

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## APPELLATE SIDE CIVIL JURISDICTION

## WRIT PETITION NO. 11341 OF 2017

|                                       |     |             |
|---------------------------------------|-----|-------------|
| Prof. Krishnamurthy Shiva Iyer        | ... | Petitioner  |
| Versus                                |     |             |
| Keraleeya Samajam (Regd.) Dombivali's |     |             |
| Model College and others              | ... | Respondents |

Mr. Sandeep B. Naik for the Petitioner.

Mr. M.V. Joglekar instructed by Mr. Rahul Oak for the Respondent No.1.

**CORAM: S.J. KATHAWALLA, J.**

**DATED : 6<sup>th</sup> DECEMBER, 2017**

P.C.:

1. By the above Writ Petition, the Petitioner has challenged the order dated 28<sup>th</sup> June, 2017 passed by the Presiding Officer, Mumbai University and College Tribunal in Miscellaneous Application No.2 of 2017 on the ground that the Petitioner has failed to give and establish a convincing and plausible explanation for the delay caused in filing the Appeal.

2. The Petitioner was serving in Respondent No.1/Institution as an Assistant Professor. A show cause notice dated 18<sup>th</sup> January, 2016 and thereafter, a charge-sheet dated 17<sup>th</sup> February, 2016 setting out the charges against the Petitioner was served on him by Respondent No.1. Thereafter, Respondent No.1 conducted an Inquiry. The Petitioner failed to participate in the said inquiry. As a result, the enquiry officer was constrained to conduct and conclude the inquiry ex-parte. The Inquiry Officer submitted his report dated 10<sup>th</sup> September, 2016, and copy thereof was sent to the Petitioner by Registered Post A.D. on 5<sup>th</sup> October, 2016 which was received by the Petitioner. However, the Petitioner failed to reply thereto and thereafter, the

Governing Council perused the past service record of the Petitioner and thereafter, awarded the punishment of dismissal from the employment with Respondent No.1/Institution on 1<sup>st</sup> November, 2016. The Petitioner filed an Appeal before the Mumbai University and College Tribunal only on 10<sup>th</sup> April, 2017 and alongwith the said Appeal an application was filed seeking condonation of delay of 173 days (131 days according to the Presiding Officer) for the reasons set out by him.

3. The first ground / reason given by the Petitioner for the delay in filing the Appeal was that he was very much disturbed with the words and language used by the respondent No.1 in the process of dismissal and therefore, he sent notices to the concerned Respondents and waited for the reply from the said Respondents, and this needed some time to discuss and decide to go and file an Appeal. The Learned Presiding Officer has in his order pointed out that the Petitioner has failed to point out from the proceedings, the words and language allegedly used by Respondent No.1 in the process of dismissal which disturbed the Petitioner and the Petitioner has also failed to provide particulars and copies of the said alleged notices sent to the Respondents and has not pointed out for how much period he waited for the reply from the Respondents. The Petitioner has neither spelt out the time required to discuss, nor has he specified the time which was consumed to take decision to file the appeal. The Learned Presiding Officer therefore, correctly held that the first ground/reason put forth by the Petitioner is vague and devoid of particulars and the same is rejected.

4. The second ground/reason advanced by the Petitioner is that he is a “*Trustee on various social activities and solving the problems of the people for the social cause such as Criminal Trespass in his own society, filing complaint and fight the same on behalf of entire society at the costs of his own money and spends valuable time on it*”. He also conducted a Marathon in Dombivli on 19.02.2017, which consumed time. The Learned Presiding Officer has pointed out that the Petitioner has not specified in how many Trusts he is a Trustee and has also not given the names of the Trusts on which he is a Trustee, and the particulars of the social work for which he was required to consume his valuable time as Trustee. The Learned Presiding Officer has also observed that even assuming for the sake of argument that the Petitioner organized a Marathon race in Dombivli on 19.02.2017, then the question that arises is what prevented the Petitioner from 1<sup>st</sup> November, 2016 upto 18<sup>th</sup> February, 2017 and also from 20<sup>th</sup> February, 2017 upto 10<sup>th</sup> April, 2017 to prefer the Appeal prior to 10<sup>th</sup> April, 2017. The Learned Presiding Officer further observed that no particulars have been put forth by the Petitioner to show the time consumed in organizing the said Marathon race. The Petitioner has also not produced any documentary evidence to substantiate his contention that his time was consumed in social activities and also in organizing the Marathon race on 19<sup>th</sup> February, 2017. The Learned Presiding Officer therefore, correctly rejected the second ground/reason put forth by the Petitioner seeking condonation of delay.

5. The third and the last ground/reason advanced by the Petitioner was that he was not well for some time, due to the burden of work and mental stress during the

said period. The Learned Presiding officer has observed that the Petitioner has not given any dates / specific period, during which he was not well. Moreover, the Petitioner also failed to produce any medical certificate to substantiate the said contention. Hence, the said ground/reason put forth by the Petitioner is also correctly rejected by the Learned Presiding Officer.

6. The Advocate for the Petitioner also relied on the decisions of the Hon'ble Supreme Court in the case of *Collector Land Acquisition Anantnag and others vs. Mst. Katiji and others*, AIR 1987 SC 1353 (Jammu and Kashmir), wherein it is held that "Every day's delay must be explained does not mean that a pedantic approach should be made", and has also relied on the decision of the Hon'ble Supreme Court in the case of *N. Balakrishnan v/s. M. Krishnamurthy*, 1998 AIR (SC) 3222 (Madras), wherein the Hon'ble Supreme Court has observed that :

*"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory."*

7. In the present case, the Learned Presiding Officer has correctly held that no satisfactory explanation has been advanced/put forth by the Petitioner to explain the delay in filing the Appeal before the Tribunal.

8. Since the Petitioner was present in Court, I enquired from him that if he had

the time and good health to conduct social activities and also a Marathon in February 2017, why he has not used that time in filing an Appeal. However, the Petitioner had no answer to the same. I am therefore of the view that the order passed by the Learned Presiding Officer needs no interference under Articles 226 and 227 of the Constitution of India and the above Writ Petition is dismissed.

**( S.J.KATHAWALLA, J. )**