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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1972 OF 2017

The President, Yashoda Shikshan Sanstha And Anr. ...Petitioners
vs
Shri Dattatray Anandrao Deshmukh And Ors. ...Respondents

.....
Mr. Vaibhav Gaikwad, for the Petitioners.

Mr. Prajakt M. Arjunwadkar, for Respondent No.1.

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

.....
CORAM : S.C. GUPTE, J.

DATED: JULY 23, 2018

P.C. :

. Heard learned Counsel for the parties. This petition challenges an order passed by the School Tribunal at Kolhapur on miscellaneous application made to it for condonation of delay in filing an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The appellant before the School Tribunal was first Respondent teacher. He claimed to be an employee of the Petitioner's School from 9 June 2003. He claimed to have been promoted and appointed as incharge headmaster on and from September 2003. After his continuous service of five years, he was promoted and appointed as headmaster of the school on and from 10 August 2008. The appointment as assistant teacher as well as headmaster of the school has been approved by the Education Officer

(Secondary) of Zilla Parishad, Satara. There was some issue concerning transfer of management of the school and merger of the employees in permanent service of the other trust. At that stage, the Petitioner management had issued a notice of termination to the first Respondent on 29 March 2010 and a fresh appointment letter was sought to be issued. At that stage, the matter was carried by the first Respondent teacher before the civil court by way of a suit. The Petitioners filed a written statement objecting to the jurisdiction of the civil court. The interim application of the first Respondent was rejected on the ground of want of jurisdiction on the part of the civil court to entertain any claim for an injunction prohibiting the school management from allowing the teacher to join duties. The first Respondent thereafter filed the present appeal before the School Tribunal. There was a delay of over five years in the interregnum. That delay was sought to be condoned by the present miscellaneous application in which the impugned order came to be passed.

2. It is apparent from the impugned order of the School Tribunal that the Tribunal has correctly applied the law on the point. The Court essentially proceeded on the basis that though there was a long delay, there was nothing to show that such delay was occasioned deliberately, or on account of culpable negligence or malafides on the part of the appellant. The Court observed that the main reason for the delay was the pendency of the civil suit filed by the appellant before the Civil Judge, Junior Division, Karad, Satara. One of the prayers in that suit was of perpetual injunction against the school management prohibiting the plaintiff from joining the duty. On the plaintiff's interim

application for injunction in the same terms, a preliminary issue was framed by the civil court concerning its jurisdiction to entertain and try the suit for such relief. The Court, by its order dated 28 July 2015, held that it had no jurisdiction to decide any dispute concerning illegal termination of a teacher by the school management and that such a prayer did not lie before the suit court, though the suit could proceed on other claims of the plaintiffs concerning transfer of the school management. The Court noted that a liberal approach had to be adopted in a matter like this and the delay, though accepted by the Court as a long one, had to be condoned. The Court invoked the principle of Section 14 of the Limitation Act. The Court found that the prosecution of the suit was in good faith on the part of the appellant though before a wrong forum. The Court did not go into prima facie merits of the appeal at the stage of condonation of delay. The Court, in the premises, proceeded to condone the delay by keeping the merits of the case open and even saddled the appellant with costs.

3. No infirmity can be found with the impugned order of the School Tribunal. The School Tribunal has acted entirely within its jurisdiction. It has applied established principles of law and taken a view which can certainly be termed as a possible view. Whilst arriving at its conclusion, the School Tribunal has neither disregarded any relevant or material circumstance nor taken into account any irrelevant or non-germane material or circumstance. The order does not accordingly merit any interference in the writ jurisdiction of this Court. In the premises, there is no merit in the petition and the petition is dismissed.

4. It is clarified that observations made in this order are only for the purpose of deciding the writ petition; these observations shall not come in the way of the School Tribunal deciding the appeal on merits in any way.

(S.C. GUPTE, J.)

**Smita Johnson
Gonsalves**

Digitally signed by Smita Johnson
Gonsalves
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