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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14384 OF 2018

Shri Siddheshwar Shikshan Sanstha ... Petitioners
Dongarsoni & Anr.

vs.

Shri Balkrishna Waman Zambare ... Respondents
and Anr.

Mr. Prashant Bhavake for the Petitioner.

Mr. Nilesh M. Wable for Respondent no. 1.

Ms. Vaishali Nimbalkar, AGP for Respondent no. 2.

CORAM : A.K. MENON, J.

DATE : 4th MARCH, 2019

P.C.

1. The challenge in this Writ Petition is to impugned order dated 6th November, 2017 passed by the Presiding Officer, School Tribunal, Kolhapur in Misc. Appeal No. 20 of 2016 which sought condonation of delay in filing an appeal under section 9(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act"). Considering the limited issue that arises in this petition, it is appropriate that the petition be disposed of finally at the stage of admission. Both respondents are represented and I therefore issue Rule. Rule made returnable forthwith. By consent taken up for final disposal.

The facts in brief are as follows :

2. The petitioner no. 1 is an educational institution managing petitioner no. 2-school. Respondent no. 1 was at the material time employed as a Laboratory Attendant at the petitioner no. 2-school. According to the petitioners, respondent no. 1. abandoned his service voluntarily. Respondent no. 1 was appointed as a Laboratory Attendant vide order dated 5th October, 1998 and apparently without following any specific process. It is the petitioners case that no advertisement was issued for recruitment of posts as contemplated under the MEPS Act and Rules. The Deputy Charity Commissioner, Sangli vide order dated 22nd November, 2013 meanwhile held that the a Change Report filed by present management was legal and valid whereas the Change Report filed by the former Chairman and Secretary were illegal and invalid and came to be rejected. It is further contended that during his services as a Laboratory Attendant, the former headmaster of petitioner no. 2 – school passed an order on 26th September, 2011 promoting respondent no. 1 to Class-III post of Junior clerk. This order is said to be illegal as a consequence of proceeding before the Charity Commissioner. Respondent no. 2- Education Officer also appears to have granted individual approval to the appointment of respondent no. 1.

3. It is the contention of the petitioner that from 1st December, 2013, respondent no. 1 absented himself without leave. The petitioners issued several letters to the respondent calling upon him to resume the post of Laboratory Attendant since his appointment as Junior Clerk was not legal. According to the

petitioner his services had not been terminated. Appointment of respondent no. 1 as Junior Clerk was illegal and so was appointment of three Shikshan Sevaks. The petitioners being aggrieved by this appointment filed Writ Petition No. 4470 of 2015 in this Court. The Court allowed the writ petition and set aside orders granting approval to the promotion inter alia of respondent no. 1 to the post of Junior Clerk.

4. It is the case of the petitioner that after the decision of this Court once again respondent no. 1 was called upon to join services of the petitioner as a Laboratory Attendant but he failed to do so. Since respondent no. 1 remained absent continuously for a period of three years the management vide order dated 13th December, 2016 exercised their rights pursuant to Rule 16(3) of the Maharashtra Employees of Private School (Conditions of Service) Rules, 1981 ("MEPS Rules") and informed respondent no. 1 that since he was continuously absent for three years his services come to an end. On 16th November, 2017 respondent no. 1. filed an appeal challenging his alleged termination on 30th November, 2013. The delay in filing the appeal was approximately three years. In view thereof Miscellaneous Application seeking condonation of delay was filed. The same was contested by the petitioners. The application was however allowed thereby condoning the delay. Being aggrieved by the said decision the petitioners have approached this court under Article 227 of the Constitution of India.

5. Mr. Bhavake has invited my attention to the impugned order of the School Tribunal. He submitted that the impugned order fails to consider the fact that there

was no ground for condonation of delay. The order passed by this Court in Writ Petition No. 4470 of 2015 was subsequently challenged before the Supreme Court in SLP No.19532 of 2016. The SLP came to be withdrawn on 3rd February, 2017. Respondent no. 1 meanwhile filed Miscellaneous Application and addressed correspondence to the petitioners.

6. Before the School Tribunal the Secretary of the petitioner did not appear nor did the Education Officer. It appears that there were some disputes in the management. In this background the School tribunal considered the application and the impugned order records that the reasons for delay include disputes in the management. There was apparently mass dismissal of employees and the disputes escalated. The approval granted by the management having been challenged, the order observes that the challenge before the High Court was an alternate remedy since Education department was controlling body. The impugned order records that respondent was pursuing his remedy "one way or other way" and was not negligent and looking at the merits of the case and considering the application for condonation of delay, the impugned order records that the appellant had entered into correspondence with the petitioners and the Education Officer between 30th November, 2013 to 4th November, 2016 in relation to this case and was therefore not negligent.

7. The impugned order further records that there was no obligation to explain each day's delay as long as explanation offered was reasonable, bonafide and does not smack any malafides. Nothing is shown that the respondent no. 1 had engaged

in dilatory tactics and although the reasons are not supported by documents the tribunal is expected to show utmost consideration of the matter. There was no presumption that delay was caused deliberately or on account of negligence or malafides since litigant does not stand to benefit and he runs a serious risk by delaying proceedings. For these reasons the application for condonation of delay was allowed subject to payment of costs.

