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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3531 OF 2016

Raosaheb s/o Ramchandra Bachhav,
Age: 54 years, Occu: Nil,
R/o: Dahivel, Tq. Sakri,
Dist. Dhule

..PETITIONER

VERSUS

1. The State of Maharashtra,
School and Education Department,
Through it's Secretary,
Mantralaya, Mumbai
2. The Education Officer (Secondary),
Nandurbar, Tal & Dist. Nandurbar
3. Navapur Taluka Shikshan Prasarak Mandal,
Tq. Navapur, Dist. Nandurbar,
Through its President
4. Headmaster,
Prathmik Ashram Shala Vadfali,
Tq. Navapur, Dist. Nandurbar
5. Adimata Bahuuddeshiya Vadifali,
Tal. Navapur, Dist. Nandurbar,
Through its President
6. Headmaster,
Kai. Su. Fu. Valvi Anudanit Prathamik
Ashram Shala Vadfali, Tq. Navapur,
Dist. Nandurbar

..RESPONDENTS

Mr Rahul B. Temak, Advocate for petitioner;
Mr A. P. Basarkar, A.G.P. for respondent Nos.1 & 2;
Mr Sachin Deshmukh, Advocate for respondent Nos.4 to 6

CORAM : NITIN W. SAMBRE, J.

DATE : 4th September, 2017

ORAL ORDER:

Heard Mr Temak, learned Counsel appearing on behalf of the petitioner; learned A.G.P. on behalf of respondents no.1 & 2 and learned Counsel Mr Deshmukh on behalf of respondents no.4 to 6. None appears on behalf of respondent no.3 though duly served.

2. The petitioner claims that he was appointed as an Assistant Teacher by respondent no.3 management vide order dated 31st August, 1992. He further claims that his services came to be confirmed vide order dated 16th May, 1996 by the Project Officer, Integrated Tribal Development Project. He was declared surplus vide order dated 6th June, 2001.

3. Subsequent thereto, alleging oral termination on 1st November, 2001, petitioner preferred Appeal before the School Tribunal on 2nd April, 2002, which was objected on the point of jurisdiction, as such on 2nd August, 2004 the same was withdrawn and on 9th August, 2004 an appeal was preferred before the Additional Commissioner, Tribal Development. The Additional Commissioner, Tribal Development dismissed the appeal preferred by the petitioner against his termination on 20th March, 2006 by observing that the same was not within limitation.

4. Feeling aggrieved, petitioner approached this Court by filing Writ Petition No.5367 of 2006, which came to be allowed vide order dated 11th December, 2006, whereby the Additional Commissioner, Tribal Development was directed to hear the issue of condonation of delay

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afresh.

5. Additional Commissioner, Tribal Development allowed the appeal of the petitioner vide order dated 28th May, 2012 and directed the management to reinstate him in service, however, without back wages.

6. Respondent no.5 management preferred Writ Petition No.9227 of 2012 which came to be allowed on 13th October, 2014, whereby the order passed by the Additional Commissioner, Tribal Development allowing the appeal of the petitioner was set aside on the ground that in view of the provisions of Right to Education Act, it is the School Tribunal who has jurisdiction in the matter. The petitioner then approached School Tribunal, Nashik Region, Nashik by filing an appeal along with Misc. Application No.38 of 2014 for condonation of delay caused in preferring the appeal. The Presiding Officer, School Tribunal, Nashik vide impugned order dated 24th November, 2015 has framed two points for determination, namely (1) whether the petitioner has satisfactorily explained delay and (2) Whether the petitioner is entitled for the relief as claimed for. The Tribunal answered both the points against the petitioner. Thus, the present petition.

7. While questioning the order of the Tribunal dated 24th November, 2015, which is impugned in the petition, Mr Temak, learned Counsel appearing on behalf of the petitioner, based on the aforesaid chronology of facts would urge that there is hardly any delay in preferring the appeal. According to him, the Tribunal has lost sight of the aforesaid events as the

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petitioner was relegated from one authority to another for redressal of his grievance, for which he cannot be blamed.

8. According to Mr Temak, the petitioner, who was a confirmed employee is kept out of service for last about 17 years for no fault on his part and as such, the matter needs to be considered afresh.

9. Per contra, Mr Deshmukh, learned Counsel appearing on behalf of respondents no.4 to 6 and learned A.G.P. on behalf of respondents no.1 & 2 opposed the claim on the ground that the petitioner should have filed appropriate proceedings before the Tribunal and not before other Courts/authorities. According to them, dismissal of the appeal of the petitioner is just and proper.

10. It is not in dispute that the petitioner was a confirmed employee who was declared surplus on 6th June, 2001, after he had put into more than 8 years of continuous service. Pursuant to the legal remedy available to the petitioner against his oral termination, he was required to approach School Tribunal, Additional Commissioner, Tribal Development, this Court and again before the Additional Commissioner, Tribal Development. At last he was relegated to the School Tribunal by the order of the Division Bench of this Court passed in Writ Petition No.9227 of 2012. The chronology of facts as aforesaid depicts that the petitioner cannot be blamed to be responsible for the alleged delay, if any, caused in preferring the appeal in question.

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11. In the aforesaid background, the finding recorded by the School Tribunal rejecting the claim of the petitioner for condonation of delay is without considering the aforesaid reasons.

12. For the foregoing observations, in my opinion, the delay caused in preferring the appeal by the present petitioner deserves to be condoned and is accordingly condoned.

13. In the aforesaid background, in my opinion, it will be appropriate to set aside the order of the School Tribunal negating the claim of the petitioner on merits, particularly as to whether he is entitled for reinstatement that too with full back wages. In view of the order of condonation of delay made by this Court, in my opinion, the Tribunal is required to reconsider the entire gamut afresh particularly in the backdrop of the fact as to whether the petitioner could be blamed for termination of his service and if not, whether he is entitled for back wages along with an order of reinstatement.

14. In the light of what has been stated herein above, I pass following order :-

The order dated 24th November, 2015, passed by Presiding Officer, School Tribunal, Nashik Region, Nashik in Misc. Application No.38 of 2014, is hereby quashed and set aside.

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The delay caused in preferring the appeal is ordered to be condoned. Thus, the Tribunal shall decide the appeal preferred by the petitioner, in accordance with law and on merits.

In the aforesaid factual background, the Tribunal shall make every endeavour to decide the appeal of the petitioner as expeditiously as possible and in any case within four months from the date of appearance of the parties.

The parties hereto agree that they shall appear before the Tribunal on 26th September, 2017 and shall file their respective appearances and written notes of arguments with documentary evidence, if any, in support of their claim.

It is clarified that, whether the appeal is against the order of termination, or reduction in rank or oral termination of the petitioner is an issue which shall also be dealt with by the Tribunal, having regard to the respective claims put forth by the parties.

Writ Petition stands allowed in above terms.

(NITIN W. SAMBRE, J.)

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