

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

WRIT PETITION NO. 904 OF 2018

Vishnu Bhausahab Navpute

... Petitioner

Versus

The State of Maharashtra and others

... Respondents

....

Mr. B. B. Bhise, Advocate h/f Mr. D. J. Choudhari, Advocate for petitioner.

Mr. S. K. Tambe, AGP for respondent No.1.

....

CORAM : M. S. KARNIK, J.

DATED : 21st AUGUST, 2019

PER COURT :-

1. Heard learned counsel for the petitioner and learned AGP for respondent No.1-State. None for respondent Nos. 2 and 3 though they are duly served.

2. The order under challenge in this petition is passed by the Presiding Officer, School Tribunal, Latur, dismissing the appeal filed by the petitioner on the ground of delay.

3. The petitioner had by filing earlier appeal No.31/2013 before the School Tribunal contended that he was orally terminated w.e.f. 04.10.2011 from respondent No.3 school where he was working as

Assistant Teacher. However, respondent Nos. 2 and 3 during the course of hearing of Appeal No.31 of 2013 pointed out that the petitioner was terminated by a written order dated 07.07.2009. The School Tribunal by order dated 17.12.2016 disposed of Appeal No.31/2013 by giving an opportunity to the petitioner to file appeal along with condonation of delay application explaining the delay during the period from 07.07.2009 to 04.10.2011.

4. Accordingly, the petitioner filed Miscellaneous Application No.1/2017 for condonation of delay along with a fresh Appeal before the School Tribunal challenging the written termination order dated 07.07.2009. In the application, it was stated that the petitioner is handicapped person and he was not well and suffering from back pain. The petitioner therefore took medical leave during the period from 06.07.2009 till 04.10.2011. The petitioner filed leave application on 06.07.2009 with the reason to grant medical leave or to sanction voluntary retirement.

5. The Tribunal, after considering the say filed by the respondents, refused to accept explanation offered by the petitioner. The Tribunal was of the opinion that the petitioner did not bother to contact the respondents as regards the order passed on his leave application for the period 06.07.2009 till date of the resumption of services by the

petitioner with effect from 04.10.2011 i.e. the period of more than two years. The Tribunal rejected the application for condonation of delay.

6. The respondent Nos. 2 and 3 though duly served, have not appeared. In my opinion, the order passed by the School Tribunal calls for interference. As per the earlier order passed by the Tribunal on 17.12.2016, the delay in filing the appeal challenging the oral termination w.e.f. 04.10.2011 was already condoned. Having condoned the delay in Appeal No. 31/2013, the respondent Nos. 2 and 3 brought on record the issue of written termination w.e.f. 07.07.2009 which according to them was communicated to petitioner by letter dated 16.06.2010.

7. The petitioner is a handicapped person and admittedly had applied for leave on medical grounds from 07.07.2009. However, no specific order was communicated by the management either granting or denying leave to the petitioner. The management came out with the case that the petitioner is terminated by a written termination order dated 07.07.2009.

8. Learned counsel for the petitioner submitted that this termination order was never served on him nor received by him. Considering the averments made in the application for condonation of

delay and the fact that the petitioner was pursuing Appeal No.31/2013 challenging the oral termination in which appeal delay was already condoned, in my opinion, the Tribunal should have accepted the explanation and condoned the delay.

9. The writ petition is therefore allowed.

10. The impugned order dated 10.11.2017 passed by the Tribunal is set aside. The Tribunal is directed to hear the Appeal on its own merits and decide the same in accordance with law.

[M. S. KARNIK, J.]

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