8. Mr. Bhavake relied upon the decision in the case of the petitioners viz. *Siddheshwar Shikshan Sanstha & Anr. vs. State of Maharashtra & Ors* [2016(4) Bom.C.R. 29] wherein this court quashed and set aside the order passed by the Education Officer granting individual approvals to the appointment of respondent therein including the respondent no. 1 herein and directed the respondent to refund all financial benefits. He submitted that there was no sufficient cause for condoning the delay.

9. Mr. Bhavake also relied upon decision of *Executive President, Pune Vidyarthi Griha, Pune and Ors. vs. Bhaskar Bhagwant Yadav and Ors* [(2001)(2) Mh.L.J.226] in respect of his contention that respondent no. 1 had failed to make out sufficient cause in support of his contention. He also relied upon the fact that the petitioners had called upon the respondent no. 1 to report to work as Laboratory Attendant but he had failed and neglected to attend. He invited my attention to the letters annexed at Exhibit E (colly) to the petition which are dated 12th December, 2013, 3rd February, 2014 and 15th September, 2016 in support of his contention that despite

being called upon to attend work as Laboratory Attendant respondent no.1 had failed to attend.

10. On behalf of the respondent Mr. Wable opposed the petition on the basis that the respondent no. 1 made out sufficient cause for condonation of delay. In this respect he relied upon the contents of the Application in Misc. Appeal No. 20 of 2016. He invited my attention to the averments therein in paragraph 2 which states that till 29th November, 2013 respondent no. 1 was regularly working and signing the muster in the school. From 30th November, 2013 he was not allowed to work in the school or sign the muster. That this conduct amounted to termination of the services which was illegal and therefore the appeal was sought to be filed. However the appeal was said to be filed only on 16 November, 2016 resulting in delay of two years ten months and fourteen days after taking into consideration appeal period of 30 days. It was contended that the appellant was not negligent and had been meeting the office bearers of the petitioner. He attended school daily and requested the in-charge headmaster to allow him to work but was not allowed. Written requests were also submitted but ignored.

11. Mr. Wable submitted that upon being denied the entry into the school he alongwith four colleagues had filed written complaint to the Education Officer-respondent no. 2 and also filed a complaint with the police station, Tasgaon. Further complaints were made to the Education Officer on 3rd December, 2013 as well. Due to the disputes in the management he had tried to convince the management to allow him to join his duties and engaged in correspondence from

5th December, 2013 onwards to 31st December, 2013. Respondent no. 1 also threatened to go on hunger strike. After such attempts, the Education Officer directed the management to permit the appellant to join his duties. On 13th February, 2014 he attended the school to resume duties but he was not permitted to join. According to Mr. Bhavake the respondent no.1 was seeking to join in the post as Junior Clerk and not as Laboratory attendant which clearly could not have been permitted.

12. Mr. Wable on the other hand submitted that respondent no. 1 was in fact willing to join but was prevented. He relied upon the fact that numerous letters have been written from respondent no. 1 to the Education department. Paragraph 3 of the application refers to the long list of letters. That on 18th June, 2016, 14th July, 2016 and 21st July, 2016 the respondent no. 1. had written letters to the headmaster and in response the management claimed that the respondent no. 1's services were never terminated. With reference to letters dated 12th December, 2013 and 3rd February, 2014 calling upon appellant to resume duties Mr. Wable submitted that these were not received by the respondent no.1. Various other submissions on merits of the previous litigation were also taken up. Therefore it was extended that delay of two years ten months and fourteen days was correctly condoned. He submitted that the letter dated 12th December, 2013 calling upon the respondent to attend duties and the letter dated 12th December, 2013 was fabricated. He referred the alteration in reference number of the letter dated 12th December, 2013 which according to him is an indication of fabrication.

13. In support of his contentions Mr. Wable relied upon a communication dated 10th/12th February, 2014 addressed by the Education Officer to the petitioner Trust whereby the Education Officer complained to the petitioner pursuant to the order passed by this Court in Writ Petition No. 5758 of 2014. The said order was in operation and was also relied upon in letter dated 30th May, 2016 from respondent no. 1 to the petitioners, apparently expressing his willingness to join. However this letter was returned undelivered because the petitioners refused to accept it.

14. Similarly on 1st June, 2016 also respondent no. 1 addressed a letter to the petitioners in relation to the litigation. Mr. Wable submitted that after the passing of the order in Writ Petition no. 4470 of 2015, a review petition came to be filed by respondent no. 1 being Review Petition No. 167 of 2018 in which clarification was sought, that the Court had set aside appointment of the respondent no. 1 as Junior clerk and not as Laboratory Attendant. This aspect was clarified by consent of parties. It was further clarified that the order directing respondent no. 1 to refund the financial benefits like salary etc. was only in relation to the promotional post of Junior clerk and not as Laboratory Attendant. By that order, this Court expedited the hearing of Appeal Nos. 20 of 2016 and 1 of 2017 and directed both parties to cooperate with each other and decide this matter expeditiously. The Review petition thus came to be withdrawn.

