petition no. 6839 of 2009. The same was disposed of on 24 June 2004, *inter alia* holding that the School Tribunal lacked jurisdiction to entertain the appeal and that the appeal was required to be instituted before

the Social Welfare Officer. This was because the school in which the petitioner was employed was an Ashram school. Liberty was also granted to the petitioner to institute appeal before the Social Welfare Officer.

7] In pursuance of the liberty granted, the petitioner claims to have instituted an appeal on 1 July 2004. However, such appeal was instituted before the Directorate of Social Welfare, instead of the Social Welfare Officer. It is the case of the petitioner that she awaited the issuance of notices by the Directorate. However, upon realising that there was no progress in the matter, the petitioner made inquiries and realised her mistake in not instituting an appeal before the Social Welfare Officer. Accordingly, the petitioner addressed letters for placement of the said appeal before the Social Welfare Officer. Again, the petitioner awaited necessary response in the matter.

8] Finally, the petitioner instituted writ petition no. 7329 of 2009 before this Court complaining that neither her appeal nor application for condonation of delay made therein was being taken up for consideration. This Court, disposed of the said writ petition by order dated 11 January 2010, which reads thus :

“1] The grievance of the petitioner is that the petitioner has filed an appeal before the respondent No.2 long back, but

the respondent No.2 is neither deciding the appeal nor taking up the application of the petitioner for condonation of delay for consideration. The learned Assistant Government Pleader appearing for respondent No. 2 states that if the petitioner appears before the respondent No. 2 on a particular day and produces copies of his appeal and application for condonation of delay, the respondent No. 2 will decide the application for condonation of delay as expeditiously as possible and in any case within a period of three months from the date on which the petitioner appears before the respondent No. 2. The statement is accepted. In view of this statement, petition is disposed in following terms.

2] The petitioner to appear before the respondent No. 2 on 25th January 2010 alongwith the copies of this order, memorandum of appeal and application for condonation of delay. The respondent No. 2 shall take up for consideration the application for condonation of delay and decide it within a period of three months from 25th January 2010. In case the delay is condoned, the respondent No. 2 shall decide the appeal on merits in accordance with law. Petition is disposed off.

Parties to act on the copy of this order duly authenticated by the Sheristedar / Private Secretary of this Court.

Certified copy expedited."

9] The impugned order states that in pursuance of the liberty granted by this Court in its order dated 11 January 2010, the petitioner did not appear before the Social Welfare officer on 25 January 2010 but rather, appeared before the Social Welfare Officer

on 6 February 2010. On this ground, amongst others, the Social Welfare Officer has held that he is unable to condone the delay, since, the petitioner has failed to avail of the opportunities granted to her by this Court. The impugned order also notes that the petitioner has been negligent on at least two occasions, in the matter of availing the opportunities granted to her. On these basis, the impugned order has been made declining to condone the delay.

10] In my judgment, if the aforesaid circumstances are cumulatively considered, then it cannot be said that the petitioner in the present case has either slept over her rights or was negligent in pursuing her remedies. No doubt, the record bears out that the petitioner on one occasion lodged the appeal in the Directorate of Social Welfare instead of filing it before the Social Welfare Officer. Further, though the petitioner was required to appear before the Social Welfare Officer on 25 January 2010, she has appeared on 6 February 2010. However, these are hardly the circumstances sufficient to deny to the petitioner at least one hearing on merits in the matter of the termination of her services. The petitioner, had instituted the appeal before the School Tribunal at the earliest instance. The School Tribunal however lacked jurisdiction in the matter and this issue was sorted out only in the year 2004. Thereafter, it is not as if the petitioner has slept over her rights or

been negligent in the matter. No doubt, in the interregnum substantial time has passed. This is a matter which the Appellate Authority will no doubt take into consideration at the stage of finally disposing of the appeal on merits. In particular, the Appellate Authority is required to apply its mind to the position that the respondent nos. 3 and 4 are in no sense responsible for this delay or the time which has gone by in the interregnum. Therefore, although, a case has been made by the petitioner for condonation of delay, so that her appeal is heard on merits by at least one authority, the time which has lapsed in the interregnum is a relevant consideration, which will no doubt be taken into consideration by the Appellate Authority at the stage of making final orders in the appeal.

11] For the aforesaid reasons, the impugned order dated 2 May 2011 is set aside. The delay in institution of the appeal by the petitioner is hereby condoned. The Appellate Authority is directed to dispose of the appeal on merits and in accordance with law as expeditiously as possible.

12] The parties to appear before the Appellate Authority on 12 July 2016 at 3.00 p.m. and file authenticated copy of this order.

13] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

14] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)

Chandka