

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13834 OF 2016

...

Samarth Shikshan Mandal & Charity Trust
and ors.

....Petitioners

v/s.

Mrs.Hemlata D.Shinde and ors.

....Respondents

...

Mr.N.V.Bandiwadekar for the Petitioners.
Mr.S.H.Kankal, AGP for the State.

...

CORAM : A.A. SAYED, J.

DATED : 23 DECEMBER 2016

P.C.:

This Petition under Articles 226 and 227 of the Constitution is directed against the order dated 13 October 2016 passed by the School Tribunal, Navi Mumbai, whereby the Application of the Respondent No.1 for condoning the delay of 4 years and 7 days in filing the Appeal has been allowed.

2. The Appeal was filed by the Respondent No.1 challenging the promotion order dated 1 August 2012 passed by the Education Officer, which according to the Respondent No.1 amounted to supersession which affected her right to the post of Headmistress under section 9(1)(b) of the Maharashtra Employees of Private Schools Act, 1977.

3. Learned Counsel for the Petitioners submitted that there is no sufficient cause made out by the Respondent No.1 for the School Tribunal

to have condoned the delay of 4 years and 7 days in filing the Appeal. He submitted that the explanation for the delay in the Application of the Respondent No.1 is vague and the School Tribunal ought not have condoned the delay as no sufficient cause had been made out by the Respondent No.1. Learned Counsel has relied upon the judgment of the Supreme Court in the case of **Londhe Prakash Bhagwan v/s. Dattatraya Eknath Mane and ors.**¹

4. It is not disputed before the Court that in matters of supersession there is no limitation period prescribed. However, the submission is that the delay ought to have been reasonable and not inordinate. It is pointed out that in the aforesaid judgment of the Supreme Court, it is also observed that if no limitation is prescribed, then the aggrieved person has to file an Appeal within a reasonable time.

5. It is now well settled that there can be no straight jacket formula in matters of condonation of delay in filing Appeal and each case has to be decided on its own facts. In the aforesaid case before the Supreme Court, the Presiding Officer had rejected the Application for condonation of delay of 10 years and the High Court had dismissed the Writ Petition challenging the order of the Presiding Officer. Thereafter, the High Court recalled its

¹ 2014 (1) Bom.C.R.312

earlier order in a Review Petition and condoned the delay. The facts of that case and the present case are certainly distinguishable.

6. The School Tribunal has adopted a liberal approach in condoning the delay considering the overall facts and circumstances of the case. The School Tribunal has observed that there was no prescribed period of limitation for challenging the supersession and it was a continuing cause of action and condoned the delay subject to costs.

7. In the circumstances, I do not find that this is a fit case to exercise writ jurisdiction of this Court to interfere with the discretion exercised by the School Tribunal in condoning the delay. The Petition is accordingly dismissed in limine. No order as to costs.

(A.A. SAYED, J.)