



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP PD(MD)No.831 of 2012

and

M.P. (MD)No.1 of 2012

WEB COPY

N.Kasthuri

... Petitioner / Appellant

Vs.

1.The Joint Director of Elementary School Education,
(Primary Education),
College Road, Nungambakkam,
Chennai - 600 006.

2.The District Elementary Educational Officer,
(Primary Education),
S.N.High Road, Opp. To Rathna Theatre,
Tirunelveli Town - 627 006.

3.The Hindu Primary School,
Veerapandiam, Panakudi Via,
Radhapuram Taluk,
Tirunelveli District
Rep.by its Secretary.

4.K.Athisayamari

... Respondents / Respondents

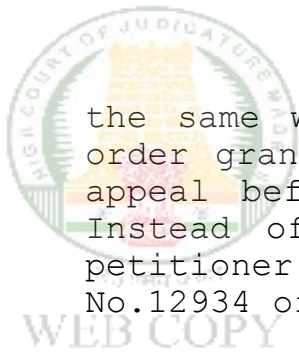
PRAYER: This petition is filed under Article 227 of Civil Procedure Code, against the Fair and Decreetal order passed in C.M.A.No.25 of 2010 on the file of the Private Schools Appellate Tribunal (Principal Subordinate Judge), Tirunelveli, dated 06.01.2012.

For Petitioner	: Mr.H.Velavadhas
For Respondents	: Mr.R.Sethuraman
(R1 & R2)	Special Government Pleader
For Respondent-4	: Mr.G.Prabhu Rajadurai
For Respondent-3	: No Appearance

O R D E R

This Civil Revision Petition has been filed challenging the order passed by the Court below dismissing the appeal filed by the petitioner, challenging her order of termination from the 3rd respondent School.

2. The petitioner was working as a teacher in the 3rd respondent school and she was dismissed from service by the 3rd respondent school. An approval was sought for by the Management and



the same was also granted by the 1st respondent. As against the order granting approval for the dismissal, the petitioner filed an appeal before the 1st respondent and the same was also rejected. Instead of challenging the said order before the Tribunal, the petitioner filed a Writ Petition before this Court in W.P.(MD) No.12934 of 2010.

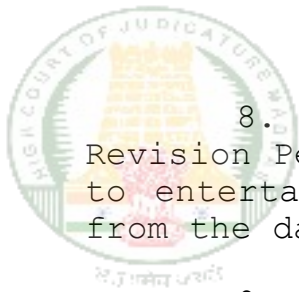
3. This Court by an order dated 20.10.2010 dismissed the Writ Petition on the ground that there is an alternative remedy available to the petitioner to approach the Tribunal and therefore, the Writ Petition cannot be entertained before this Court.

4. Pursuant to the orders passed by this Court, the petitioner filed an appeal before the Private School Tribunal in CMA.No.25 fo 2010. This appeal was filed with a delay of nearly 63 days and therefore, a preliminary objection was raised by the 3rd respondent Management on the ground that the Tribunal does not have the powers to condone the delay exceeding one month as per the proviso to Section 43 of the Tamil Nadu Private School Regulation Act. The Tribunal accepted the said contention and dismissed the appeal on the ground that it is barred by limitation. Challenging the said order, the present Civil Revision Petition has been filed.

5. The learned counsel appearing for the petitioner submitted that the petitioner instead of filing an appeal before the Tribunal, had approached this Court by filing W,.P.No.12934 of 2010 and this Court dismissed the Writ Petition by an order dated 20.10.2010. Thereafter, an appeal came to be filed before the Tribunal during December 2010 and therefore, the time taken by the petitioner before this Court in the Writ Petition filed by her, has to be taken into consideration at the time of calculating the limitation. The learned counsel therefore submitted that the Court below went wrong in dismissing the appeal.

