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

WRIT PETITION NO.13219 OF 2017

Hansraj Diwan Patil

.. Petitioner

Vs.

The Chief Executive Officer,

Indian Education Society

& Ors.

.. Respondents

Mr. Sudhir Deshpande a/w Mrs. Swarna P.Munshi for the petitioner.

Mr. A. G. Kothari i/b. Ms. Nandini G. Menon for the respondent nos.1 to 3.

Ms. Vaishali Nimbalkar, AGP, for respondent nos.4 to 7.

CORAM : A.K. MENON, J.

DATED : 22nd JANUARY, 2018.

P.C. :

1. By this writ petition, the petitioner seeks to challenge an order dated 24th August, 2017 passed by the School Tribunal rejecting an application seeking condonation of delay of 915 days.
2. The facts in brief are as follows:- The petitioner has challenged his being superceded by the respondent nos.8 to 16 in an appeal which came to be presented sometime in March 2017. When the appeal was sought to be filed the registry of the tribunal declined to register the appeal on account of delay in approaching the Tribunal. The petitioner filed an application for condonation of delay which he did on or about 10th April, 2017. His application came to be listed on 27th

April, 2017. The applicant sought condonation of delay of 915 days. The number of days of delay has been computed from the date of promotion of one Mrs. More who is respondent no.8. The petitioner has proceeded on the basis that the cause of action arose on that day and that is how he computed a period of 915 days. Mr. Deshpande the learned counsel for the petitioner submitted that the aforesaid application was made without prejudice to his contention that no period of limitation should apply in view of the fact that the Maharashtra Employees Private Schools (Continuous Service) Regulations Act, 1977 does not provide for a period of limitation for any complaint alleging supersession.

3. In support of his case the petitioner has relied on the averment in paragraph 12 of the appeal in which it is submitted that the appellant was bonafide in pursuing his grievance against the respondent nos. 8 and 9 by filing appeal no.31 of 2015 on 31st January, 2015. The appeal came to be dismissed by the School Tribunal on 3rd December, 2016 and since that appeal was pending, the appellant had not filed any appeal in relation to the promotions given to respondent nos.10 to 16. Mr. Deshpande contended that for every instance of supersession the petitioner was not required to file an appeal and that he was entitled to wait till the disposal of Appeal no.31 of 2015. In other words, he seeks exclusion of time on the basis of pendency of Appeal

no.31 of 2015.

4. Mr. Deshpande relied upon the averments in the delay condonation application to the effect that although he is an educated person and a qualified teacher, he is not “legally minded” and hence the delay should be condoned. He has contended that only because there has been illegality and injustice caused to him, he had to resort to litigation and that he has a very strong case on merits and on technical grounds his case should not be rejected. Mr. Deshpande also submitted that under Section 14 of the Limitation Act, 1963 exclusion of time consumed in proceeding bonafide in a court without jurisdiction ought to be excluded. According to him time taken in prosecuting Appeal no. 31 of 2015 should be excluded.
5. Mr. Deshpande further submitted that the respondent nos.1 to 3 had not followed the due procedure of law and they have not displayed any seniority list before granting promotion to respondent nos.8 to 16 and secondly, the vacancies were across 11 institutions which are under the management of respondent no.1. He submitted that in view of these procedural defects also, there was no question of the issue of limitation being held against him.

6. Mr. Deshpande the learned counsel for the petitioner placed reliance on the judgment of ***Union of India v/s. Ram Pal Singh K. & Anr. 2002 I CLR 403*** which quotes observations of the Supreme Court in *Ajaib Singh's case 1999 SCC (L&S) 1054*. He submitted that the petitioner's claim ought not to be rejected on a mere technicality. Reliance was also placed on the observations of the Supreme Court in ***Collector, Land Acquisition, Anantnag v/s. Mst. Katiji AIR 1987 SC 1353*** and the tests laid down to generally ascertain whether there was a reasonable ground for condonation of delay.

7. Mr. Kothari the learned counsel on behalf of the respondent nos.1, 2 and 3 pointed out that the cause of action case sought to be agitated in the present case in which the impugned order came to be passed is different from the cause of action in Appeal no.31 of 2015. In the instant case the relevant post was that of the Head Master as well Assistant Head Master whereas Appeal no.31 of 2015 related to the post of Assistant Head Master. Mr. Kothari pointed out that in Appeal no.31 of 2015 an application for condonation of 65 days delay came to be filed which was allowed. In the said application, delay had been condoned but in the case at hand the petitioner has pleaded vague grounds to seek condonation of delay.

8. Mr. Kothari submitted that in the affidavit in reply, the respondents have annexed a copy of the application for condonation of delay in filing Appeal No.31 of 2015 wherein a specific reference is made (paragraph 4) that the appeal has been filed after the applicant had sought and obtained legal advice before approaching the Court and delay was caused in obtaining legal advice and the ill health of the applicant. It was contended that the petitioner could not file the appeal in time resulting in 65 days delay.
9. Mr. Kothari relied upon the decisions in the case of Narsinh M. Taklikar v/s. Solapur Municipal Corporation 1997 (1) ALL MR 64, Kalpana Lenze v/s. Gurudeo Krushan Dharmik Trust 2008 (3) MLJ 486 and Bina Manohar Dudani v/s. Major Charanjitlal Verma 2007(5) ALL MR 381 in support of the respondents case. In the case of Narsinh Taklikar (supra), Mr. Kothari relied upon the observations in paragraph 13 on the aspect that the party who seeks relief from the High Court in exercise of its equitable jurisdiction under Article 226 of the Constitution of India must make a true and full disclosure of all the relevant facts and no attempt must be made to mislead the Court. In the instant case, the petitioner had not disclosed the fact in the case of respondent nos.8 and 9 and the challenge to the promotions granted to the aforesaid persons had already been decided against him. There

was no occasion to consider this again and that the order had attained finality but by impleading respondent nos.8 and 9 in the present petition, the earlier challenge is sought to be reopened to some extent.

