

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION (CAO) NO.552 OF 2016
IN
MISC. CIVIL APPLICATION (MCA) ST. NO.5924 OF 2016
IN
WRIT PETITION NO.1962 OF 2009 (D)

Sugat Shikshan Prasarak Mandal,
Thr. Its Secretary U. P. Ingole,
R/o 56 M Vaishali Nagar, Yavatmal

... Applicant

-vs-

Shankeshwar s/o Narayanji Zambre
And ors.

... Respondents.

Shri Apurv De, Advocate for applicant.
Shri V. Kothale, Advocate for respondent No.1.
Ms M. Naik, Assistant Government Pleader for respondent No.2.

CORAM : A.S.CHANDURKAR, J.
DATE : April 02, 2018

P.C.

The original petitioner in Writ Petition No.1962/2009 prays for condoning the delay of 2209 days in seeking restoration of Writ Petition No.1962/2009. In this writ petition the order passed by the School Tribunal on the appeal preferred by respondent No.1 dated 21/02/2009 allowing the same was under challenge. The writ petition came to be dismissed for want of prosecution on 18/01/2010.

2. In the application for condonation of delay it has been stated that the

services of respondent No.1 were terminated on 24/10/2008 which order of termination was challenged by filing an appeal before the School Tribunal. That appeal was allowed on 21/02/2009 after which Writ Petition No.1962/2009 came to be filed. After the said writ petition was dismissed on 18/01/2010 the respondent No.1 sought to join services by issuing letter dated 26/06/2010. According to the petitioner the respondent No.1 at that time was working in another institution. Despite that he filed proceedings under Section 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the said Act) in January 2012. The petitioner contested those proceedings which were ultimately decided on 27/01/2016. It is thereafter that on 11/03/2016 the present application has been filed.

3. It is submitted on behalf of the petitioner that as the respondent No.1 was in service in another institution the petitioner was under bonafide belief that said fact would be taken into consideration and no orders would be passed against it in proceedings under Section 13 of the said Act. It is submitted that despite the services of the petitioner being duly approved in another institution, said fact had been suppressed by respondent No.1. It is therefore prayed that an opportunity to challenge the order of reinstatement in favour of the respondent No.1 be granted by restoring the writ petition.

4. The respondent No.1 has filed reply opposing the prayer as made. It is submitted that after the School Tribunal decided his appeal various communications were issued to the petitioner to reinstate him in service. On account of non-compliance of that order the respondent No.1 accepted temporary employment in another college and in paragraph-5 of the application filed under Section 13 of the said Act, it was mentioned that said employment would be abandoned if respondent No.1 is reinstated. It is submitted that the petitioner contested those proceedings and only after the application filed by respondent No.1 was allowed that the petitioner has chosen to seek restoration of the writ petition. There is no explanation for the delay as caused for the period from 18/01/2010 to 11/03/2016.

5. After hearing the learned counsel for the parties and after perusing the documents on record it is clear that the writ petition was dismissed in default on 18/01/2010. In January 2012 after issuing various communications to the petitioner, the respondent No.1 initiated proceedings under Section 13 of the said Act. The petitioner was duly served in those proceedings and filed its reply. These proceedings were ultimately decided on 27/01/2016. It is thus clear that the respondent No.1 was seeking to enforce the judgment of School Tribunal and the fact that the writ petition came to be dismissed in default has been stated in paragraph 3 of the application filed by the respondent No.1. Thus in January 2012 or shortly thereafter the petitioner

became aware of dismissal of the writ petition in default. No steps were taken by it to have the same restored and instead the Management contested the proceedings under Section 13 of the said Act on merits. There is no explanation for not seeking restoration of the writ petition from January 2012 till March 2016. The petitioner remained contained with defending the proceedings under Section 13 of the said Act. Though it is urged on behalf of the petitioner that the adjudication on merits is warranted, in absence of any explanation for the delay of almost six years, I do not find any ground made out to grant the prayer made in the civil application. The same is therefore rejected. No costs.

Misc. Civil Application is also accordingly disposed of.

JUDGE