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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 15th May, 2019

+ W.P.(C) 5278/2019

MAHADEV P. G. COLLEGE Petitioner

Through: Mr.Sanjay Sharawat, Adv.

versus

NATIONAL COUNCIL FOR TEACHER
EDUCATION AND ANR. Respondents

Through: Ms. Arunima Dwivedi, SC for
NCTE with Ms. Preeti Kumra, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T (O R A L)

1. This writ petition assails an order, dated 26th April, 2019, passed by the Appellate Committee in the National Council for Teachers Education (hereinafter referred to as “the NCTE”), dismissing the appeal, of the petitioner, challenging the order dated 11th April, 2017, of the Northern Regional Committee (NRC) of the NCTE, on the ground that there was no sufficient explanation for the delay of one year and four months in filing the appeal.

2. A perusal of the Memorandum of Appeal reveals that it contains a specific column requiring the appellant to explain the reason for delay, if any. Against this column, the only explanation made by the appellant reads: “Because the correspondence to NCTE NRC”.

3. The appellate committee has held that this cryptic entry, in the memorandum of appeal, does not constitute, sufficient justification for the inordinate delay in filing the appeal and has, therefore, dismissed the appeal on the ground that the petitioner had failed to disclose sufficient cause for condonation of delay.

4. Section 18 of the National Council for Teacher Education Act 1993, (hereinafter referred to as “the NCTE Act”) deals with filing of appeals. Sub-sections (1) and (2) thereof read thus:

“18. APPEALS

(1) Any person aggrieved by an order made under section 14 or section 15 or section 17 of the Act may prefer an appeal to the Council within such period as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor, if the appellant satisfies the Council that he had sufficient cause for not preferring the appeal within the prescribed period.”

5. As is apparent from the reading of the above-extracted sub-sections (1) and (2) of Section 18 of the NCTE Act, an appeal, before the NCTE, is required to be filed within the “prescribed” period as defined in clause (h) of Section 2 of the NCTE Act and as meaning “prescribed by rules made under Section 31”.

6. The period for filing an appeal is contained in Rule 10 of the NCTE Rules, 1997 (hereinafter referred to as “the NCTE Rules”) and stands prescribed as “60 days”. The appeal may be entertained after 60 days only on the appellant satisfying the Appellate Authority that sufficient cause existed for the delay.

7. Rule 11 of the NCTE Rules, on which Mr. Sharawat places reliance, may also be extracted thus:

“11. Procedure for disposal of appeals

(1) On receipt of memorandum of appeal, the Council shall call for the records of the case from the Regional Committee concerned which passed the order appealed against and after giving the appellant a reasonable opportunity of being heard pass such orders as it may deem fit.

(2) The appellant shall be entitled to be represented by an employee or officer of the appellant institution.

(3) The Council shall decide every appeal as expeditiously as possible and ordinarily every appeal shall be decided on a perusal of documents, memorandum of appeal, written argument, if any, affidavits and after hearing such oral arguments as may be advanced.

(4) The Council shall endeavour to dispose of every memorandum of appeal within a period of three months from the date of its filing.

(5) The Council shall not ordinarily allow more than three adjournments in any appeal.”

8. Clearly, therefore, the statutory scheme requires every appeal, under the Act, to be filed within 60 days from the date of passing of the order under appeal. Reckoned thus, the appeal of the petitioner was delayed by as long as one year and four months.

9. The cryptic entry, against the column requiring the petitioner to provide the reason for the delay, reading “because the correspondence to NCTE NRC” cannot, viewed with any which way, be said to constitute sufficient cause to condone the said delay.

10. Mr. Sharawat has sought to place reliance on the orders dated 6th April, 2018, passed by a Coordinate Single Judge Bench of this Court in W.P.(C) 3356/2018 (*Birmati Memorial College of Education v. National Council of Teachers Education*) and dated 22nd May, 2018 in W.P.(C) 1988/2018 (*Shri Bhagwan College of Education v. National Council of Teachers Education*).

11. Neither of the said decisions can, in my view, come to the aid of the petitioner.

12. In *Birmati Memorial College (supra)*, the petitioner had sought to impugn an order, dated 5th December, 2016, passed by the concerned Regional Committee in the NCTE. The petitioner had sought to contend that it had not received any show cause notice, and had come to the court directly against the order of the Regional Committee, without preferring any appeal.

13. On an objection being raised, by learned counsel for the respondent/NCTE to the effect that, in view of the availability of an efficacious statutory remedy of appeal, the writ petition ought not to be entertained, the learned Single Judge relegated the petitioner to the appellate remedy available to it with an observation that the appeal would be considered on merits and not rejected on the ground of limitation.

