

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10442 OF 2016**

Gokul Nivrutti Mandalik .. Petitioner.

Vs.

The Chairman

Sant Dhyaneshwer Vidya

Prasarak Mandal and Ors. .. Respondents.

Mr.Amey Deshpande for the Petitioner.

Mr.Amol Wagh i/b Sagar Kasar for the Respondent No.1.

Mr.Anilkumar Patil for the Respondent No.2.

Ms.Vaishali Nimbalkar for the Respondent No.4.

CORAM : A.K. MENON, J.

DATED : 3RD JANUARY, 2019

P.C. :

1. By this writ petition, the petitioner seeks to challenge the order dated 7th October, 2015 passed by the School Tribunal, Nashik Division, Nashik in Miscellaneous Application No.20 of 2012 by which the petitioner-applicant sought condonation of delay of about 39 months in filing the appeal. The application was rejected.

2. The application seeks to set out reasons for delay in approaching the Tribunal. The application is dated 1st November, 2012. It inter alia relies upon a communication dated 2nd February, 2009, a copy of which has been produced before this Court in a separate compilation. That communication is addressed by the Respondent No.4 to Respondent No.1, who was then the

Chairman of Sant Dhyaneshwer Vidyaprasarak Mandal which was at the material time managing the respondent no.3 – institution. It is stated across the bar that the said institution is now managed by respondent no.5.

3. Essentially, the challenge in this petition is to the order refusing to condone delay of about 40 months and in face of contentions raised by the respondents to the effect that delay is more than six years. However, in my view, it is not necessary to go into that controversy. The impugned order dated 7th October, 2015 has set out the facts which reveal that the petitioner-applicant was initially appointed on 12th September, 2005 as an Assistant Teacher with effect from 15th September, 2005 and approval of his appointment has been sought and was received on 24th April, 2006. It is contended by the petitioner-applicant that respondent no.2 remained absent without permission continuously and as a result of which one post was vacant and therefore, the post was filled by appointing the applicant as per letter dated 12th September, 2005.

4. The services of the applicant were orally terminated on 2nd February, 2009. Vide letter dated 2nd February, 2009 the respondent no.4 had called upon respondent no.1 to consider accommodating the petitioner-applicant in some other school since apparently there were other institutions under the same management. However, it is the case of the petitioner that the letter dated 2nd February, 2009 has not been taken into account in the impugned order, although specific reference was made to this letter in the

application seeking condonation of delay. Mr.Deshpande submits that the petitioner was orally informed about termination of his service from 2nd February, 2009 itself and was not allowed to sign on the muster roll but he has been orally assured that he will be provided with suitable employment. However, despite these assurances, no steps have been taken by the respondents as a result while waiting for the respondents to honour their assurance, substantially long period of time has passed. Moreover, it is the petitioner's case that the respondents have not challenged the fact that the letter dated 2nd February, 2009 was in fact issued and that the petitioner was therefore entitle to be appointed in a suitable post.

5. In the course of submissions it was pointed out that the impugned order records that there is delay of more than six years in filing the appeal. The finding is to the effect that the applicant was throughout negligent and although he was educated, his conduct does not demonstrate diligence and reasons given for the delay are not satisfactory. In paragraph 26 of the order, the Presiding Officer has recorded that in a letter dated 4th February, 2008 (Exhibit-30) the petitioner-applicant had mentioned that he was appointed on 1st April, 2006 and thereafter the proposal for approval was sent, however, other documents produced on record shows that he has not been working since 30th September, 2006 and this was indication of the fact that the applicant had made incorrect statements that his services were orally terminated from 2nd February, 2009. The Presiding Officer has come to

conclusion that the applicant had not come before the Tribunal with clean hands.

6. Be as it may, in the course of submissions, I called upon learned counsel for the petitioner to explain the delay in filing the application for condonation of delay after a copy of the letter dated 2nd February, 2009 was received by the petitioner. Save and except for his submission that the letter had been received by him and that the application was made thereafter, the petitioner was unable to explain the delay between 2nd February 2009 and 1st November, 2012. The petitioner has not mentioned in the application when the letter dated 2nd February, 2009 was received by him. Admittedly, the letter is marked to the petitioner as can be seen from the foot of letter. Even the writ petition does not disclose why there was delay from 2nd February, 2009 or so soon thereafter when the said letter was received by the petitioner. Thus, the application and writ petition is silent on this aspect. There is no clarity on the aspect of delay. In the circumstances, it is not possible to find fault with the impugned order. The impugned order is neither perverse nor illegal and seems to have taken into consideration relevant facts and circumstances of the case. Hence, I pass the following order :

- (i) Writ Petition is dismissed.
- (ii) No costs.

(A.K. MENON,J.)