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IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION******WRIT PETITION NO.6501 OF 2018***

Sanjay Tukaram Naik ..Petitioner.

V/s.

Bhartiya Shikshan Prasarak Mandal & Ors. ..Respondents.

Mr.Satyajeet A.Rajashirke for the petitioner.

Mr.N.V.Bandiwadekar i/b. Ashiwini Bandiwadikar for
respondent No.1.

Mr.S.S.Panchpor, AGP for respondent-State.

CORAM : NITIN W.SAMBRE, J.***DATE : AUGUST 14, 2019*****P.C. :-**

The order dated December 30, 2018 is passed by the Presiding Officer, School Tribunal, Kolhapur, rejecting the prayer of condonation of delay of three years eleven months and sixteen days caused in preferring the appeal under the provisions of Maharashtra Employees Private Schools (Conditions of Service) Regulation Act, 1977 ('the MEPS Act' for short).

2. The case of the petitioner is, having been appointed on the post of peon, he was not permitted to sign

the muster roll which fact was followed by a departmental inquiry.

3. Since the petitioner was found to be guilty in the departmental proceedings, service of the petitioner was terminated on October 5, 2011.

4. According to the petitioner, after October 5, 2011 till date of filing of the appeal questioning the termination i.e. October 26, 2015, the petitioner was engaged in communication with various government authorities viz. Director of Education, Collector, Kolhapur, Deputy Director and Education Officer. According to him, lastly, the Education Officer informed the petitioner to approach the Court for redressal of his grievance on the issue of termination, same has prompted the petitioner to file an appeal along with application for condonation of delay.

5. Apart from the ground of financial constraint, the contentions are, incorrect legal advice and the petitioner was pursuing the matter with various government authorities are relied on in support of prayer for condonation of delay. It is claimed that the delay from the date of termination till the date of filing of the appeal is required to be ignored while calculating limitation for the aforesaid *bona fide* cause.

6. *Per contra*, learned counsel for the respondent opposed the prayer on the ground that the petitioner was negligent and at fault in not preferring the appeal within limitation.

7. Considered rival submissions.

8. The petitioner was served with the termination order dated October 5, 2011 is not disputed. It is also not in dispute that after disciplinary inquiry, said termination was issued.

9. However, it is required to be considered as to whether the petitioner was pursuing the claim before various government authorities and said act of the petitioner can be considered to be a *bona fide* to form a ground of ordering delay condonation.

10. The fact that the petitioner faced an inquiry pursuant to the procedure prescribed under Rules 35 and 36 of the MEPS Rules and pursuant thereto, the petitioner was aware of his legal right under the the MEPS Act and Rules framed thereunder can be inferred.

11. Just because the petitioner was pursuing the issue of his alleged illegal termination before the various government authorities for almost four years cannot by itself

be termed as his *bona fide* mistake. The delay in preferring the appeal before the Tribunal is due to negligent approach on the part of the petitioner.

11. No convincing explanation can be noticed which warrants delay to be condoned in the matter of preferring statutory appeal against the order of termination before the Tribunal.

12. As such, the petition fails and is dismissed.

(NITIN W.SAMBRE, J.)