

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****WRIT PETITION NO. 232 OF 2016****Amit Singh****..... Petitioner****VERSUS****John Wilson Education Society & Ors.****..... Respondents****ALONGWITH****WRIT PETITION NO. 236 OF 2016****Rashmi David****..... Petitioner****VERSUS****John Wilson Education Society & Ors.****..... Respondents**

Mr.Mihir Desai, Senior Advocate, i/b. Mr.Sarnath Pramod for the Petitioners.

Mr.Arvind Kothari for Respondent nos. 1 and 2.

Ms.P.H.Kantharia, Government Pleader for Respondent nos. 3 and 4.

Mr.Abhishek Tripathi, i/b. Mr.Rui Rodrigues for Respondent no.5.

CORAM : R.D. DHANUKA, J.**DATED : 22nd MARCH, 2016****P.C.**

Rule, returnable forthwith. Learned counsel appearing for the respondents waive service.

2. By consent of parties, both the writ petitions were heard together finally at the admission stage and are being disposed off by a common order :-

3. By these two petitions filed under section 226 of the Constitution of India, the petitioners have impugned a common order passed by the Presiding Officer, Mumbai University and College Tribunal on 29th October, 2015 thereby dismissing the separate applications filed by the petitioners herein inter alia praying for

condonation of delay in filing appeal. According to the parties, there was delay of 260 days in approaching the school tribunal by the petitioners. This order of the school tribunal dated 29th October, 2015 dismissing the miscellaneous applications inter alia praying for condonation of delay is impugned in these two writ petitions by the petitioners.

4. Some of the relevant facts for the purpose of deciding these two petitions are as under :-

5. Since the facts in both the petitions are common, the learned counsel appearing for the parties have summarized the facts in the writ petition no.232 of 2016.

6. On 30th April, 2014, the respondent nos. 1 and 2 terminated the services of the petitioners with immediate effect and forwarded a cheque to the petitioners towards one month salary in lieu of the notice period. The said termination was protested by the petitioners by addressing separate letters on 30th April, 2014.

7. On 17th June, 2014, the petitioners filed Writ Petition (L) No.1551 of 2014 and Writ Petition (L) No.1552 of 2014 respectively in this court inter alia praying for various reliefs including a writ of certiorari for quashing and setting aside the order of termination of the services of the petitioners dated 30th April, 2014.

8. During the pendency of those two writ petitions, the Government passed a resolution on 25th November, 2014 proposing to handover charge of the College Tribunal, Mumbai to the Presiding Officer, College Tribunal, Nagpur. The learned Government Pleader made a statement before this court that a corrigendum would be also issued in respect of handing over charge of the other University Tribunals

including Women University. This court accordingly passed an order that in view of the issuance of the resolution by the Government, the petitioners would have now alternate remedy available and they may resort the said remedy. Both those writ petitions were accordingly disposed off by a common order passed on 25th November, 2014.

9. On 17th December, 2014, the petitioners herein filed two separate appeals before the tribunal and applied for condonation of delay of 260 days in filing those appeals. Those applications for condonation of delay were vehemently opposed by the management on the ground that the delay was not sufficiently explained.

10. By a common order passed by the Presiding Officer of the Mumbai University and College Tribunal on 29th October, 2015, the tribunal rejected both those applications for condonation of delay which order is impugned in these writ petitions.

11. Mr.Desai, learned senior counsel appearing for the petitioners in both these matters invited my attention to the various annexures annexed to the petition and also to the observations made by the Mumbai University and College Tribunal and more particularly paragraph 5. He states that the whole premise of the order passed by the tribunal while rejecting the application for condonation of delay was that none of the petitioners had assailed the order of termination passed against them by the management before the High Court in the writ petitions filed by both these petitioners and only issue raised by them was about the reliefs of salaries and other pecuniary benefits which was allowed by the High Court while disposing of the writ petitions. It is observed that the entire writ petition was silent about their termination being illegal and perverse etc. The tribunal also held that there was no

just and proper convincing explanation explaining delay of more than 256 days by the petitioners.

12. Learned senior counsel for the petitioners invited my attention to the prayers in the earlier writ petitions filed by the petitioners and would submit that the observations of the tribunal that there was no challenge to the order of termination is ex-facie factually incorrect.

13. It is submitted by the learned senior counsel that during the period of limitation, after the order of termination was passed by the management, admittedly there was no presiding officer in office of the College and University Tribunal and thus the petitioners had no alternate but to file a writ petition in this court inter alia praying for a writ of certiorari, for setting aside the order of termination and for various other reliefs. He submits that the order passed by the Tribunal rejecting the application for condonation on the ground that there was no challenge to the order of termination in the writ petition is ex-facie perverse and thus deserves to be set aside.

14. Insofar as the reasons rendered by the Tribunal that there were no sufficient reasons recorded by the petitioners in the application for condonation of delay is concerned, it is submitted that in the month of May 2014, there was vacation in this court. He submits that the reasons why the appeal could not be filed earlier are sufficiently explained in the application for condonation of delay. He submits that admittedly during the pendency of those writ petitions, the Government issued a resolution thereby proposing to handover the charge of the Presiding Officer of the University and SNDT College Tribunal Mumbai to the Presiding Officer of the Nagpur Tribunal. He submits that within 30 days from the date of the disposal of

the writ petitions, the petitioners have admittedly filed appeals before the College Tribunal.

