

Sequeira

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

***WRIT PETITION NO. 1010 of 2013
Along with
CIVIL APPLICATION NO. 2318 of 2014.***

Mrs.Nilam Sham Gajbare .. Petitioner / Applicant
Vs.
State of Maharashtra & ors. .. Respondents

Mr.V.K.Bodhare i/b Mr.A.M.Joshi, for Petitioner-Applicant.
Ms.M.S.Bane 'B' Panel- Assistant Government Pleader, for
Respondent Nos.1 to 3.
Mr.Sandeep Waghmare, for Respondent Nos.4 & 5.

***CORAM: N.M. JAMDAR, J.
Friday, 29 January 2016***

Oral Order :

By order dated 19 March 2013, notice was issued to the Respondents indicating that the matter will be disposed of finally at the stage of admission. Accordingly taken up for final disposal.

2. The Petitioner challenges the order dated 12 December 2012 passed by the School Tribunal dismissing the application filed by her for condonation of delay in filing an appeal challenging her termination dated 24 March 2008 and 28 March 2009.

3. The Petitioner, after her termination in March 2009, filed an appeal on 16 July 2012, along with an application for condonation of delay. The application was opposed by the Respondent-Management. The School Tribunal firstly noted that the Petitioner

was not qualified and she was rightly dismissed and therefore, appeal has no merits. Secondly, that merely because the Petitioner had made certain representations to the Government and concerned Ministry that did not justify the delay in filing the appeal which was more than three years i.e. from March 2009 to July 2012. Accordingly, the application for condonation of delay was rejected. This order is challenged in the present petition.

4. I have heard learned counsel for the parties. The Petitioner has filed a Civil application No.2318 of 2014 seeking leave to place certain documents on record. These documents primarily are correspondence made by the Respondent-Management to the State Government. Considering the facts and circumstances and the representations which are made by the Respondent-Management to the State Government which is part of the routine correspondence, I have taken these documents also for consideration.

5. After the order of termination was passed in March 2009, the Respondent-Management addressed a communication to the Director Technical Education, on 23 June 2009 wherein the Management requested the Director that the application made by the Petitioner be considered sympathetically. The Petitioner also made similar representations to the Minister for higher and technical education. The School Tribunal has only noted that the Petitioner made representations to the Ministers and that may not be sufficient cause, however has failed to notice that the State Government had directed the Respondent-Management to keep

one post vacant till the decision is taken on the representation concerning the Petitioner. These letters are issued on 17 August 2011 and 29 May 2012. The learned counsel for the Petitioner is justified in making a submission that the Petitioner was hopeful of getting the grievance redressed from these authorities and therefore, she approached the Tribunal late. The learned counsel for the Respondents submitted that the authorities to whom representations were made were not competent to pass the order and in any case no final order was passed by these authorities. The question is whether it can be said that the Petitioner was justified in entertaining a belief that she will get a redressal of her grievance with the governmental authority. The management itself had made representation to these authorities and who had passed some order in her favour. This aspect has been completely missed by the School Tribunal while rejecting her case. Based on the representation Tribunal has held that only representations will not suffice. This is an incorrect conclusion. Since nothing further came out of the representations made to the Government, the Petitioner filed the appeal along with application for condonation of delay.

6. In the circumstances, I am of the opinion that the Tribunal proceeded to decide the application omitting to take into consideration the relevant material on record. While entertaining the application for condonation of delay the School Tribunal ought to have restricted the inquiry to find out whether the Petitioner had a case for seeking condonation of delay and whether she was

negligent and not on the merits of the Appeal. Therefore, the order passed by the Tribunal needs to be set aside. In the circumstances, the petition is required to be allowed.

7. It is however, clarified that in case the Petitioner succeeds and is held to be entitled to monetary benefits, it will be open to the School Tribunal to consider the fact that the Petitioner had approached the School Tribunal after the period of three and a half years as stated. The prejudice caused to the Respondents can also be set off by imposition of costs.

8. Accordingly, **Rule is made absolute** in terms of prayer clause (a) and (c) subject to the condition that Petitioner will pay an amount of ₹10,000 to the Respondent Nos.4 and 5, by way of costs within period of six weeks from today. The parties shall appear before the School Tribunal, on 21 March 2016.

9. Civil Application is **disposed of** accordingly.

(N.M.Jamdar, J.)