

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.170 of 2017**

Smt. Deudita Rose Fernandes E
Travassom w/o Mr. John Travasso,
Indian National, Aged 35 years,
Computer Teacher, R/o House No.
804/B, Batora, Curtorim, Salcete-
Goa. .. Petitioner

Vs.

1. The Chairman
St. Theresa Convent High School
Ganapoga, Raia, Salcete- Goa
2. The Manager
St. Theresa Convent High School
Ganapoga, Raia, Salcete-Goa
3. The Headmistress
St. Theresa Convent High School
Ganapoga, Raia, Salcete-Goa
4. The Directorate of Education
Directorate of Education
Porvorim, Bardez-Goa .. Respondents.

Shri J. P. Supekar, Advocate for the petitioners.

Shri A. V. Nasnodkar, Advocate for the respondent nos.1 to 3.

CORAM :- C. V. BHADANG, J.

DATE:- 9th March, 2018

ORAL JUDGMENT :

The challenge in this petition is to the judgment and order dated 10/01/2017, passed by the Administrative Tribunal in Education Appeal No.5/2016. By the impugned judgment, the

appeal filed by the petitioner has been dismissed, as being barred by limitation.

2. The brief facts are that the petitioner was working as a Computer Teacher, with the St. Thereza Convent High School, Ganapoga, Salcete, Goa and while she was on probation, her services came to be terminated by an order dated 01/01/2016. According to the petitioner, a copy of the order of termination was never supplied to her. On the contrary, it is contended on behalf of the respondent nos.1 to 3 that a copy of the order was tendered to the petitioner on 02/01/2016 in the presence of the respondent no.3 and three other teachers. It is contended that the petitioner accepted and read the contents and left the school. After some time, she came back with the copy of the order and kept it on the table of the respondent no.3. It is further contended that the order was also sent by Registered Post A. D. at 01/01/2016 on the residential address of the petitioner/ appellant. However, the registered envelope came back with a postal remark that 'the party has left and hence, returned to sender.' According to the respondent nos.1 to 3, there is a deliberate evasion on the part of the petitioner to accept the order of termination. Be that as it may, the record discloses that the petitioner sought to challenge the order before the Director of Education and pursued the matter from 05/01/2016 to 14/06/2016. Indisputably, during this period, a copy of the order was properly furnished to the petitioner on

03/06/2016. On 14/06/2016, the petitioner was asked to approach the Administrative Tribunal by way of an appeal under Section 22 of the Goa, Daman and Diu School Education Act, 1984 (the Act, for short), which prescribes a period of 30 days, for filing the appeal, from the date of communication of the order. According to the petitioner, the period for filing of the appeal expired on 03/07/2016 in as much as the copy of the order was served on the petitioner on 03/06/2016. The appeal came to be filed on 04/03/2016 as 03/07/2016 was a Sunday. A perusal of the appeal memo and in particular, paragraphs 21 and 22 show that the petitioner tried to explain this to the Administrative Tribunal. Not only that the petitioner also prayed in prayer clause (c) that the delay, if any, in filing the appeal be condoned.

3. The Tribunal, however, by the impugned order came to the conclusion that the petitioner has neither filed an application for condonation of delay nor has explained the delay in the appeal memo and in that view of the matter, has dismissed the appeal as being barred by limitation.

4. I have heard Shri Supekar, the learned Counsel the petitioner and Shri Nasnodkar, the learned Counsel for the respondent nos.1 to 3. With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned judgment passed by the Administrative Tribunal.

5. On hearing the learned Counsel for the parties and on perusal of the record, I do find that the appeal filed by the petitioner, requires to be heard on its own merits. As noticed above, according to the petitioner, copy of the termination order was not supplied till 03/06/2016 and reckoned from that date, the appeal would be within limitation as 03/07/2016 was a holiday, being Sunday. Subsection (2) of Section 22 of the Act provides that the appeal shall be preferred within 30 days from the date of the 'communication of the order.' Thus, if the date of communication is reckoned as 03/06/2016, the appeal would be within limitation. The respondents have disputed that the copy of the order was not supplied to the petitioner and claimed that a copy was furnished to the petitioner on 02/01/2016. However, the fact remains that there is no copy produced containing an acknowledgment of the petitioner of having received the copy of the order on 02/01/2016 and on their own saying, according to the respondent nos.1 to 3, even the copy of the order sent by registered post, was returned back with the remark that the addressee has left. Thus, it is not the case made out that the copy, when sent by the registered post, was unclaimed or was refused to be accepted. The learned Counsel for the respondent nos.1 to 3 submitted that another copy sent by registered post, was returned as 'refused'. The learned Counsel has referred to a copy of the registered envelope produced at page 125 of the compilation.

However, a perusal of the said document shows that it is dated 14/12/2015, which evidently cannot be in respect of the order of termination, which is dated 01/01/2016. Even assuming that the copy was tendered to the petitioner on 02/01/2016, it does appear that the petitioner was prosecuting a challenge before the learned Director of Education from 05/01/2016 to 14/06/2016 and during this period, the copy of the order was supplied to the petitioner on 03/06/2016. It is trite that under Section 14 of the Limitation Act, the period spent by a party in *bonafide* prosecuting a remedy before a wrong forum, is liable to be excluded. Looking at from that angle also and the period, which would stand excluded, the appeal would be within limitation. It is now well settled that normally, the Court would lean in favour of the matter being decided on merits than on technicality. The Court has to take a pragmatic view while considering the prayer for condonation of delay. It is only in cases of gross delay and laches that the Court can take a strict view as held by the Supreme Court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others***; (2013) 12 SCC 649. In the matter, where the delay is of small duration, the Court can take a liberal view.

6. The learned Tribunal has found that the petitioner has neither tried to explain the delay in the appeal memo, which is not

correct. A bare perusal of the appeal memo shows that the delay was tried to be explained and not only that there is a specific prayer made for condonation of delay, if any. Considering the overall circumstances, I find that the impugned order cannot be sustained. Consequently, the same is set aside. The Education Appeal No.5/2016 is restored to the file of the learned Administrative Tribunal, Goa, for disposal on merits, in accordance with law.

7. Parties to appear before the learned Administrative Tribunal on 02/04/2018 at 10.30 a.m.

8. Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA