

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No. 1213 of 2018

Sevakeram Pundalik Pustode
Vs.
Gramin Shikshan Sanstha & Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. P.N.Shende, Advocate for the Petitioner.
Mr. P.S. Chawhan, Advocate for the Respondent Nos.1 & 2.
Mr. A.D. Sonak, AGP for the Respondent No.3.

CORAM : MANISH PITALE, J.
DATED : APRIL 08, 2019.

1. By this writ petition, the petitioner has challenged order dated 27th October, 2017, passed by Presiding Officer, School Tribunal, Nagpur, whereby an application for condonation of delay in filing appeal, has been rejected. As a consequence, the challenge raised by the petitioner to the termination of service on 7th April, 2016 by respondent nos.1 and 2, has not been considered on merits at all.

2. The petitioner was working as a Junior College Lecturer/Shikshansevak, in respondent no.2, which is run by the respondent no.1-management. On 7th April, 2016, the service of petitioner was terminated with effect from 11th April, 2016. The petitioner filed an appeal under Section 9

of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 on 12th July, 2016. Along with the said appeal, the petitioner filed an application for condonation of delay under Section 9(3) of the aforesaid Act. It was the case of the petitioner that he had received the order of termination of service on 27th May, 2016 and therefore there was a delay of about 15 days in filing the appeal.

3. The application for condonation of delay was opposed on behalf of the respondent nos.1 and 2 on the ground that the order of termination of service dated 7th April, 2016 was served upon the petitioner on 12th April, 2016. In support of the said contention, the said respondents placed on record a postal certificate showing that the order was indeed served on 12th April, 2016 on the address of the petitioner.

4. It was also contended that there was material placed on record by the petitioner to show that he was served with the order of termination on 27th May, 2016. It is also relevant to mention here that in the application for condonation of delay, the petitioner had also contended that that three other similarly situated employees had been served with the orders of termination of service like the petitioner and they were all re-instated in service and that the petitioner also expected such a relief, which also resulted in delay in approaching the Tribunal.

5. By the impugned judgment and order, the Tribunal has come to the conclusion that petitioner failed to demonstrate that he had received the order of termination of service on the date claimed by him and that respondent nos.1 and 2 had placed on record sufficient material to prove that it was indeed served on 12th April, 2016. On that basis, the Tribunal came to a conclusion that the petitioner had made a false statement in support of his prayer for condonation of delay and therefore his application was liable to be dismissed. Accordingly, tribunal dismissed the application for condonation of delay.

6. The main reason that is expressed by the Tribunal is the failure on the part of the petitioner to prove that he indeed received the order of termination of service on the date on which he claimed to have received the same. In addition, the Tribunal has expressed that the material placed on record by the respondent nos.1 and 2 shows that there was postal certificate on record demonstrating that the order of termination of service was indeed served at the address of the petitioner. The material on record appears to show that the order of termination of service dated 7th April, 2016 was served on the address of the petitioner on 12th April, 2016, although, there is no acknowledgement on record demonstrating that the order of termination of service was indeed served personally on the petitioner. Although, there is some substance in the contention raised on behalf of the respondent nos.1 and 2, since there was a postal certificate

on record, there was a presumption that the order of termination of service was indeed served on the address of the petitioner and it can be concluded that the said order of termination was indeed served upon the petitioner, but it appears that the Tribunal has taken a rather harsh view of the matter by refusing to consider the sufficiency of reasons given by the petitioner for condonation of delay, only by giving an opinion that the petitioner has indulged in falsehood. The Tribunal was completely oblivious of the reasons given in the application of condonation of delay on behalf of the petitioner that there were three identically situated other employees whose services had been terminated and upon approaching to respondent nos.1 and 2, they had been reinstated in the service. It was the case of petitioner that he was hoping for such a relief which also contributed towards delay in challenge the order of termination dated 7th April, 2016. This aspect of the matter has been completely ignored by the Tribunal while emphasizing on the date on which the order of termination of service was served upon the petitioner. It appears that the Tribunal has indeed committed an error in not condoning the delay. In that view of the matter, reliance placed by the learned counsel for the petitioner on the judgment of the Hon'ble Supreme Court, appears to be misplaced. In those cases, the delay was inordinate and it was to the tune of 1724 days in one case and more than five years in the other case.

7. In view of above, this Court is of the opinion that the application for condonation of delay filed on behalf of the petitioner ought to have been allowed and the Tribunal ought to have taken up the appeal filed by the petitioner for consideration on merits. Accordingly, the writ petition is allowed. The impugned judgment and order dated 27th October, 2017 is quashed and set aside and the application for condonation of delay filed on behalf of the petitioner is allowed. Consequently, the parties shall appear before the Tribunal on 22nd April, 2019 for the appeal filed by the petitioner to be taken up for consideration on merits.

The writ petition is disposed of in above terms.
No order as to costs.

JUDGE