

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11634 OF 2019

**AHILYADEVI SHIKSHAN PRASARAK MANDAL KHANEPURI
THROUGH SECRETARY AND ANOTHER
VERSUS
HAUSAJI NAGORAO MORE AND ANOTHER**

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Advocate for the Petitioners : Shri V. J. Dhage
Advocate for Respondent No. 1 : Shri S. V. Deshmukh
AGP for Respondent No. 2 : Shri S. R. Yadav- Lonikar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 23rd SEPTEMBER, 2019.

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PER COURT :

1. The petitioner /Management is aggrieved by the order dated 30/07/2019 passed by the School Tribunal, Aurangabad, by which, Misc. Application No. 01/2019 filed by respondent No.1 seeking condonation of delay, has been allowed.

2. I have considered the submissions of the learned Advocates for the respective sides and the learned AGP on behalf of respondent No.2.

3. I find that the following dates and sequence of events

need to be recorded without going into the disputed questions since the Appeal is pending :-

(a) The original appellant approached this Court in Writ Petition No. 3757/2018 contending that he is not paid his monthly salary from October 2013 onwards. He also averred that he was not being allowed to join duties.

(b) The Management took a stand that the appellant tendered a leave application on 09/09/2017 and is not attending School since 07/09/2017.

(c) The learned Division Bench disposed off the petition filed by the appellant vide order dated 19/12/2018 concluding that as the petitioner contends that he is not allowed to work and since he was attending duties admittedly till 07/09/2019, it would amount to otherwise termination and the appellant can approach the School Tribunal by filing an appropriate proceeding.

(d) The appellant approached the School Tribunal by contending that he had gone to the School on 20/12/2018 and he was driven out and hence the oral termination is from 20/12/2018.

(e) The School Tribunal has accepted the version of the appellant and has concluded that the delay is of only 9 days and deserves to be condoned.

4. I find that the learned Advocate for the petitioner is right in submitting that the appellant had not controverted the contention of the Management before the learned Division Bench. The Court also accepted the said statement and concluded that this would amount to otherwise termination and permitted the petitioner / original appellant to approach the School Tribunal. Apparently, the School Tribunal has lost sight of this fact and has purely gone by the pleadings of the appellant and has accepted the version of the appellant without applying its mind to the observations of the learned Division Bench in paragraph 3 of the order dated 19/12/2018. I am, therefore, of the view that the impugned order cannot be sustained.

5. The learned Advocate for the appellant submits that the appellant would waive the entire back wages from 07/09/2017 till the School Tribunal condoned the delay by the

impugned order dated 30/07/2019. The learned Advocate for the petitioners opposes the said proposal.

6. This Court has passed several such orders of depriving the appellant of the back wages, in the event he succeeds before the Tribunal, for the period of delay. This is so done as the appellant would not be able to challenge his termination in any form if the delay is not condoned and the doors of litigation would be shut forever. He would be rendered remediless. The law laid down by the Honourable Apex Court in the matters of *Collector, Land Acquisition, Anantnag v/s. Mst. Katiji*, AIR 1987 SC 1353 and *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*, (2013) 12 SCC 649, would apply in such cases and the Court has to adopt a pragmatic approach so as to ensure that such an appellant would not be rendered remediless against his termination.

7. In view of the above, this petition is partly allowed. The impugned order of the School Tribunal dated 30/07/2019 stands modified with the following directions :-

(a) As the Appeal before the Tribunal is posted on 26/09/2019, the litigating parties shall appear before the Court, if an appearance is not yet caused.

(b) On the said date, the appellant shall tender an affidavit undertaking to the School Tribunal stating therein that if he succeeds in the proceedings before the Tribunal, he would not claim back wages for the period 07/09/2017 till 30/07/2019. If such affidavit is not filed, this order shall be recalled and the appeal shall stand dismissed in default.

(c) Needless to state, after the affidavit is filed, the School Tribunal would then proceed to decide the Appeal on its own merits and if the appellant succeeds in the matter and the issue of back wages crops up, the Tribunal would deprive the appellant of the back wages from 07/09/2017 till 30/07/2019. However, this shall not affect his continuity of service.

(d) *Insofar* as the controversy in the appeal is concerned and the pleadings of the parties are concerned, the School Tribunal shall decide the said Appeal on its own merits.

(RAVINDRA V. GHUGE, J.)

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