

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Date of Decision: 14th July, 2017**

% **LPA No.470/2017**

SHARDA DEVI SANSKRIT VIDYAPEETH Petitioner
Through: Mr.Sunny Choudhary with
Mr.Abhimanyu Singh,
Advocates

Versus

SHRI GANESH RAM BHATT & ANR.Respondents
Through: Mr.Sanjeev Ralli with
Mr.Prabhav Ralli, Advocates
for Caveator.
Mr.Santosh K. Tripathi, ASC
with Mr.Rizwan, Advocate for
R-2/Director of Education.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

CM No.24392/2017

1. Exemption allowed, subject to just exceptions.

CM No.24391/2017 (for condonation of delay)

2. This application has been filed by the appellant seeking
condonation of 29 days delay in filing the present Letters Patent
Appeal.

3. For the reasons stated in the application, the same is allowed. Delay in filing the Letters Patent Appeal is, hereby, condoned.

This application is disposed of.

LPA No.470/2017

4. The appellant has preferred the present Letters Patent Appeal to assail the judgment dated 8th May, 2017 rendered by the learned Single Judge in Writ Petition (C) No.6581/2016. The learned Single Judge has allowed the said writ petition preferred by the respondent herein and set aside the order dated 4th April, 2016 passed by the learned Delhi School Tribunal in Appeal No.17/2015 whereby the respondent's application to seek condonation of 430 days delay in filing the statutory appeal against his dismissal from service, had been dismissed. The respondent was serving as the Principal of the appellant School. He was sought to be suspended initially. Since the suspension was not approved by the Director of Education, the respondent contended that he was entitled to be reinstated in service. On the aforesaid aspect, he preferred a writ petition being Writ Petition (C) No.7255/2011. The writ petition was

filed on or about 12th September, 2011. The operative part of the appellant's prayers reads as under:-

“a) Issue a writ of mandamus or any other appropriate writ order of direction thereby directing the respondent no.1 to enforce the statutory provisions of the Delhi School Education Act and the rules made there under and take appropriate action in accordance with law as envisaged under section 24 of the Act, against the respondent no.2 in view of the violations of the act and the rules brought to their notice by the petitioner and also to protect the petitioner from illegal and arbitrary action of the respondent no.2 of not allowing him to resume and discharge his duties as principal/head of the school.

b) Issue a writ of probation or any other appropriate writ order or direction thereby restraining the respondents from removing/terminating the service of the petitioner except in accordance with law.

c) Issue a writ of mandamus or any other appropriate writ order or direction thereby directing the respondents to immediately allow the petitioner to attend the service and accordingly letting him to perform and discharge his duties as principle/head of the school. Consequently further direct the respondents to pay the petitioner his entire unpaid salary and allowances and further pay

the petitioner regular salary and allowances admissible to him month by month in accordance with law.”

5. It can be seen from the record that during the pendency of the writ petition, the appellant sought to dismiss the respondent from service, after obtaining approval of the Director of Education on 10th October, 2013. The learned Single Judge of this Court decided the writ petition on 11th July, 2014. During the pendency of the dismissal/removal from service, vide order dated 31st October, 2013, the learned Single Judge required the placing of the order on issue on record in the writ proceedings.

6. The learned Single Judge held that the period of suspension having elapsed at the end of fifteen days, failure on the part of the Director of Education to communicate a decision within the stipulated period could not be interpreted to mean that the respondent would automatically remain under suspension till further orders.

7. Consequently, the order of suspension dated 28th April, 2011 was held to have died its natural death at the end of fifteen days w.e.f. 30th April, 2011. The appellant herein was directed

to pay to the respondent his unpaid salary and allowances as admissible w.e.f. 15th May, 2011.

8. The respondent was aggrieved by the said order of the learned Single Judge, since the respondent was not permitted to challenge the order of dismissal, which had been passed during the pendency before the Delhi School Tribunal. Consequently, the respondent preferred LPA No.108 of 2015 which was disposed of by the Division Bench on 27th February, 2015. The Division Bench held that there was no question of the learned Single Judge, considering any request by the respondent, to permit him to challenge the order of a removal from service since a statutory right was vested in him under Section 8 of the Delhi School Education Act to challenge his removal before the Tribunal. The respondent had even contended before the Division Bench that he remained under a wrong impression, that till the writ petition filed by him questioning his suspension was decided by learned Single Judge, he could not file an appeal before the Tribunal. The Division Bench observed that since the respondent was holding the position of a Principal and

he was discharging executive functions as the Principal of the School, he should have understood the difference between an order of suspension and order of removal. The Division Bench observed in para 9 as follows:-

“9. Be that as it may, it would be for the Tribunal to decide whether delay in filing the appeal challenging the order removing appellant from service needs to be condoned or not and for which the sufficiency of the cause projected by the appellant would be considered with reference to the cause shown.”

9. After the disposal of the aforesaid LPA, the respondent preferred the statutory appeal against his removal with an application to seek condonation of 430 days delay but the Tribunal rejected the said application and consequently, the respondent preferred the writ petition which has been allowed by the learned Single Judge by the impugned judgment dated 8th May, 2017. A perusal of the impugned judgment shows that the learned Single Judge has taken note of several decisions of the Supreme Court dealing with the principles to be applied and the approach to be adopted by the court while dealing with the application seeking condonation of delay in such like

circumstances including the decision in *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Ors.* in Civil Appeal Nos.8183-8184/2013 decided on 13th September, 2013.

10. The submission of learned counsel for the appellant is that the learned Single Judge failed to appreciate that the present case was the case of gross delay in filing of the statutory appeal and it was not a case of only some delay. He submits that the Division Bench in the earlier LPA had already rejected the ground taken by the respondent in not preferring the statutory appeal during the pendency of the writ petition and the LPA and in the face of the said order, the Tribunal was justified in rejecting the application seeking condonation of delay. No other explanation has been furnished by the respondent apart from claiming that his writ petition and thereafter the LPA was pending. However, it may be noted, the said writ petition and LPA related only to the issue of his suspension and not to the issue of removal from service.

11. We have perused the record including the impugned judgment and heard the submissions of learned counsels and having considered the matter, we find no error in the impugned judgment.

12. We have deliberately extracted hereinabove the prayers made by the respondent in his earlier writ petition i.e. WP (C) No. 7255/2011. No doubt, the cause of action for preferring the said writ petition was the refusal of the appellant-School to take back the respondent in service despite expiry of the period of fifteen days from the date of suspension even though the approval of the Director of Education has not been obtained. However, in the said writ petition, the respondent had also sought protection of the Court from illegal and arbitrary action of the respondent no.2 in not allowing him to resume and discharge his duty as Principal/Head of the School and “to seek issuance of a writ of probation or any other appropriate writ order or direction thereby restraining the respondents from removing/terminating the service of the petitioner except in accordance with law.”

13. It cannot be ruled out that the respondent may have been reeling under the impression that his removal from service was also an aspect, which he would be entitled to urge when the writ petition is heard by the learned Single Judge. This belief of the respondent may have been further fortified by the fact that the learned Single Judge vide order dated 31st October, 2013 required placing on record of the order of the disciplinary authority removing the respondent from service.

14. No doubt, the respondent was not correct in his thinking that in the earlier writ proceedings, he could assail the order of removal from service which had come into existence after the filing of the first writ petition. It is for this reason that the Division Bench held that the respondent was not correct in his thinking that the order of removal could be assailed in the writ proceedings or in the appeal or in the Letters Patent Appeal. However, the Division Bench did not say that the respondent actually did not entertain such a belief. It is for this reason that in para 9 of its decision dated 27th February, 2015, the Division

Bench inter alia observed “Be that as it may, it would be for the Tribunal to decide whether delay in filing the appeal”

15. Even otherwise, we find that the judgment rendered by the learned Single Judge is in accordance with justice. The respondent having been removed from service, has no other remedy except to prefer statutory appeal before the Delhi School Tribunal. That valuable right cannot be allowed to be defeated on mere technicality. The respondent has nothing to gain by making delay in filing the statutory appeal. Therefore, the said delay in this case cannot be treated as a calculated delay. It is not even the appellant’s case that the power to condone the delay did not vest with the Tribunal.

16. In the aforesaid circumstances, we find no merit in this appeal which is hereby dismissed.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

JULY 14, 2017/aa