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

+ W.P.(C) 8041/2017

MANOJ KUMAR SINGH

..... Petitioner

Through Mr. Rajiv Ranjan Mishra, Adv.

versus

THE DIRECTORATE OF EDUCATION AND ORS Respondents

Through Mr. Anuj Aggarwal, ASC, GNCTD

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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28.01.2019

Vide the present petition, the petitioner has assailed the order dated 26.07.2017 passed by Delhi School Tribunal in appeal No. 06/2014 whereby the appeal of the petitioner was dismissed on delay.

It is not in dispute that earlier the petitioner filed W.P.(C) No. 6050/2013, which came for hearing on 21.11.2013 and on the said date counsel for the School i.e. respondents no. 2 and 3 therein stated that petitioner's services were terminated vide order dated 06.04.2013. Accordingly, this Court was of the opinion that once the services of an employee of the School are terminated, the challenge would lie before Delhi School Tribunal in view of the judgement in case of ***Shashi Gaur Vs NCT of Delhi (2001) 10 SCC 445.***

It is also not in dispute that the petitioner came before this Court in W.P.(C) No. 6050/2013 on the aspect of payment of suspension allowance, however, during the hearing on 21.11.2013 counsel for the School disclosed

that the services of the petitioner has already been terminated vide order dated 6.4.2013. Thereafter, pursuant to order dated 21.11.2013, the petitioner filed appeal with condonation of delay application before the Tribunal on 26.02.2014.

Learned counsel appearing on behalf of the respondent School submits that the petitioner has not explained the delay as he was terminated on 6.4.2013. Moreover, instead of filing the appeal before the Tribunal the petitioner had approached this Court suppressing the termination order dated 6.4.2013. Thus, the Tribunal has rightly dismissed the appeal on delay because the petitioner failed to explain day to day delay of 11 months, which is the settled law.

It is not in dispute that day to day delay has to be explained but the fact remains that when the petitioner approached this Court in WP(C) 6050/2013, he filed the petition for payment of suspension allowance, thus it is established that on the date when he filed the petition and order dated 21.11.2013 was passed by this Court, the petitioner was not aware about the termination order dated 6.4.2013 which was disclosed by the counsel for the School that the petitioner had already been terminated vide order dated 6.4.2013.

It is also not in dispute that this Court vide order dated 21.11.2013 given liberty to the petitioner to challenge his termination before the Tribunal in accordance with law.

Once liberty is granted by this Court then the delay should not have come in the way. Moreover, when the petitioner filed W.P.(C) No. 6050/2013 he was not aware of the termination order dated 6.4.2013 therefore this Court granted liberty to the petitioner to file the appeal before

the Tribunal. In that situation, the learned Tribunal ought to have condoned the delay and decide the appeal on merits.

It is also settled law that when any person approached to wrong forum and the said forum give him liberty to file petition before the appropriate forum, then the said forum has condoned the delay to that extent. In the present case, this Court vide order dated 21.11.2013 given liberty to the petitioner to file the appeal before the Tribunal.

It is also not in dispute that the appeal filed by the petitioner firstly was taken on 18.3.2014 and continued to adjourn till the impugned order dated 26.7.2017 is passed.

In view of the facts recorded about, I am of the considered view that the learned Tribunal has erroneously dismissed the appeal of the petitioner on delay. Accordingly, I hereby set aside the order dated 26.07.2017 and remand the case to the Tribunal to decide afresh on merits by condoning the delay for filing the appeal.

The petition is accordingly disposed of.

Parties are directed to appear before the learned Tribunal on 15.02.2019.

SURESH KUMAR KAIT, J

JANUARY 28, 2019

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