15. Learned counsel for the respondent nos. 1 and 2 on the other hand would submit that the petitioners could have filed a writ petition immediately after passing of the impugned order of termination by the management and was not required to wait till 17th June, 2014. He submits that the appeals were filed not immediately after disposal of the writ petitions by this court but belatedly. It is submitted that in the applications for condonation of delay, the petitioners have not explained as to why the petitioners took time to file writ petitions till 17th June, 2014 and to file appeal on 17th December, 2014 though the writ petitions were disposed of on 26th November, 2014. He submits that since there was no sufficient explanation in the application for condonation of delay, the tribunal was right in dismissing the application for condonation of delay.

16. In support of his submission, learned counsel for the respondent nos. 1 and 2 placed reliance on the following judgments :-

- (a) Judgment of Supreme Court in case of ***Brijesh Kumar & Ors. vs. State of Haryana & Ors.***, 2014(3) All MR 965 (SC) (paragraph 11)
- (b) Judgment of Supreme Court in case of ***Lanka Venkateswarlu (D) by Lrs. vs. State of A.P. & Ors.*** In Civil Appeal No.2909-2913 of 2005 delivered on 24th February, 2011 (paragraph 22)
- (c) Judgment of Supreme Court in case of ***Ashis Kumar Hazra vs. Rubi Park Co-operative Housing Society Ltd. and others***, AIR 1997 SC 2724 (paragraph 3)

(d) Judgment of Supreme Court in case of ***P.K.Ramachandran vs. State of Kerala and another***, AIR 1998 SC 2276 (paragraph 6)

(e) Judgment of Division Bench of this court in case of ***Mathuradas Mohota College of Science, Nagpur vs. R.T.Borkar and others***, Maharashtra Education Cases 943 (paragraph 9)

17. There is no dispute that the services of the petitioners were terminated on 13th April, 2014. There was summer vacation in the month of May. It is an admitted position that though appeal was required to be filed within 30 days from the date of receipt of the letter of termination, the fact remains that till 25th November, 2014, there was no Presiding Officer of the University and College Tribunal available. The petitioners had in that circumstances had no other remedy than to file a writ petition under Article 226 of the Constitution of India in this court which came to be filed on 17th June, 2014. During the pendency of the writ petitions filed by the petitioners, on 25th November, 2014, the Government passed a resolution proposing to handover charge of the Presiding Officer of the University and College Tribunal, Mumbai to the Presiding Officer of University and College Tribunal, Nagpur. The Government Pleader made such statement before this court in the hearing of those two petitions held before this court on 25th November, 2014. This court accordingly took a view that in view of the alternate remedy available to the petitioners now in view of such resolution passed by the Government on 24th November, 2014, the petitioners will have to file appeals provided under the provisions of M.E.P.S. Act, 1977. The petitioners accordingly filed appeals on 17th December, 2014 that was before expiry of 30 days.

18. A perusal of the impugned order passed by the tribunal clearly indicates that the main reason recorded by the tribunal for rejecting the application for condonation of delay was that the petitioners herein had not challenged the order of termination passed by the management in the writ petition filed before this court. A perusal of the prayers in the two writ petitions filed by the petitioners clearly indicates that the first prayer in the writ petition was for a writ of certiorari inter alia praying for quashing and setting aside the order of termination. In my view the first reason recorded by the University and College Tribunal for rejecting application for condonation of delay is factually incorrect and is ex-facie erroneous.

19. Insofar as second reason recorded by the University and College Tribunal for rejecting the application for condonation of delay that delay was not sufficiently explained is concerned, the fact that the Presiding Officer of the tribunal was not in place during the period between 30th April, 2014 and 26th November, 2014 is not disputed. Even if the petitioners were required to file an appeal within 30 days from the date of receipt of the order dated 30th April, 2014, since the presiding officer of the University and College Tribunal was not in place, the petitioners could not have filed such appeal.

20. A perusal of the application for condonation of delay filed by the petitioners clearly indicates that the petitioners had explained as to why there was delay in approaching the University and College Tribunal and as to why the petitioners were required to file a writ petition in this court. In my view the petitioners had sufficiently explained the delay in the application for condonation of delay and thus the University and College Tribunal ought to have condoned the delay considering the explanation given by the petitioners.

21. A perusal of the judgments relied upon by the learned counsel for the respondent nos. 1 and 2 in support of his submission that unless the delay was sufficiently explained, the tribunal could not have condoned the delay as a matter of course is concerned, there is no dispute about the propositions laid down by the Supreme Court and this court in those judgments.

22. A perusal of the applications filed by the petitioners for seeking condonation of delay clearly indicates that it is not a case of no explanation of delay at all in the said application for condonation of delay. Division Bench of this court after adverting to various Supreme Court judgments has held that absolute absence on the part of the appellant to explain the delay or to furnish cause to the satisfaction of the tribunal takes away the jurisdiction of the tribunal to entertain the appeal. In my view there is no absolute absence on the part of the appellant to explain the delay. The causes of delays were undisputed before the University and College Tribunal. If Presiding Officer of the tribunal was not in place, petitioners were not at fault. The judgments thus relied upon by the learned counsel for the respondent nos. 1 and 2 referred to aforesaid would not assist their case.

23. I, therefore, pass the following order :-

(a) The impugned order passed by the Mumbai University and College Tribunal on 29th October, 2015 refusing to condone delay is set aside. Applications made by the petitioners for condonation of delay are allowed.

(b) The Presiding Officer of Mumbai University and College Tribunal shall consider the appeals filed by the petitioners on its own merits.

(c) The Mumbai University and College Tribunal shall make an endeavour to dispose of the appeals filed by the petitioners expeditiously in co-operation of the petitioners as well as the respondent nos. 1 and 2.

(d) Rule is made absolute in both the above writ petitions in the aforesaid terms.

[R.D. DHANUKA, J.]