

Mr. Prashant Bhavake for Petitioner.
Mr. Rajan Pawar, AGP for Respondents No.1 and 2-State.
Mr. Surel S. Shah for Respondents No.3 to 5.

P.C. :

Heard Mr. Bhavake, learned Counsel for petitioner, Mr. Pawar, learned AGP for respondents No.1 and 2-State and Mr. Shah, learned Counsel for respondents No.3 to 5 at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, petitioner has challenged the judgment and order dated 21.04.2014 passed by the learned Presiding Officer, School Tribunal, Kolhapur (for short 'Tribunal') in Miscellaneous Application No.34 of 2013. By that order, the Tribunal rejected the application made by the petitioner for condoning the delay in filing the appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'Act') challenging promotion of respondent No.4 herein (respondent No.2 before the Tribunal) dated 18.04.2010 and promotion of respondent No.5 (respondent No.4 before the Tribunal) dated 01.08.2012.

3. Rule. Learned Counsel for respective respondents waive service.

Having regard to the narrow controversy raised in this Petition and at the

request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Bhavake submitted that petitioner is B.A.,B.Ed. and belongs to S.C. Category. He was appointed as Assistant Teacher on 17.07.1980 in Balasaheb Pawar High School, Udatare run by respondent No.3, Yashwant Shikshan Sanstha. Respondent No.3 is duly registered under the provisions of the Maharashtra Public Trusts Act as also Societies Registration Act, 1860. He submitted that respondent No.3 promoted respondent No.4 on 18.04.2010, who belongs to Special Backward Classes. Respondent No.5 was appointed in the place of one Mr. Bhalerao, who belonged to S.C. Category. He retired from the post of Head Master with effect from 31.05.2012. Respondent No.5 was promoted with effect from 01.08.2012. Mr. Bhavake submitted that appeal was filed on 25.09.2013 challenging promotion of the fourth respondent dated 18.04.2010 and promotion of the fifth respondent dated 01.08.2012. By the impugned order, the Tribunal dismissed the application. He relied upon the decision of the Apex Court in the case of **Londhe Prakash Bhagwan Vs. Dattatraya Eknath Mane, (2013) 10 SCC 627**, and in particular paragraph 9 thereof.

5. Mr. Bhavake submitted that petitioner was making representation to the educational authorities and has made out sufficient cause challenging the promotion of fourth respondent on 18.04.2010. In so far as promotion of the fifth respondent on 01.08.2012 is concerned, the Tribunal did not consider whether appeal filed on 25.09.2013 suffers from delay and laches. In fact, he submitted that no period of limitation is prescribed for filing appeal against the supersession.

6. On the other hand, Mr. Shah supported the impugned order. He submitted that respondent No.4 was promoted on 18.04.2010 and the appeal filed by the petitioner against that order on 25.09.2013 was beyond the period of 3 years and 5 months, which cannot be construed as a reasonable time.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 11, the Tribunal referred to the decision of the Apex Court in **Londhe Prakash Bhagwan** (*supra*). In paragraph 13, the Tribunal has observed thus,

“13) The cause of action arose when the promotion was given by superseding the right of appellant on 18.04.2010 and 01.08.2012 and as there is no provisions of statutory notice have been provided by the MEPS Act, 1977 as unless the notice given and then after the certain laps of period right to sue accrued. In the light of these observations, it cannot be said that appellant had made out the proper explanation for not preferring the accompanied appeal within reasonable time. Particularly, in the light of the ratio laid down in above referred cases of *Shiroai Education Society* and *Londhe Prakash Bhagwan* as relied by the respondents.”

8. In paragraph 9 of **Londhe Prakash Bhagwan** (*supra*), the Apex Court has observed thus,

“9. Even if we assume that no limitation is prescribed in any statute to file an application before the court in that case, can an aggrieved person come before the court at his sweet will at any point of time ? The answer must be in the negative. If no time-limit has been prescribed in a statute to apply before the appropriate forum, in that case, he has to come before the court within a reasonable time. This Court on a number of occasions, while dealing with the matter of similar nature held that where even no limitation has been prescribed, the petition must be filed within a reasonable time. In our considered opinion, the period of 9 years and 11 months, is nothing but an inordinate delay to pursue the remedy of a person and without submitting any cogent reason therefor. The court has no power to condone the same in such

case. (See: Cicily Kallarackal v. Vehicle Factory [2012 (8) SCC 524], State of Orissa v. Mamata Mohanty [2011 (3) SCC 436] and K.R. Mudgal v. R.P. Singh [1986 (4) SCC 531]. In these cases, it has been held that the application should be rejected on the ground of inordinate delay. Furthermore, it is to be noted that appointment of the appellant was within the knowledge of respondent No.1 from day one but he did not take any steps for such a long time.”

9. As noted earlier, as far as the challenge to supersession on account of promotion of respondent No.4 on 18.04.2010, appeal is filed on 25.09.2013, whether the appeal is filed within reasonable time or not will have to be decided by the Tribunal after considering the case made out by the petitioner. A perusal of paragraph 13 of the impugned order does not indicate that the Tribunal has considered the case made out by the petitioner in application for condonation of delay. As far as the challenge to promotion of respondent No.5 on 01.08.2012 is concerned, whether the appeal is barred by limitation is also not properly considered by the Tribunal. Hence, the impugned order deserves to be set aside thereby restoring Miscellaneous Application for deciding the same afresh.

10. In view thereof, Petition succeeds. Impugned order dated 21.04.2014 is set aside. Miscellaneous Application No.34 of 2013 is restored to the file of the Tribunal for deciding it afresh. All contentions of the parties on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)