

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

**WRIT PETITION NO.13638 OF 2017**

Shivtej Krida and Shikshan  
Mandal Through its Secretary ... Petitioner

V/s.

Shri Navnath Damodar Gargote and ors.... Respondents

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Mr.Mayuresh S. Lagu, Advocate for the Petitioner.

Mr.C.D.Mali, AGP for Respondent No.4.

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**CORAM : UJJAL BHUYAN, J.  
DATE : NOVEMBER 21, 2019.**

**P.C.:-**

1. Heard Mr.M.S.Lagu, learned counsel for the petitioner; and Mr.C.D.Mali, learned AGP who appears for respondent No.4.

2. Despite service respondent Nos.1,2,3, 5 and 6 are not represented.

3. By filing this petition under Articles 226 and 227 of the Constitution of India, petitioner has challenged

legality and correctness of the order dated 3<sup>rd</sup> December, 2016 passed by the School Tribunal, Pune in appeal filed by respondent No.1 i.e. MCA No.1 of 2015.

4. By the aforesaid impugned order, delay of 6 years, 10 months, 10 days in filing the related appeal has been condoned.

5. Petitioner is Shivtej Krida and Shikshan Mandal which is a Charitable Trust managing amongst others the educational institution-Late Bhausahab Tapkir Prathamik Vidyamandir (School) in which respondent No.1 and respondent No.3 are teachers.

6. Shorn of details, it may be mentioned that respondent No.3 was promoted as Headmistress of the school superseding the petitioner vide order dated 25<sup>th</sup> February, 2008. This came to be assailed by respondent No.1 by filing the related appeal before the School Tribunal at Pune (Tribunal) which was registered as MCA No.1 of 2015.

7. It appears that initially at the time of filing appeal the same was not accompanied by any application for condonation of delay though the appeal was filed belatedly. Subsequently, an application for condonation of delay was filed on 5<sup>th</sup> February, 2015. The said application was marked as Ex.1. An order was passed by the Tribunal on 20<sup>th</sup> February, 2016 below Ex.1 allowing the application for condonation of delay subject to payment of cost of Rs.1,000/-.

8. Petitioner challenged the said order allowing condonation of delay before this court by filing Writ Petition No.6633 of 2016. A Single Bench of this court vide order dated 10<sup>th</sup> October, 2016 took the view that the order condoning the delay was not a reasoned order. Mere fact of filing an appeal could not be a ground for condoning the delay. Therefore, the order dated 20<sup>th</sup> February, 2016 was set aside and the delay condonation application was remitted back to the Tribunal for reconsideration and for passing a fresh order.

9. Petitioner assailed this order before the Supreme Court by filing Petition for Special Leave to Appeal (c) No.33763 of 2016. Vide order dated 25<sup>th</sup> November, 2016, notice was issued with an interim order to the effect that there should be stay of all further proceedings pursuant to the order of the High Court dated 10<sup>th</sup> October, 2016.

10. In the meanwhile, on remand by the High Court Tribunal took up the application for condonation of delay afresh. By the order dated 3<sup>rd</sup> December, 2016, delay was condoned and the said application was allowed. It is recorded in the footnote of the order dated 3<sup>rd</sup> December, 2016 that 15 minutes after pronouncement of the said order, an employee of the petitioner produced an authenticated copy of the order passed by the Supreme Court.

11. Assailing the legality and correctness of the aforesaid order dated 3<sup>rd</sup> December, 2016, the present writ petition has been filed.

12. This court by order dated 10<sup>th</sup> January, 2019 had issued notice and had stayed further proceeding in the Appeal-MCA No.1 of 2015 before the Tribunal.

13. In the hearing today learned counsel for the petitioner has very fairly brought to the notice of the court that the Petition for Special Leave to Appeal No. 33763 of 2016 was dismissed by the Supreme Court on 16<sup>th</sup> April, 2018. However, liberty was granted to the petitioner to question the order of the Tribunal dated 3<sup>rd</sup> December, 2016 before the appropriate forum.

14. Learned counsel for the petitioner has referred to Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as the MEPS Act) and submits that though no time period is provided under the said

section for filing of appeal by an employee of a private school, nonetheless, courts have held that such appeal has to be filed within a reasonable period. He submits that the period of six years respondent No.1 took in filing the appeal cannot be said to be a reasonable period. In this connection, learned counsel for the petitioner has preferred to a Single Bench decision of this court in **Executive President Vs. Bhaskar Bhagwant Yadav, 2001(1) Bombay C.R. 159**, as well as a Supreme Court decision in the case of **Londhe Prakash Bhagwan Vs. Dattatraya Eknath Mane, (2013) 10 Supreme Court Cases 627** and contends that order of the Tribunal dated 3<sup>rd</sup> October, 2016 is liable to be set aside and the appeal be dismissed as being time-bound. He has also referred to a decision of the Supreme Court in **P.S.Sadasivaswamy Vs. State of Tamilnadu, (1975) 1 Supreme Court Cases 152**, to contend that belated challenge to supersession should not be entertained by the High Court under Article 226 of the Constitution of India.

