

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2039 OF 2019

Shri Samarth Education Society ... Petitioner
Versus
Vinayak Dattatray Ghorpade ... Respondent

Mr. V.S. Talkute a/w Mr. Graham Francis for the petitioner.
Mr. Sagar Kasar for the respondent.

CORAM : M. S. KARNIK, J.

DATE : 16th APRIL, 2019.

P. C.:

1. Heard learned counsel for the parties.
2. **Rule.** Rule is made returnable forthwith and heard finally by consent of the parties.
3. Learned counsel waives service of Rule on behalf of the respondent.
4. By this Petition filed under Articles 226 and 227 of the Constitution of India the petitioner is challenging an order dated 14.02.2018 passed by the School Tribunal, Kolhapur allowing the application for condonation of delay in filing the Appeal.

5. It is the contention of the petitioner that the respondent who is relative of the then Chairman joined the services of the petitioner without following the due selection process and by using influence upon the then Headmaster. As per petitioner on and from 01.08.2005 the respondent remained absent and failed to attend services and therefore he is deemed to have abandoned his services. The respondent was terminated on 25.10.2007. The respondent filed Miscellaneous Appeal No.2 of 2009 before the School Tribunal on 23.01.2019 contending that he was restrained from attending the School on 07.10.2008 and he was terminated. The respondent filed an application for condonation of delay of 77 days in filing the Appeal. By an order dated 14.03.2011 the School Tribunal dismissed the application for condonation of delay. The respondent filed Writ Petition No.3170 of 2011 in this Court. By an order dated 15.07.2011 the Writ Petition is allowed and the delay was condoned.

6. Against the order passed by the learned Single Judge the petitioner filed L.P.A. No.392 of 2011. The L.P.A. came to be disposed of on 24.11.2011. In L.P.A. it was observed by this Court that the ground that the respondent took a long time to challenge the termination order can be a ground that can be urged by the respondent before the School Tribunal in support of their case that no relief should be granted to the respondent before the School Tribunal.

7. The respondent filed an application No.72 of 2011 for permission to withdraw the Appeal with liberty to file a fresh Appeal. On 12.09.2013 the said application came to be rejected by the Tribunal by observing that the respondent could file an Appeal on the basis of a separate cause of action which arose on 25.10.2007. Writ Petition No.6586 of 2015 was filed by the respondent challenging the order dated 12.09.2013.

8. On 20.06.2016 this Court set aside the order dated 12.09.2013. Application No.72 of 2011 was allowed and point of limitation was kept open. On 31.01.2017, Appeal No.72 of 2011 was disposed of as withdrawn in terms of order dated 20.06.2016 passed by this Court.

9. On 30.03.2017 the respondent filed Miscellaneous Appeal No.14 of 2017 before the School Tribunal. Alongwith the said Appeal the respondent filed an application for condonation of delay of 9 years, 4 months and 20 days in challenging his termination of services vide order dated 25.10.2007.

10. The petitioner opposed the application for condonation of delay on the ground that the delay in filing Appeal is inordinate. Learned counsel for the petitioner submits that the School Tribunal was not justified in condoning the delay of 9 years, 4 months and 20 days in challenging the order dated 25.10.2007. The Tribunal was of the opinion that the respondent has shown a

good cause for not filing the Appeal within time. In the circumstances of the present case, the Tribunal was satisfied that a case for condonation of delay has been made out. The Tribunal has taken into consideration the challenge raised by the respondent to the termination before the School Tribunal and subsequently in this Court which ultimately resulted in disposing of Appeal No.72 of 2011 only on 31.01.2017. The respondent was prosecuting his challenge before the School Tribunal and this Court which has resulted in delay in filing the present Appeal.

11. Having regard to all these circumstances, School Tribunal came to the conclusion that delay is not deliberate and intentional. I do not find any error in the order of the Tribunal condoning the delay. I see no reason to interfere with the order passed by the School Tribunal. Moreover the Tribunal has condoned the delay subject to payment of cost of Rs.3,000/-.

12. I do not find merit in this petition and the same is disposed of.

13. Rule is discharged with no order as to costs.

(M. S. KARNIK, J.)