15. Mr. Wable submitted that there was sufficient cause for the delay to be condoned and the appeal heard on merits and it is for this reason that the

impugned order need not be faulted. Mr. Bhavake however in rejoinder contended that the reference to Appeal no. 20 of 2016 and 1 of 2017 was misleading. *The impression created by this order was that this Court has expedited the appeals and therefore it was sought to be contended that the condonation of delay was matter of course to be expected. However, it is pointed out by Mr. Bhavake "Appeal" no. 20 of 2016 was actually Miscellaneous application seeking condonation of delay and Appeal no. 1 of 2017 was the appeal pertaining to post of junior clerk. That the direction in paragraph 3 expediting these matter would be of no consequence today. Meanwhile application for condonation of delay had already been decided on 6th November, 2017 and that the appeal has since been registered as Appeal no. 75 of 2017.

16. In the facts of the present case, I am required to consider the validity of the impugned order dated 6th November, 2017 which proceeds to hold that the applicant has made out a case with plausible and justifiable reason for not filing his appeal within reasonable time as set out in issue no. 1. This has been answered in the affirmative. In my view the impugned order does not disclose any reasons for arriving at this conclusion. The impugned order records that mass dismissal of employees as a result of disputes in the management had caused litigation to travel to this court and caused respondent no. 1 to move the Supreme Court. That the respondent no. 1 had obtained certain approvals of the department which had been set aside by the High Court. The High Court had also directed refund of the financial benefits availed of by respondent no. 1 and other persons whose approvals

in respect of whose appointment had also been set aside by the High Court. Reliance placed by the learned presiding officer of the School tribunal on the documentary evidence is also incorrect. Merely because correspondence had been exchanged between the Education Department and the petitioner does not entail sufficient cause as set out in the judgment of the Supreme court in *Balwant Singh (Dead) vs. Jagdish Singh & Ors.*[(2010)(6) ALL MR 480]. The concept of sufficient cause must be dealt with in light of the rights accruing to the other party. That if a party has been so negligent, it would be unfair to deprive the other party of a valuable right that has accrued to in law.

17. This observation of the Supreme Court bears great relevance to the facts of the present case. It is not in dispute that the initially the vacancy was available but it is case of the petitioner that since respondent no. 1 did not wish to join as Laboratory Attendant but was keen to joining as Junior Clerk. This was clearly not permissible since the order of the Education Officer granting approval to the respondent no. 1 had been set aside in Writ Petition no. 4470 of 2015. Thereafter for the Academic year 2015-16 as a result of reduction in posts, the post of Laboratory Attendant was done away with. Mr. Bhavake also submitted that alongwith first respondent three other person Mr. Ganesh Bharat Pawar, Mr. Arun Baban Nangare and Saraswati Ankush Damane had filed Civil Application in Writ Petition No. 5758 and the Civil Application seeking urgent interim relief before this Court and vide the order dated 14th January, 2015 Rule was issued. The petition was thereafter dismissed upon withdrawal by the said petitioner and rule was

discharged on 25th March, 2015. Mr Bhavake therefore submitted that no case for interference has been made out since post itself is now been abolished.

18. In my view this submission is worthy of acceptance. At the material time it appears that the petitioner was not inclined to join back as Laboratory Attendant. Had he been interested in doing so, he would have approached the management, but instead he challenged the decision of the management. He contested this aspect in Writ Petition No.4470 of 2015 along with other writ petitioners. Respondent no. 1 was respondent no. 7 in that writ petition. The impugned order of 23rd February, 2015 passed by the Education Officer vacating the stay granted to individual approvals of appointment of inter alia to respondent no.1. Paragraph 16 of the judgment refers to an approval granted by Education Officer to the promotion of respondent no.1 as Junior clerk. After considering the facts in detail the Court came to the conclusion that permission granted to respondent no.1 was not justified and hence the impugned order were set aside. At that stage on behalf of respondent nos. 4 to 8 including respondent no. 1 herein a suggestion was made that the matter be remanded to the School Tribunal or Education Officer for hearing expeditiously. However the petitioner had objected to the suggestion and it was then clear that the matter would not be remanded to the School tribunal. For these reasons also there was no occasion for the tribunal to pass the impugned order.

19. In my view having suffered the order in Writ Petition No. 4470 of 2015 and having failed to obtain any relief in the Supreme Court and having withdrawn the SLP the order in Writ Petition No. 4470 of 2015 and connected matters the orders

assailed had attained finality. In view of the non availability of the posts of Laboratory Attendant and as canvassed by Mr. Bhavake in this Writ Petition it is no use pursuing the appeal before the School Tribunal. The fact that this post is not now available is evident from the Sanch Manyata for 2015-16 where in the post of Laboratory attendant is not available as of 1st January, 2015. In my view there is no substance in the challenge which requires to be rejected. The challenge must fail. I pass the following order :

- (i) The impugned order dated 6th November, 2017 passed by the School Tribunal is hereby set aside. As a consequence Miscellaneous Appeal No. 20 of 2016 stands dismissed.
- (ii) Rule made absolute in the above terms.

(A.K. MENON, J.)