

M.R.Tandle

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5088 OF 2018

Shashikant S. Debey

... Petitioner

Vs.

President/Secretary, Marwadi Vidyalaya
High School, and others

... Respondents

.....

Ms. Panthi Desai a/w Jainu Vashi i/b M P. Vashi Associates for
Petitioner

Mr. Omkar Kulkarni, Advocate for Respondent Nos 1 & 2.

Mr. V. S. Nimbalkar, AGP for Respondent No.3.

.....

CORAM : M. S. KARNIK, J.

DATE : 27TH MARCH, 2019

P. C. :

1. Rule. Rule made returnable forthwith. By consent of the parties and heard finally.

2. The petitioner by this petition filed under Articles 226 and 227 of the Constitution of India has assailed judgment and order dated 7th November, 2017 passed by the Presiding Officer, School Tribunal, Mumbai refusing to condone the delay of 280 days in filing the appeal.

3. The petitioner joined the service of the respondent nos. 1

and 2 as an Assistant Teacher in 1998 and worked in the said school upto 2016. It is stated by the petitioner that on 14th November 2014, he had requested for leave for 7 days due to severe health problems, which application came to be rejected.

4. It is further stated in the petition that due to harassment from the staff members of the respondent no. 1 and 2, petitioner is under tremendous stress and undergoing treatment for several health problems. The petitioner relied upon the prescription of the doctors between the period from 12.01.2015 to 14.12.2017 to demonstrate that he was taking treatment for stress related ailments.

5. The petitioner resigned on 13.06.2016. It is the contention of the learned counsel for the petitioner that the said resignation was a forcible resignation. The resignation was accepted by the respondent no.1 by communication dated 13.06.2016. Thereafter, after the delay of almost 280 days, the petitioner approached School Tribunal alleging that the resignation is not voluntary and in fact he had resigned as a result of the harassment. The petitioner filed an application for condonation of delay pointing out that as a result of stress, he was undergoing treatment, therefore he could not approach the Tribunal earlier.

6. The Tribunal by the impugned order found the explanation offered by the petitioner unsatisfactory. The Tribunal was of the opinion that the medical evidence on record does not substantiate the case of the petitioner that he was suffering from medical ailments.

7. Learned counsel for the respondent nos. 1 and 2 invited my attention to the findings of the Tribunal and submits that apart from there being no explanation for the delay, even the conduct of the petitioner has been taken into consideration by the Tribunal while rejecting the application. The petitioner had accepted the full and final amount due towards salary of Rs. 44,187/- and also received the amount of Rs.364800/- on 06.01.2017, as the settlement amount of Gratuity, Provident Fund etc.

8. Learned counsel for the respondent points out that though the petitioner through his Advocate sent a notice on 10th February 2017, even thereafter there is a delay in filing the appeal in as much as the appeal came to be filed in July 2017. The learned counsel for the respondent has contended that the appeal filed is not bonafide.

9. Heard the learned counsel for the parties. Admittedly the

petitioner has worked as an Assistant Teacher from 1998 to 13th June 2016. Thereafter the petitioner tendered his resignation. No doubt, the petitioner received his salary and the full claim amount of Rs.364800/- on 06.01.2017. Learned counsel for the petitioner submits on instructions of the petitioner who is present in person that in order to show his bonafides, he is willing to deposit the amount of Rs. 364800/- with the School Tribunal subject to the decision in appeal.

10. I have gone through the application for condonation of delay. Learned counsel relied upon the Advocates notice dated 10th February 2017 and also complaint made to the concerned Police Station on 5th March 2017. From the averments made in the application for condonation of delay and from the medical prescriptions annexed, it appears that the petitioner was suffering from stress related problems indicating that he was under stress. Whether the resignation was voluntary, it is a matter which the Tribunal will have to decide on merits. However as now the petitioner is willing to deposit the amount of Rs. 364800/- with the School Tribunal within a period of 8 weeks from today and having regard to the explanation offered in the application for condonation

of delay, I am of the opinion that the delay of 280 days caused in filing the appeal should have been condoned by the tribunal. Hence the following order :-

- i) The Petition is allowed.
- ii) The impugned order of the Tribunal is quashed and set aside.
- iii) The delay in filing the appeal is condoned.
- iv) The Tribunal to hear the appeal on merits and in accordance with law.
- v) All contentions of parties on merits are kept open.
- vi) The petitioner who is present in the Court today undertakes to deposit the amount of Rs.364800/- with the School Tribunal within a period of 8 weeks from today. The deposit of the amount of Rs. 364800 is condition precedent to hearing of the appeal. It is made clear that if the said amount is not deposited, then the order of the School Tribunal will stand revived.

11. Petition is partly allowed. Rule is made absolute in the above terms with no order as to costs.

(M. S. KARNIK, J.)