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

WRIT PETITION NO.3875 OF 2018

Sarvodaya Madhyamik Vidyalay & Anr.

.. Petitioners

Vs.

Saleem A. Gafoor Khatik & Anr.

.. Respondents

Mr. N.V. Bandiwadekar I/b. A. N. Bandiwadekar for the petitioners.

Mr. Yogesh Dharne for the respondent no.1.

Mrs. M.S.Bane, AGP, for respondent no.2.

CORAM : A.K. MENON, J.

DATED : 4TH MARCH, 2019.

P.C. :

1. The challenge in this petition is to an order dated 13th November, 2017 passed by the School Tribunal in Misc. Application no.18 of 2016 thereby condoning the delay in filing an appeal to the school tribunal under the Maharashtra Employees of Private Schools Act (MEPS Act). Considering the fact that the petitioners are the school management and respondent no.1 is represented today, so is the Education Officer, it is appropriate that this petition be disposed finally.
2. Accordingly, I issue Rule. Rule returnable forthwith. By consent, taken up for final hearing and disposal.

3. The facts in brief are as follows.

The petitioner no.1 is the private secondary school managed by the petitioner no.2 which is a trust registered under the Bombay Public Trusts Act. The respondent no.1 was appointed as an Assistant Teacher from 5th June, 2007. The copy of the order of appointment is at Exhibit A. It is the case of the petitioners that respondent no.1 resigned from his post dated 15th August, 2013. The resignation was accepted and he was relieved. After his resignation was accepted, the petitioners after following due process appointed a new teacher to the post on or about 16th September, 2013. This appointment was approved by the Education Officer–respondent no.2 on or about 29th May, 2015. While appointing the alternate teacher in place of the respondent no.1 an appointment order dated 16th September, 2013 in Schedule D was issued. The copy of the approval granted by respondent no.2 is also annexed at Exhibit H to the petition. In this background, the respondent no.1 approached the respondent no.2–Education Officer claiming that his services were illegally terminated on 15th August, 2013.

4. According to Mr. Bandiwadekar, the learned counsel for the petitioner, the grievance is made 28 months after the resignation/alleged termination. He submitted a copy of the application said to have been

made by respondent no.1 to respondent no.2 was not produced by the school tribunal. On 5th January, 2016 respondent no.2 is said to have issued an order directing the petitioner no.2 to reinstate the respondent no.1 in service but no such communication has been received by the petitioners. Likewise the respondent no.2 is said to have issued a second order on 6th April, 2016 calling upon the petitioners to reinstate respondent no.1. This letter also has not been received by the petitioners. Mr. Bandiwadekar submitted that even otherwise the said two orders do not make any reference to application or representation said to have been made by respondent no.1. On 13th April, 2016, respondent no.1 claims to have made an application to the respondent no.2 complaining that he was not allowed to join the school. In this application, the reference is made to a further order dated 5th January, 2016 said to have been issued by the respondent no.2 but this order is also not been produced before the tribunal.

5. It is further submitted that letter dated 16th April, 2016 said to have been written by the respondent no.1 in this petition and by the first respondent in companion writ petition no.3876 of 2018 referred to various other communications which have not been annexed and the petitioners were unaware of these communications. In short, Mr. Bandiwadekar submitted that the respondent no.1 has not produced on

record any application made by him to the petitioners to serve orders of respondent no.2 requesting petitioners to allow them to rejoin duty and in this behalf respondent no.1 also appears to have made an application to the District Collector without endorsing a copy thereof to the petitioner. Finally on 28th July, 2016, respondent no.1 has filed an appeal before the school tribunal alleging oral termination with effect from 15th August, 2013. Along with the appeal, an application for condonation of delay of 34 months was filed on 20th November, 2016. The petitioners opposed the application by filing a reply and written submissions. On 13th November, 2017 the school tribunal passed the impugned order condoning the delay. The petitioners are aggrieved by the said order. In the course of submissions, Mr. Bandiwadekar has relied upon the following judgments :-

- (1) *Executive President, Pune Vidyarthi Griha, Pune and others v/s. Bhaskar Bhagwat Yadav and others*¹
- (2) *Balwant Singh (Dead) v/s. Jagdish Singh & Ors.*²

6. On behalf of the respondents, the learned counsel Mr. Dharne relied upon the contents of an affidavit in reply of respondent no.1 dated 11th July, 2018 in which he has contended that the application for condonation of delay was correctly allowed and the contention of the

¹ 2001(2) Mh.L.J. 226

² 2010 (6) ALL MR 480

petitioners that he had tendered his resignation was incorrect. He denied that he had resigned. The respondent has contended that the case law relied upon by the petitioners are not relevant and that the order of the tribunal does not suffer any irregularity and that the challenge is based on vague grounds. He has contended that the reasons for delay have been dealt with in the application for condonation of delay and that the petitioners had no objection thereto. According to him, although the petitioner had contended that for 2 years and 4 months from 15th August, 2013 he had not approached the tribunal, he had sufficient reasons which the tribunal has accepted. According to the affidavit of the respondent no.1, the delay of 2 years and 4 months caused in approaching the respondent no.2 has been condoned by respondent no.2 because respondent no.2 had directed the petitioners to reinstate him in service. It is his contention that delay of 2 years and 4 months was for the respondent no.2 to consider. Respondent no.2 was not a Court and therefore Section 5 of the Limitation Act did not apply to the respondent no.2 whereas presently the appeal which is sought to be urged before the school tribunal has filed under Section 9 of the MEPS Act since the delay in approaching the respondent no.2 is deemed to be condoned. He therefore contended that the delay is rightly condoned. Mr. Dharne, therefore supported the impugned order. He has relied upon the judgment in the

