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

WRIT PETITION NO.3876 OF 2018

Sarvodaya Madhyamik Vidyalay & Anr.

.. Petitioners

Vs.

Shankar Balbhim Babar & 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.17 of 2016 filed by respondent no.1 seeking condonation of delay of about 34 months in filing an appeal to the School Tribunal. 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. The fact situation is identical to the case of Mr. Saleem A. Gafoor Khatik respondent no.1 in writ petition no.3875 of 2018. In this writ petition also a new teacher came to be appointed vide order dated 10th

December, 2013 after the resignation/oral termination of respondent no.1 on or about 15th August, 2013. The new teacher was also not impleaded before the tribunal despite knowledge of the same. The submissions of counsel in Writ Petition no.3875 of 2018 have been adopted in this petition as well. The impugned order proceeds on the same basis and is identical in all respects, save and except for reference to documents/exhibits. The reasoning is identical and even the date of alleged resignation/oral termination is the same.

3. The affidavit in reply filed by respondent no.1–employee Shankar Balbhim Babar also proceeds on the same basis as the affidavit in writ petition no.3875 of 2018. The contents of the affidavit of Mr. Babar are a *verbatim* of reproduction of the affidavit of Mr. Khatik in writ petition no.3875 of 2018. The period of delay is also the same so is the submission that the delay of 2 years and 4 months is deemed to be condoned by the Education Officer.
4. All contentions being the same, the counsel appearing for the parties have adopted submissions in Writ Petition no. 3875 of 2018. Nothing else falls for separate consideration the only difference being in the names of the employees. For the reasons set out in the order passed in writ petition no.3875 of 2018, this petition is liable to succeed.

5. 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.)

wadhwa