IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10673 OF 2017

Ma Jijau Shikshan Prasarak Mandal, Aurangabad
Through its President Shantaram S. Sawla and others … Petitioners
Vs.
The State of Maharashtra and others … Respondents

Mr. Suraj Gothwal for Petitioners.
Mr. S. D. Rayrikar, AGP for Respondent No.1-State.

CORAM : R. G. KETKAR, J.
DATE : OCTOBER 04, 2017

P.C. :

Heard Mr. Gothwal, learned Counsel for petitioners and Mr. Rayrikar, learned AGP for respondent No.1-State at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 18.04.2017 passed by the learned Presiding Officer, School Tribunal, Nashik Region, Nashik (for short 'Tribunal') in Miscellaneous Application No.6 of 2015. By that order, the Tribunal condoned the delay of 7 months in filing Appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'Act') in challenging the otherwise termination order of 16.06.2014.

3. In support of this Petition, Mr. Gothwal submitted that basically, respondent No.2 was not appointed by the petitioners. In other words, he submitted that there is no employer-employee relationship between the parties and consequently, respondent No.2 cannot maintain the appeal. He has invited my attention to the reply dated 19.06.2015 filed by the petitioners opposing the application for condonation of delay.

The Tribunal ought not to have condoned the delay. Apart from this, he submitted that in paragraph 15, the Tribunal observed that the applicant worked in school upto 17.09.2014. She did not produce any documentary evidence to show that after her termination on 16.06.2014, she made any correspondence for allowing her to sign the muster. In other words, he submitted that no sufficient cause is made out for condoning the delay in filing the appeal.

4. I have considered the submissions advanced by Mr. Gothwal. I have also perused the material on record. In paragraph 13, the Tribunal has observed that respondent No.2 had produced photocopies of documents along with exhibit-26. She has produced teaching notes (exhibits 26/1 to 26/3). The said notes have been signed by Head Master of Matoshri I. S. Patil Public School till 16.02.2014. She has also produced copies of the application dated 11.11.2014 (exhibit 26/4) submitted to the concerned authority, which she obtained under the Right to Information Act, 2005. The Tribunal, therefore, observed that while considering the application for condonation of delay, the contention whether respondent No.2 is appointed by the petitioners by following due process of law or not is not required to be gone into. In paragraph 15, the Tribunal dealt with the case of the respondent No.2 that she was not allowed to sign muster from 16.06.2014 although she worked in the school upto 17.09.2014. Even if the period between 16.06.2014 and 17.09.2014 is excluded from consideration, nonetheless, the appeal is instituted in February 2015. In other words, there is delay of 7 months in filing the appeal. The Tribunal has condoned the delay subject to imposition of costs of Rs.3,000/-.

5. In the case of ***State of Nagaland Vs. Lipok AO***, **(2005) 3 SCC 752,** it is held by the Apex Court 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.

6. In view thereof and having regard to the fact that there is a delay of 7 months in filing the appeal and Tribunal has condoned the delay, no case is made out for invocation of powers under Article 227 of the Constitution of India for interfering with the discretionary order. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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