case of *Dadasaheb Kisan Jagdale v/s. The Principal NMV High School and others*³

7. I have heard the learned counsel for the parties at length and with their assistance I have perused the pleadings, written submissions, documents and the impugned order. The Misc. Application filed by the respondent no.1 sought condonation of 34 months delay. The petitioners have filed their say opposing the condonation of delay on that basis that the delay is inordinate and the conduct of the respondent no.1 was negligent. The onus of showing sufficient cause lay upon the respondent no.1 and that he failed to discharge his burden. Contention on merits have been taken up however, we are presently concerned with the correctness of the order passed on the application for condonation of delay. Perusal of the order reveals that the tribunal was satisfied that there was sufficient cause which prevented the applicant from approaching the tribunal within the stipulated time. The reasoning of the tribunal is that the documents produced on record show that the respondent no.1 had approached the Education Officer against the order of oral termination and the Education Officer had directed the petitioners to reinstate the applicant. The Education Officer has since directed the petitioners to reinstate the respondent no.1 which establishes that the Education

Officer had been convinced of the merits of the case. The tribunal observed that under Section 5 of the Limitation Act, it has to do substantial justice and could not overlook the fact that the respondent no.1 had pursued its case before respondent no.2 after the alleged oral termination and that if one more opportunity is not given his case would suffer. Whereas if an opportunity was given to respondent no.1 the petitioners case would not be prejudiced since ultimately the appeal would proceed on merits. It is for these reason the tribunal concluded that there was sufficient cause that has prevented the respondent no.1 from approaching the tribunal.

8. In my view, the impugned order discloses no reasons at all as to how the respondent no.1 had made out a case of sufficient cause. The impugned order has failed to consider the submissions on behalf of the respondents specially those in written arguments filed by the petitioners on 21st December, 2016. In the written arguments the petitioners have unequivocally denied the allegations of the respondent no.1 in the Misc. Application that the members of the Executive Council of the respondent no.2 had demanded illegal gratification. These are aspects on merits of the case.

9. With specific reference to the aspect of delay, the petitioners had

contended that there was not a single document placed on record for the period from August 2013 to October 2015 which demonstrated that the respondent no.1 had made a representation to the petitioners. It is specifically contended that the cause of action if any arose on 15th August, 2013 and that the appeal ought to have been filed within 30 days. Sufficient cause has not been shown. It is also seen that the written arguments the petitioners had dealt with, in substantial detail, with the conduct of the respondent no.1 who have not taken any action from 15th August, 2013 to 30th November, 2015. In the meantime, the post was already filled. In the light of these facts the school tribunal in my view ought not to have condoned the delay.

10. In the case of *Executive President, Pune (supra)*, a single Judge of this Court as he then was, has held that under Section 9(3) of the MEPS Act, the tribunal could entertain the appeal till it was made only if sufficient cause is shown for not preferring the appeal within the specified period. In that case the respondent was pursuing a remedy before the management and education authority in the matter of his supersession. A period for about 3 years remained unexplained. It was held that although the Court ought to had look out for sufficient cause the Court and tribunal despite having a liberal approach cannot overlook valuable rights that accrued in favour of opposite party and

which cannot be taken away on flimsy grounds.

11. Furthermore, in *Jagdish Singh (supra)* the Supreme Court had occasion to interpret the expression “sufficient cause” and while doing so the Court observed that while the law of limitation is a substantive law and has definite consequences on the rights and obligations of a party to a lis, the principles should be adhered to and applied appropriately depending upon the facts and circumstances of the case. Once a valuable right accrued to one party as a result of failure of the other party it will be unreasonable to take away that right for the asking, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. While facilitating a party's rights and remedies, it would be equally unfair to deprive the other party of the valuable right that has accrued to it in law.

12. In the present case, a teacher has been appointed in place of respondent no.1 and that appointment has now attained finality. After receiving approval of the Education Officer that teacher is now a permanent teacher of the establishment. Even assuming the tribunal had no occasion to consider this aspect, one fact is clear that even according to the respondent no.1 there is a delay of 2 years and 4

months in approaching even the Education Officer. A novel argument is advanced that the delay in approaching the Education Officer is deemed to have been condoned by the Education Officer and therefore the tribunal was justified in condoning the delay. In my view this is an argument that borders on absurdity. In any event even such a argument cannot be accepted firstly for the reason that the Education Officer was not a court considering the issue of condonation of delay nor was the Education Officer was therefore not competent to condone the delay.

13. Be that as it may, the admission of the part of the respondent that delay to the extent of 2 years and 4 months had indeed occasioned cannot be overlooked and no proper explanation is forthcoming. In my view the respondent has failed the test of showing sufficient cause. Even assuming that no valuable right had occasioned in favour of the petitioners as regards the decision in the case of *Dadasaheb Kisan Jagdale (supra)* which is cited on behalf of the respondent, I am not persuaded to hold in favour of the respondent on that basis since in that case the petitioners had approached the Civil Court and filed and prosecuted a suit which was clearly not maintainable in view of the decision of the full bench of this Court in *St. Ulai High School & Anr. V/s. Devendraprasad Jagannath Singh, 2007 (1) BCR 540*. The delay

was therefore condoned on the basis that the petitioners had approached the wrong forum for the period 1991 to 1996. The facts obtaining in the present case do not warrant such a view to be taken. In the result, the challenge must fail and therefore I pass the following order:

- (i) The impugned order dated 13th November, 2017 passed by the School Tribunal is hereby set aside. As a consequence the appeal stands dismissed.
- (ii) Rule made absolute in the above terms.
- (iii) No orders as to costs.

(A.K.MENON,J.)