14. Firstly, this order is an order in which this Court, exercising its jurisdiction under Article 226 of the Constitution of India, gave liberty to the petitioner to file an appeal, opining that the appeal be not dismissed on the ground of limitation. I am unable to understand how this order can constitute a precedent in a case such as the present, far less a justifiable basis, to set aside the impugned order dated 26th April, 2019, of the Appellate Authority in the NCTE.

15. That apart, in *Birmati Memorial College (supra)*, the stand of the petitioner was that it had not even been served a show cause notice. There is no such contention in the present case.

16. In *Shri Bhagwan College (supra)*, learned counsel for the petitioner himself sought to withdraw the writ petition with liberty to file an appeal before the Appellate Authority in the NCTE.

17. It was prayed that “keeping in view the peculiar facts of the case, the delay may be condoned”. This request, of the learned counsel for the petitioner in the said case, was not opposed by learned counsel

for the respondent, as is specifically noted in the order.

18. The order, therefore, proceeded on a concession, and in view thereof, dismissed the petition with liberty to the petitioner to file a statutory appeal with an observation that it would not be rejected on the ground of delay.

19. Apart from the fact that the ground on which the concession was sought, in that case, was different, the reliance by Mr. Sharawat, learned counsel for the petitioner on the said decision, as a precedent, would also be liable to be discountenanced for the reason that the order was passed on a concession made by learned counsel for the respondent.

20. It is trite that an order made on concession cannot be construed as a precedent.

21. Mr. Sharawat has also sought to place reliance on Rule 11 of the NCTE Rules, specifically sub-rule 5 thereof, which stipulates that the Appellate Authority in the NCTE “shall not ordinarily allow more than three adjournments in appeal”, Mr. Sharawat would seek to place reliance on this provision that he ought to be granted one, if not three, adjournments, to provide a reason for condonation of the delay.

22. The reliance, by Mr. Sharawat, on the aforesaid Rule 11 (5) of the NCTE Rules, is obviously misplaced, inasmuch as the said sub-rule deals with adjournment for hearing of the appeal. The question of

hearing of appeal would arise only if the delay is condoned. Quite obviously, therefore, Rule 11 (5) cannot be interpreted to mean that, for providing sufficient case for condonation of delay in filing the appeal, the appellant would be allowed three adjournments.

23. This submission of Mr. Sharawat is also, therefore, rejected.

24. That apart, this Court is required to be alive to the possibility of a precedent being set, were a writ petition such as this to be allowed.

25. In the absence of any tangible reason being cited, by the petitioner before the appellate authority, for condonation of delay in filing the appeal, even where the delay was inordinate in nature, the order of the appellate authority, dismissing the appeal on the ground of delay could not, in my view, be interfered with by this Court.

26. I am of the view that, in such cases the court has to be circumspect and not create a situation in which the statutory provision requiring the appeal to be filed within the specific period, and requiring sufficient cause, for delay to be condoned, is not rendered nugatory or otiose.

27. It is obvious, in case this writ petition is entertained, it would set an example in all cases for every other appellant to file an appeal, provide no tangible reason for the delay in doing so, and, thereafter, if the appeal is dismissed on the ground of delay, move this Court for setting it aside.

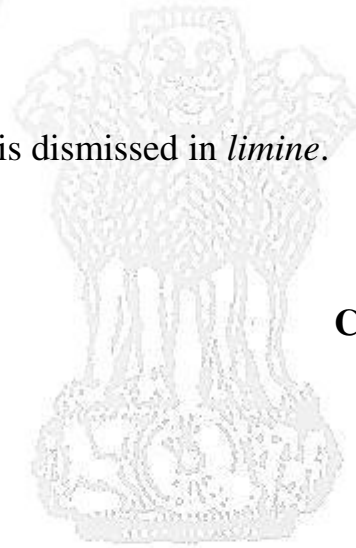
28. It is well settled that statutes of limitation are statutes of equity and repose, intended to achieve a quietus to the controversy. There is a public element inherent in such provisions, which ought not to be defeated by indiscriminate interference, exercise of the extraordinary power conferred by under Article 226 of the Constitution of India.

29. For the above reasons, I am of the opinion that there is no error in the impugned order and no case arises for this Court to interfere with the same.

30. The writ petition is dismissed in *limine*.

MAY 15, 2019/dsn

C.HARI SHANKAR, J



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