10. In the case of Kalpana Lenze (*supra*), Mr. Kothari relied upon the view taken by the Single Judge of this Court on the aspect of adopting a liberal view on the aspect of limitation and delay. He relied upon paragraph 8 which recorded that limitation for filing an appeal before the School Tribunal was 30 days and that the rationale behind providing a shorter period of limitation is demonstrative of the punctuality required in resorting to challenge in such matters.

11. In yet another case of Dudani (*supra*), Mr. Kothari referred to the observation of this Court that limitation cannot be saved by any correspondence and therefore, in the present case there was no reason whatsoever to entertain the petition since the conduct of the petitioner would not justify condoning the delay.

12. I have heard counsel for the parties at length. In the present condonation of delay application, the statement made by the applicant is that he is not "legally minded". One is therefore led to infer that the applicant was unaware of the legal process. This is clearly belied by the averments in the earlier application. The petitioner himself has stated that he was required to seek legal advice. When one examines

the conduct of the petitioner, it becomes apparent that if the petitioner was bonafide agitating his contentions apropos the promotions granted to the others, there was no reason for him to wait for the disposal of appeal no.31 of 2015 which was in respect of a different post. The allegations apropos the absence of the seniority list have not been canvassed at the material time and pertains to the merits of the case and beyond the scope of the challenge in this petition and hence irrelevant.

13. In paragraph 5 of the application seeking condonation of delay, the petitioner states that he objected the promotion granted to respondent no.8 on 29th September, 2014 and thereafter has regularly objected to the promotions granted to the other respondent nos.9 to 16 on various dates between 10th November, 2014 to 13th July, 2016. However, the petitioner filed the second appeal against all the present respondents only in March 2017. The impugned order has taken into consideration the contentions of the petitioner. The Tribunal came to the conclusion that no case was made out for condonation of delay. This was based on the fact that the delay has not been explained. As correctly pointed out by Mr. Kothari time taken in prosecuting Appeal 31 of 2015 cannot be excluded because the two Appeals originated from two causes of action.

14.Mr. Deshpande's submissions based on section 14 also cannot be accepted because it overlooks the fact that in the appeal no.31 of 2015, the challenge on behalf of the petitioner was seeking relief in an appeal which was in relation to post of Assistant Head Master. Moreover the Appeal no. 31 of 2015 was not being prosecuted in an court without jurisdiction. In my view Section 14 could be pressed into service where the proceedings relate to the same matter in issue and is prosecuted in good faith in a court which due to want of jurisdiction could not entertain such proceedings. In the circumstances, I find that the factual basis required to invoke provisions of Section 14 was unavailable to the petitioner.

15.In *Ajaib Singh* the Supreme Court the aspect of limitation was considered in relation to an application under Section 33-C of the Industrial Disputes Act, 1947. The Court found that the Labour Court was not correct in rejecting the claims of workmen on the ground of delay and laches by refusing to condone the delay. In the present case, the petitioner was well aware of the consequences of the promotion being granted. Yet, he has failed to take action promptly and sought exclusion of time on the basis of Appeal No.31/2015 which was filed for a completely different cause of action. The decision in the case of

Ajaib Singh was rendered in the case of a money claim under Section 33C. The facts in that case being different, Ram Pal Singh's case quoting Ajaib Singh (Supra) is of no assistance to Mr. Deshpande. Even applying the tests in **Mst. Katiji (supra)**, I am of the view that the petitioner has failed to make out any case.

16. I also do not find that the judgment in Kalpana Lenze (supra) relied upon by the respondents is relevant in the present case since the period of limitation of 30 days provided in Kalpana Lenze (supra) was in relation to a challenge to an order of termination of services and seeking reinstatement. The same yardstick cannot be applied in the present case.

17. It is by now well settled that even if the statute does not prescribe for limitation and even in case of special statutes one has to consider whether the delay was been reasonable. If the Court comes to the conclusion that the delay is reasonable, there is no impediment in condoning such delay. Applying the aforesaid test, it is seen that initially an appeal was filed on 31st January, 2015 in relation to the supersession by respondent nos.8 and 9 on the basis that the petitioner's appointment as Assistant Head Master was affected by virtue of certain adverse remarks made in his confidential report, as a result of which he was deprived from seeking that post. Appeal no.31

of 2015 thus challenged the promotions of respondent nos.8 and 9 and that Appeal was decided on 3rd December, 2016, yet no steps were taken and respondents nos.8 and 9 are once again impleaded in the present appeal which was filed only in March 2017.

18. It is observed that the various respondents whose promotions have been challenged have since taken charge of their respective posts and almost three years have gone by without any challenge to these promotions. Considering the fact that the respondents that have been holding their new posts for the last three years, condonation of delay could potentially result in serious prejudice to these respondents. The petitioner was well aware of the developments from time to time and has filed his appeal belatedly.

19. For these reasons I find no reason to interfere with the impugned order which does not exhibit any perversity.

20. For the aforesaid reasons, I pass the following order:-

- (i) Writ petition is dismissed.
- (ii) No orders as to costs.

(A.K. MENON,J.)