

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8797 OF 2017

The Secretary/President
Sadhana Education Society Petitioner
Vs.
Prashant Virendra Upadhyay & Others Respondents

AND

WRIT PETITION NO.8798 OF 2017

The Secretary/President
Sadhana Education Society Petitioner
Vs.
Dhirendrakumar Ramnarayan Sharma
& Others Respondents

AND

WRIT PETITION NO.8817 OF 2017

The Secretary/President
Sadhana Education Society Petitioner
Vs.
Udaybhan Lallan Singh & Others Respondents

Mr. Sandeep Mishra for the Petitioner in all petitions.
Ms Jyoti Jadhav, AGP, for the Respondent-State in
all petitions.

CORAM: R.G. KETKAR, J.

DATE : AUGUST 02, 2017

P.C:

1. Not on board. At the request of Mr. Sandeep Mishra, taken up on the production board and called out for admission.

2. By these petitions under Article 227 of the Constitution of India, the petitioner, the Secretary/President, Sadhana Education Society (for short, “the Management”) has challenged orders dated 22-6-2017 passed by the learned Presiding Officer, Additional School Tribunal, Navi Mumbai (for short, “the Tribunal”) in applications for condonation of delay. By these orders, the Tribunal has condoned the delay in filing appeals under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, “the Act”) challenging termination orders passed by the Management. As common questions of law and facts arise in these petitions, the same can conveniently be disposed of by this common order. In order to appreciate the controversy raised in

these petitions, the facts from Writ Petition No.8797 of 2017 are taken into consideration.

3. In support of these petitions Mr. Mishra submitted that respondent No.1 (hereinafter referred to as “the respondent”) has filed an appeal before the Tribunal on 29-3-2017 challenging the oral termination. As there was delay in filing the appeal, he filed an application for condonation of delay. In the application the respondent, however, came up with the case that it is a case of otherwise termination. He further submitted that on 7-3-2017 the respondent along with others made a representation to (1) The Education Officer (Secondary), Zilla Parishad, Thane, (2) The Superintendent, Provident Fund, Thane and (3) The Deputy Director of Education, Mumbai Division, Mumbai. In paragraph 2, the respondent and others contended that they have instituted proceedings challenging their termination and the matter is sub judice. However, appeals were not filed on 7-3-2017 and, therefore, it cannot be said that the matter was sub judice before the Competent Court. In short, Mr. Mishra submitted that the

respondent gave false reason for getting the delay condoned. He submitted that though the respondent claims that there is delay of 54 days caused in filing the appeal, the delay is of more than 80 days. Having regard to the enormous delay in filing the appeal, the Tribunal was not justified in condoning the delay. In support of this submission, he relied upon the decision of the Apex Court in the case of **Ramlal and others Vs. Rewa Coalfields Ltd.**, AIR 1962 SC 361.

4. I have considered the submissions advanced by Mr. Mishra. I have also perused the materials on record. In the application for condonation of delay as also in the appeal, the respondent has contended that his services are terminated on 4-1-2017. The appeal is filed on 29-3-2017. In the application for condonation of delay it is stated that there is delay of 54 days in filing the appeal.

5. Section 9(2) of the Act prescribes a period of thirty days for preferring an appeal from the date of receipt of the order of dismissal, removal, other wise termination of service or

reduction in rank, as the case may be. The respondent came up with the case that his services were terminated on 4-1-2017 and the appeal is filed on 29-3-2017.

6. In view thereof, it cannot be said that there was delay of more than 80 days in filing the appeal. A perusal of the reply also does not indicate that the Management has contended that the delay is not of 54 days but more than 80 days. The Tribunal, therefore, proceeded on the premise that there was a delay of 54 days in filing the appeal and it cannot be said to be an inordinate delay.

7. Mr. Mishra relied upon the decision in the case of **Ramlal** (supra). In the case of **State of Nagaland Vs. Lipok Ao & Ors.**, (2005) 3 SCC 752, it is held that what counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. The expression “sufficient cause” should be considered with pragmatism in a justice oriented approach rather than the technical detection of sufficient cause for

explaining every day's delay. In view thereof, the reliance placed by Mr. Mishra upon the decision of Ramlal (supra) does not advance the case of the petitioner.

8. In the light of the aforesaid discussion, I do not find that the Tribunal committed any error in condoning the delay of 54 days in filing the appeal. The order passed by the Tribunal is purely a discretionary order. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Accordingly, the petitions fail and the same are dismissed. Order accordingly.

(R.G. KETKAR, J.)