6. Per contra, The learned counsel appearing on behalf of the 3rd respondent, which is the School Management, submitted that the Act itself provides for the maximum condonable limit which should not exceed one month and beyond that, the Tribunal does not have the power to condone the delay. The learned counsel further submitted that admittedly the petitioner had filed a petition to condone the delay earlier and the same came to be dismissed. However, the appeal was numbered and in the appeal the Tribunal came to a conclusion that the appeal cannot be entertained, since it was filed with a delay of 63 days and has rightly refused to entertain the appeal. The learned counsel therefore submitted that there is no ground to interfere with the order passed by the Court below.

7. This Court has carefully considered the submissions made on either side and the materials available on record.



8. The only issue that has to be considered in this Civil Revision Petition is as to whether the Tribunal had the jurisdiction to entertain the appeal which was admittedly filed beyond 60 days from the date of the order of the appellate authority.

9. The only ground that has been raised by the learned counsel for the petitioner is that the petitioner had wrongly approached this Court by filing a Writ Petition in W.P.(MD)No.12934 of 2010 against the order passed by the appellate Authority and this Court had dismissed the petition by order dated 20.10.2010 on the ground that there is an alternative remedy for the petitioner to approach the Tribunal. The learned counsel therefore submitted that the pendency of the writ petition should be taken into consideration while calculating the limitation and the period that was spent during the pendency of the Writ Petition, must be excluded while computing the period of limitation.

10. This Court had an occasion to consider the issue as to whether any relief in terms of Section 14 can be granted by the High Court in the proceedings pending before it and whether this Court can pass an order stating that the time spent before this Court must be excluded. A Division Bench of this Court in the Judgment in Pridhivi Asset Reconstruction and Securitisation Company Limited Vs. Naihaa Retail Private Limited and Others reported in (2017 (6) CTC 732) has categorically held that any relief in terms of Section 14 of the Limitation Act, can be granted only by the Forum, before whom, the application is presented and the High Court cannot say that the time spent in the proceedings before it must be excluded. It must be borne in mind that this Judgment was passed by a Division Bench of this Court.

11. It is true that the scope of Section 14 of the Limitation Act deals with exclusion of time spent in a proceedings bonafide in a Court without jurisdiction and civil proceedings that has been referred to in the said provision, also includes Tribunals wherein the proceedings have the trappings of a civil Court.

12. On a careful consideration of the appeal filed by the petitioner, the petitioner has raised the issue regarding the petitioner prosecuting the Writ Petition before this Court in W.P. (MD)No.12934 of 2010, which was dismissed on 20.10.2010 and wherein which the order copy was received on 15.11.2010. Therefore, the petitioner wanted this period to be excluded by the Tribunal while considering the issue of limitation.

13. The Tribunal while considering this issue has taken note of the fact that the petition filed by the petitioner to condone the delay in filing the appeal in I.A.No.115 of 2011 was dismissed on 02.11.2011 and this order has not been challenged by the petitioner and it has become final. Therefore, the Tribunal came to a



appeal and the appeal cannot be entertained in view of the in-built provision contained under Section 43 of the Tamil Nadu Private Schools (Regulation) Act, 1973.

14. This Court does not find any illegality or infirmity in the order passed by the Tribunal. Once the application filed for condoning the delay was dismissed and the said order has become final, it is not known as to how the main appeal was numbered and the Tribunal again went into the same issue of condoning the delay in filing the appeal. In the considered view of this Court, the Tribunal ought not to have numbered the appeal. In view of the peculiar facts that are available in the present case, there is no necessity for this Court to go into the issue of the applicability of Section 14 of the Limitation Act, in the case on hand.

15. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Joint Director of Elementary School Education,
(Primary Education), College Road, Nungambakkam,
Chennai - 600 006.

2.The District Elementary Educational Officer,
(Primary Education),
S.N.High Road, Opp. To Rathna Theatre,
Tirunelveli Town - 627 006.

3. The Private Schools Appellate Tribunal
(Principal Subordinate Judge), Tirunelveli.

+1 CC to Mr.H.VELAVADHAS, Advocate SR-86004.

+1 CC to Mr.G. PRABHU RAJADURAI, Advocate SR-86102.

+1 CC to GP SR-86135.

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CS(25.09.2019) 4P 7C