

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1646 OF 2018

Mr.Sakharam Manipal Kalshekar

...Petitioner

Vs.

Lalbahadur Shastri Shikshan Prasarak Mandal,
Mumbai & Ors.

...Respondents

Mr.Ankit Kulkarni for Petitioner.

Mr.Shaikh Nasir Masih with Vishal K. Jagwani & Moinuddin Chowdhari for
Respondent Nos.1 and 2.

Mr.J.A. Madane, AGP for Respondent No.3.

CORAM : S.C. GUPTE, J.

DATE : 13 AUGUST 2018

P.C. :

Heard learned Counsel for the parties.

2 This petition challenges an order passed by the School Tribunal at Mumbai on a miscellaneous application for condonation of delay in filing an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules of 1981. The Petitioner was terminated by an intimation dated 9 March 2011, which was admittedly received by him on 19 March 2011. It is the case of the Respondent management that the Petitioner, who was working as a peon in the Respondent college, had unauthorisedly remained absent with effect from 13 May 2006 and it was this absence which resulted in the Respondent management issuing intimation of 9 March 2011. In the application for condonation of delay, the Respondent prays for condoning delay of 3286 days in filing appeal. This purportedly on the basis that he

had applied for a short leave of 2 days on account of Holi festival and went to his native place. It is his case that when he returned to the Respondent's school for resumption of duties on 17 March 2006, the school management did not allow him to resume his duties and it is this action of the school management which was being challenged by him in the appeal proposed to be filed and as a result, he applied for condonation of delay. It is this delay of 3286 days, which was considered by the School Tribunal for condonation.

3 Learned Counsel for the Petitioner contends before this court that since the termination of the Petitioner by a written communication happened on 9 March 2011, and which was received by him on 19 March 2011, the delay is not of 3286 days but 1731 days. Even if he proceeds on the footing that the delay is of 1731 days, there is practically no explanation for this delay. The only explanation by the Petitioner in his miscellaneous application is that “He continuously has been writing to the Respondent school and Education Officer concerning his problems as annexed above but to no avail.” This solitary line and a further reference to it in para 31 that he has been fighting for his rights “as is evident from his letters written to various officers from 2007 to 2014 regarding his grievance”, the Petitioner wanted the School Tribunal to condone an inordinately long delay in approaching the court. The School Tribunal has rightly rejected the Petitioner's misc. application holding that no reasonable excuse is made out for the delay. The Tribunal noted that even after the Petitioner had knowledge of the formal communication of his termination by letter dated 9 March 2011, he did not approach the School Tribunal in appeal. The Tribunal also noted that though the Petitioner claims to have correspondence with the Education Inspector, even the latter's letter of 12

August 2014 clearly informed him that he would have to approach the School Tribunal for redressal of his grievances. Even after this communication, the Petitioner did not do anything till about 14 January 2016. It was on this date, he tendered his misc.application in court. Since there were certain objections to the application, the Petitioner took further time to remove those objections and finally filed the application on 11 April 2016. In the premises, the School Tribunal was of the view that the Applicant was negligent in knocking the doors of the Tribunal and was guilty of deliberate inaction causing inordinate delay and corresponding accrual of invaluable rights in favour of the Respondent. At the hearing of the petition, learned Counsel for the Petitioner submits that his case before the School Tribunal was not that he was continuously writing to the Education officer but that the officers were continuously assuring him that his grievances would be redressed. Apart from the fact that no such case is reflected in the misc.application of the Petitioner, this case is not very different from what is discussed above. Under the MEPS Act and Rules, an employee of a school has 30 days' period for filing of an appeal. On the facts of the case, the School Tribunal's refusal to contend an inordinately long delay of 3286 days (according to the Petitioner's own misc. application) or 1731 days (according to learned Counsel for the Petitioner at the hearing of the present petition), cannot be termed as a perverse conclusion meriting interference at the hands of this court in its jurisdiction under Articles 226 and 227 of the Constitution of India.

4 Learned Counsel for the Petitioner relies on two judgments of the Supreme Court. In **Ram Sumiran vs. D.D.C.**¹, the party before the court was from a rural area. The delay alleged against him was in bringing

1 (1985) 1 SCC 431

on record legal representatives of the deceased respondent. The court took notice of the fact that the appellant was admittedly from rural area and “in a country like ours where there is so much poverty, ignorance and illiteracy, it would not be fair to presume that everyone knows that on death of the respondent, the legal representatives have to be brought on record within a certain time”. In the premises, the court was of the view that ends of justice required that the Appellants' application for bringing legal heirs on record should be granted. These facts have no bearing on the Petitioner's misc.application in the present case. In **N. Balakrishnan vs. M. Krishnamurthy's**², the Supreme Court considered a case where the trial court had accepted the petitioner's explanation and condoned the delay but High Court had allowed the revision and set aside that order. That was a case where an exparte decree was passed. The decree was sought to be set aside by moving an application, which was dismissed for default on 17 February 1993 and the appellant before the court moved for having that order set aside only on 19 August 1995. The application was accompanied by another application for condonation of delay by offering an explanation. In the explanation, the Appellant alleged that he had engaged an advocate for setting aside the exparte decree but the advocate had failed to inform him about the dismissal of the application for default on 17 February 1993. It is only when he received a summons from the execution side on 5 July 1995 that he approached his advocate and thereupon came to know about the dismissal of his application for setting aside the exparte decree. On these facts, the Supreme Court held that the appellant's conduct did not, on the whole, warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much different from what an ordinary litigant would broadly do and that, in the premises, it was not just

2 (1998) 7 SCC 123

or fair to visit him with drastic consequences. Even these facts have no bearing on the present facts. In the present case, the Petitioner was clearly aware of the management's action, which occurred sometime in 2006. He himself claimed to have written several letters to the Education office in respect of this action. The Education office really had no power or authority to redress the Petitioner's grievances in this behalf. In the midst of his approaches to the Education Officer, a formal intimation of his termination was conveyed to him in March 2011. Even thereafter he did not take any step but presumably wrote a few communications to the Education Officer even thereafter. Finally, the Education officer, by a communication, which was addressed on 12 August 2014, informed the Petitioner that he would have to approach the School Tribunal for redressal of his grievances. Even thereafter, for over a year, he did not do anything and finally approached the School Tribunal with a one line explanation of his delay, namely, that he had been continuously writing to the Respondent's school and Education Officer concerning his grievances. This is no explanation for a long delay such as the present.

5 In the premises, there is no infirmity in the impugned order of the School Tribunal. The writ petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)