

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.121 OF 2017
(The Mahatma Phule Education Society, Jintur Road, Parbhani and
another Vs. Babu S/o Nagappa Phulari and others)
WITH REVIEW APPLICATION NO.22 OF 2017
IN WRIT PETITION NO.2084 OF 2017

Mr.V.D.Gunale, Advocate for the applicants.
Mr.M.V.Ghatge, Advocate for the respondent

(CORAM : Ravindra V.Ghuge, J.)
DATE : 20/06/2018

PER COURT :

1. The first review application is filed by the Management / Original respondent Nos. 1 and 2 in WP No.2084/2017. The second review application is filed by the original applicant who is the appellant before the School Tribunal.

2. I have heard Mr.Gunale, learned Advocate for the Management and Mr.Ghatge, learned Advocate for the appellant/employee at length.

3. The contention of the Management is that it did not participate in the hearing of the writ petition before this Court on 09/03/2017. The appellant was the petitioner who was praying for condonation of delay of 10 months and 25 days caused in filing the appeal before the Tribunal. The Management apologizes for having not participated in

the hearing of the writ petition though it was served and opportunities to appear in the matter were granted. It is, however, contended that the Management has a good case to demonstrate that the delay caused by the appellant in filing the appeal could not be condoned. There are several documents on record which would indicate that the appellant was aware about the domestic enquiry being conducted against him under the M.E.P.S. Rules. He was aware of his dismissal from service dated 30/04/2014. He wasted his time in approaching the Education Officer to exert pressure on the Management so as to facilitate his reinstatement in service.

4. The Hon'ble Apex court in Lily Thomas Vs. Union of India, [AIR 2000 SC 1650] has concluded that a review application hearing is not in the form of a re-hearing of the writ petition. Unless an error apparent on the face of the order is pointed out, a review application need not be entertained.

5. There is no dispute that the delay is of only 10 months and 25 days. It is equally undisputed that if the delay is not condoned, the applicant / teacher would never be able to challenge his dismissal from service which, according to him, has occurred on account of a departmental enquiry conducted surreptitiously by the management by

creating documents to suggest that the employee was aware of the enquiry. The doors of the Court would be permanently closed on such a litigant and he would never have the opportunity of establishing a case of illegal dismissal. It is a matter of his survival and his endeavour to establish that his dismissal is unsustainable, would never be entertained by any Court if the delay is not condoned.

6. This Court has relied upon the view taken by the Hon'ble Apex Court in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] and in the matter of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [2013(12) SCC 649]. I do not find that the view taken by this Court to ensure that the ends of justice are met by condoning the delay of 10 months and 25 days by depriving the appellant of all monetary benefits, except continuity of service, for the period of delay so as to balance the equities, can be said to be erroneous. Even if it is accepted in view of the contention of the Management that the reasons cited are not strong enough to support condonation, it cannot be ignored that the delay is not inordinate and the employee would be deprived of an opportunity to seek justice from the Court. On these premises, the delay deserved to be condoned.

7. Considering the above, the review application filed by the management is rejected.

8. In so far as the review application filed by the employee is concerned, it appears that as the said employee claimed to be ignorant about an enquiry which was allegedly conducted surreptitiously, he was approaching the Education Officer with the request that the Management is orally keeping him out of employment. After several rounds to the office of the Education Officer, it was finally revealed that the Management had already issued the order of termination and the Education Officer was helpless. On these premises, learned Advocate for the appellant contends that Section 9(3) r/w Section 11(1)(c) would entitle the employee to seek wages or monetary benefits even for the period of delay, if it can be established that the delay was caused on account of circumstances which were beyond the control of the employee.

9. Though I find that the submissions of the learned Advocate on behalf of the employee are appreciable, it cannot be ignored that the equities were balanced by depriving the appellant of the monetary benefits for the period of delay, rather than permitting the litigation to be prolonged in this Court. In fact, by depriving the appellant of the

back wages for the period of delay in the event he succeeds before the School Tribunal, this Court has reduced the financial burden on the Management which seems to be eager to litigate only on the point of condonation of delay and prolong the matter which is apparent from the review application filed before this Court. I find that one limb of the litigation has been put to rest by depriving the employee of monetary benefits for the period of delay caused. The Tribunal can decide the appeal expeditiously keeping in view that the appellant has been dismissed from service in April 2014.

10. Considering the above, I do not find that the order sought to be reviewed by the appellant suffers from any error apparent on the face of the order. The second application filed by the employee is, therefore, rejected.

11. It is informed by the litigating sides that the Tribunal would be hearing the learned Advocates for the litigating sides, finally on the merits of the appeal. It is, therefore, expected that these litigating sides would refrain from seeking any adjournment and would canvass their oral submissions and also submit written notes if advised, on 06/07/2018 without seeking an adjournment.

(Ravindra V.Ghuge, J.)