15. On the other hand, Mr.C.D.Mali, learned AGP supports the order passed by the Tribunal and submits that no prejudice will be caused to the petitioner if the appeal of respondent No.1 is adjudicated on merits by the Tribunal.

16. Submissions made by learned counsel for the parties have been considered.

17. As has upon noticed, the initial order passed by the Tribunal in condoning the delay was set aside by this court in the previous round of litigation. While setting aside the earlier order, this court observed that the order condoning the delay was not a reasoned one. Accordingly, the matter was remanded back to the Tribunal for fresh consideration of the delay condonation application.

18. When this was challenged before the Supreme Court, initially notice was issued with stay. However, Tribunal has noted in the order dated 3<sup>rd</sup> December, 2016

that it was after passing of the aforesaid order that an unauthenticated copy of the Supreme Court's order was placed before Tribunal. In any case, the Petition for Special Leave to Appeal against this court's order remanding the matter back to the Tribunal was ultimately dismissed by the Supreme Court on 16<sup>th</sup> April, 2018 with liberty to the petitioner to question the order dated 3<sup>rd</sup> December, 2016 before the appropriate forum. Therefore, this aspect of the matter need not detain the court further.

19. Coming to the order dated 3<sup>rd</sup> December, 2016, it is seen that the Tribunal had elaborately examined the sequence of events whereby respondent No.1 resisted the move of the petitioner to promote respondent No. 3 by superseding him. This would be evident from paragraph Nos.6,7 and 8 of the order dated 3<sup>rd</sup> December, 2016. Ultimately, while condoning the delay, Tribunal held as under:

“10. I have gone through the relevant documents which are produced on record by the appellant after remand of the matter. I

have also gone through the documents produced by the respondent/management. While deciding the delay condonation application the applicant's bonafides are to be inquired into and considered. It is established position of law that when the applicant prosecuting bonafidely in the proceedings before any court of law then the period undergone is required to be condoned. In this case as it appears from the documents produced by appellant alongwith affidavit that he was engaged prosecuting his claim of seniority with the management and educational authorities, even he has filed two writ petitions before the Hon'ble High Court for getting decided his seniority and about wages. Even there had been contempt petition preferred by him under which the Education Officer was directed to go into the matter expeditiously. His efforts seem to be bonafide ones for the fact that he has been successful in getting cancellation of approval granted to Smt.Ulka Jagdale by the Education Officer. The learned counsel Mr.Kulkarni for the respondents argued that appellant was well within knowledge of his claim in the year 2009 and he could have filed accompanied appeal in the year 2009 itself and in the writ petitions also he has not claimed the post of Head Master and harassed them by filing writ petitions about seniority and wages. It seems to me that the aspect of seniority is connected with the main claim of promotion as Head Master, so when there is abundant documentary evidence with the applicant to show his bonafides about prosecuting his claim with management and educational authorities and even before Hon'ble High Court. It is also argued on behalf of the applicant that the record of seniority was tampered with guise that the record of school or management was

burnt hence so far as delay is concerned in my view it is satisfactorily explained by the applicant. Hence, in my view the delay of 6 years 10 months and 10 days deserves to be condoned. With these observations I hold that application deserves to be allowed in the result I reply Point No.1 in the affirmative. Hence, I pass following order.

ORDER

- 1) Application is allowed and the delay of 6 years and 10 months and 10 days is condoned.
- 2) No order as to costs.
- 3) Judgment pronounced in open Court."

20. In my considered view, Tribunal has passed a reasoned order explaining as to why the appeal filed by respondent No.1 though belated was required to be heard on merit and as to why the delay was required to be condoned.

21. It is trite that while dealing with an application for condonation of delay in filing appeal, a court or a Tribunal ordinarily takes a liberal approach and is not bound by the strict rules of technicalities. It is also true that Section 9 does not provide any limitation period for filing appeal, but it has been held that despite there being no limitation period in filing appeal, same should be filed

within a reasonable period. What is a reasonable period would depend upon the facts and circumstances of each case and no definite or fixed time period as such can be said to be a reasonable period.

22. Further, there is one important aspect to this matter which would distinguish the judgments relied upon by learned counsel for the petitioner. In an inter-se seniority dispute between two employees, view taken by the courts is that a right which has crystallized in favour of the respondent ought not to be disturbed by a belated challenge. In all the cases relied upon by learned counsel for the petitioner, the orders by this court or by the Supreme Court disapproving condonation of delay was at the instance of the aggrieved employee. In the instant case, grievance has been made by the school authority or by its Manager. The person who would be aggrieved by lodging of the belated appeal has not assailed the order of the Tribunal condoning the delay. In such circumstances, court is not inclined to interfere with the order passed by the

Tribunal, more so, in exercise of its supervisory jurisdiction under Article 226/227 of the Constitution of India.

23. Now that the delay has been condoned, Tribunal should proceed with the appeal expeditiously.

24. Writ petition is accordingly dismissed.

**(UJJAL BHUYAN, J.)**

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