

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8482 OF 2018

1. The President,
Vasantrao Naik Shikshan Prasarak Mandal,
Behind Vasantrao Naik College,
Jalna Road, Aurangabad,
 2. The Head Master,
Baliram Patil Vidyalaya,
Cidco, N-9, Aurangabad
- PETITIONERS

VERSUS

Subhash Jagannath Jadhav,
Age-55 years, Occu-Nil,
R/o Cidco, N-6,
Sinhagad Colony, M-2,
39/6, Aurangabad

-- RESPONDENT

Mr.S.S.Jadhavar, Advocate for the petitioners.
Mr.Y.B.Bolkar, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 02/04/2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner/Management has challenged the judgment and order dated 11/10/2017 delivered by the School Tribunal,

Aurangabad, vide which delay of about more than 6 years has been condoned.

3. I have considered the strenuous submissions of the learned Advocates, have gone through the petition paper book with their assistance and the impugned judgment.

4. The respondent/original appellant before the School Tribunal was placed under suspension vide order dated 30/04/2008 and a departmental enquiry was initiated against him. The date of his dismissal from service is 07/01/2009. An appeal was preferred by the appellant in May 2015.

5. The stand taken by the appellant before the Tribunal was that he was unwell from 01/09/2008 till 17/06/2011. A discharge certificate from the Government Hospital indicates that the appellant was discharged on 18/06/2011. Besides the said certificate, treatment papers as regards his illness or his medication, have not been placed on record. The Tribunal has considered the said medical document showing the illness of the appellant as being "depressive disorder" further indicates that he was taking treatment from 01/09/2008 upto 17/06/2011 with the said casualty Medical

Officer.

6. The appellant has further taken a ground that he approached the school and prayed for resumption of duties. The Management did not consider his request and did not intimate him that he was dismissed from service. He then claims to have approached the Education Officer who directed the Management to reinstate the appellant. However, the Education Officer was not arrayed as a respondent before the Tribunal. The appellant then approached this Court in WP No.812/2015 and the said petition was disposed off on 10/11/2015 after recording the statement of the Management that the appellant has been terminated vide order dated 07/01/2009.

7. Learned Advocate for the petitioner, therefore, has strenuously canvassed that there is hardly any document worth calling as evidence to convince the Court as regards the reasons set out for seeking condonation of delay. I do find that the learned Advocate for the petitioner is well placed in making his submissions. If this case is to be strictly viewed, much remains to be said about the lapses on the part of the appellant.

8. Notwithstanding the above, I am sustaining the impugned

order, with certain modifications, for reasons as under :-

[a] The appellant has suffered an order of dismissal from service and if the delay is not condoned, the doors of the Court would be permanently closed on him.

[b] In such matters, a pedantic view cannot be taken and a pragmatic approach needs to be adopted keeping in view the law laid down by the Hon'ble Apex Court in Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107].

[c] The appellant appears to have taken treatment for depressive disorder mentioned in the medical certificate which can be considered as some evidence as regards his illness.

[d] The appellant makes a statement that he would not claim 50% of the back wages from the date of his dismissal till the date a new employee has been appointed in his place or till the date of the filing of his appeal in May 2015, whichever is earlier.

[e] The appellant makes a statement that he would not claim any back wages from the date of appointment of a new person in his place till the appeal is decided, as the Management is a 100% grant-in-aid institution and the salary grants would be utilized for making payment to the new person.

9. The appellant submits that his appeal is now registered and the Management has appeared in the main appeal before the Tribunal on 11/12/2017. A "No W.S." order has been passed on

05/04/2018 during the pendency of this petition. The appellant has concluded his oral arguments in the appeal and the oral arguments of the Management are yet to be advanced.

10. Hence, this petition is partly allowed with directions hereunder.

11. The petitioner/Management is granted the liberty to file an application for recalling the “No W.S.” order. The appellant shall not oppose the said application and the Management shall therefore tender its detailed written statement alongwith the record and proceedings of the enquiry, with the application praying for recalling of the “No W.S.” order. Needless to state, the School Tribunal shall proceed with the appeal after the written statement of the management is placed on record, in accordance with Law.

12. The appellant shall add the Education Officer (Secondary) as a respondent before the Tribunal and notice shall be issued to the said Education Officer to cause his appearance and submit his written statement.

13. In the event the appellant succeeds in the appeal, his statements as regards waiver of 50% back wages and 100% back

wages after the appointment of a new employee to his place, would be kept in mind by the School Tribunal. The next date before the Tribunal is 09/04/2019. In view of the above, the Tribunal would grant time to the Management to file its application, W.S. and R & P of the enquiry, till 30/04/2019.

14. Rule is made absolute accordingly.

(Ravindra V.Ghuge, J.)