

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13766 OF 2017

ABDUL JABBAR ABDUL GAFOOR AND OTHERS
VERSUS
AKBAR KHAN MUSTAFA KHAN AND ANOTHER

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Advocate for the Petitioners : Shri Deshmukh Rajendra S..

Advocate for Respondent 1 : Mrs.Ansari A.N..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th June, 2018

Per Court:

1 The Petitioners, who are representing the group that claims to be the governing body of the Educational Society in which, Respondent No.1, original Appellant before the School Tribunal, was working, are aggrieved by the order dated 14.09.2017 passed by the School Tribunal, Latur. Miscellaneous Application No.16/2016 filed by Respondent No.1/ Appellant for seeking condonation of delay of 15 months and 26 days in filing the appeal before the School Tribunal, has been allowed on costs of Rs.7000/-.

2 I have considered the strenuous submissions of the learned Advocates for the Petitioners and Respondent No.1/ Appellant and I have gone through the 10 grounds formulated by the Petitioners in the memo

of the petition.

3 Since Respondent No.2 is not the contesting party in this petition, the Petitioners seek leave to delete Respondent No.2. Deletion is permitted at the risk of the Petitioners and be carried out forthwith.

4 The case of the Appellant is that there are two factions in Arbab Arab Education Society, Nanded and each group claims to be the governing body. The Appellant was suspended on 30.08.2014.

5 It is the case of the Management that a departmental enquiry was initiated under the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and finally, by order dated 06.03.2015, the Appellant was dismissed from service by way of punishment. The copy of the punishment order was offered and the Appellant refused to accept it.

6 The Appellant approached this Court in Writ Petition No.12111/2015 for challenging his order of suspension. The Management appeared in the matter and informed the learned Division Bench that the Appellant was already dismissed from service by way of punishment on 06.03.2015. The said Writ Petition was, therefore, disposed of by order dated 09.06.2016 recording that if the Appellant desires to file an appeal before the School Tribunal, time spent in prosecuting the writ petition can be considered for condonation of delay.

7 The Management has come forward with the case that due

procedure as is prescribed in law, was followed and the departmental enquiry was conducted. The Management has the entire record of the enquiry, which would demonstrate that the Appellant was aware of the disciplinary proceedings. As the Appellant had refused to accept the order of dismissal, the Management has resorted to paper publication in daily "Godateer Samachar" dated 10.06.2015 with regard to the removal of the Appellant from service. In this backdrop, it is contended that the Appellant was made aware by publishing the public notice in a largely circulated newspaper in Nanded region and he was made aware of his dismissal. He had filed his Writ Petition on 16.11.2015 challenging the suspension order only by way of a pretence that he was not aware that he has been dismissed.

8 The Appellant contends that he derives no advantage by turning a blind eye to his dismissal and spending time in this Court for challenging the suspension. He is a teacher and is aware that if he is dismissed from service, it is futile to challenge the suspension and his interest lies in challenging his dismissal without wasting time as he would lose his monthly salary if he spends time in futility.

9 The Honourable Supreme Court has crystallized the law on the condonation of delay in the matters of *Collector, Land Acquisition, Anantnag v/s Mst.Katiji*, **AIR 1987 SC 1353** and *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*, **(2013) 12 SCC**

649). In Esha Bhattacharjee (supra), the Honourable Supreme Court has laid down certain principles, which have to be considered while adjudicating upon the application for condonation of delay.

10 In my view, while dealing with the application for condonation of delay, it has to be seen whether, the Applicant derives any advantage by delaying the matter or whether, ulterior motives or oblique motives are attributable to his conduct. If the Applicant does not derive any advantage by causing delay and in fact, is likely to jeopardize his case by the delay caused, the background in which the delay has occurred will have to be scrutinized. It also needs to be seen as to whether, the refusal to condone the delay would render the Applicant remedy-less and he would never be able to pose any challenge and demand justice against an unjust cause of action.

11 It, however, cannot be ignored that the publication of a public notice is taken to be the best method of serving a litigant. Respondent No.1/Appellant himself submits in his application for condonation of delay that after he realized that the Management has published the notice in daily "Godateer Samachar" as per this stand taken before the learned Division Bench, he tried to search for the copy of the said publication and could not locate it. The Management rightly submits that after publishing the notice in a largely circulated newspaper, there is no other way of serving the Appellant with the dismissal order or intimating him of the

dismissal. His refusal to accept the dismissal order compelled the Management to publish the notice.

12 It needs mention that the Appellant would be drawing a hefty salary in view of the 6th pay commission's recommendations, if so made applicable at the time of his dismissal. If he finally succeeds before the School Tribunal and is awarded full back wages or 50% back wages or any quantum of back wages, the Management will be financially burdened. Equities can, therefore, be balanced by depriving the Appellant of monetary benefits for the period of delay.

13 The record reveals that after the publication of the public notice on 10.06.2015, the Appellant approached this Court in November, 2015. Even after the petition was disposed of on 09.06.2016, the Appellant preferred his appeal on 02.08.2016. In this backdrop, the School Tribunal should have deprived the Appellant of the monetary benefits for the period of delay from 11.06.2015 till 01.08.2016, when the appeal was preferred.

14 Considering the above, this Writ Petition is partly allowed. Clause (1) of the impugned order of the School Tribunal stands modified. Instead of costs of Rs.7000/-, Respondent No.1 herein, Appellant before the School Tribunal, would be deprived of monetary benefits for the period from 11.06.2015 till 01.08.2016 in the event he succeeds in his challenge before the School Tribunal and is granted reinstatement with

continuity and any quantum of back wages.

15 Needless to state, in view of this order, that if costs of Rs.7000/- are already deposited by the Appellant in the School Tribunal, the Appellant would be at liberty to withdraw the said amount.

kps

(RAVINDRA V. GHUGE, J.)