

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4256 OF 2020

The President
Khandesh College Education Society
& another

Petitioners

Versus

Vasudeo s/o Bhaskar Bhirud & others

Respondents

Mr. S.R. Patil, Advocate for the petitioners.
Mr. S.N. Kendre, AGP for respondent No. 3.
Mr. Khanapure, Advocate holding for Mr. Ajit Gaikwad-Patil,
Advocate for respondent No. 1.
Mr. A.B. Girase, Advocate for respondent No. 2.

CORAM : M.G. SEWLIKAR, J.

DATE : 17th July, 2021.

PER COURT :

1. This petition under Article 227 of the Constitution of India is filed challenging the order passed by the University and College Tribunal, Aurangabad, on 30.01.2020 on delay condonation application by which, the learned Tribunal condoned the delay in preferring appeal against the oral termination of respondent No. 1.
2. Factual matrix leading to this petition is that respondent

No. 1 was appointed as Assistant Professor with petitioner – institution on 10th November, 2010. Since his work was not satisfactory, during the period of probation, respondent No. 1 came to be terminated orally. It is the case of respondent No. 1 that he kept on visiting the Management with a request to reinstate him. Almost one and half years were lost in this persuasion. It is his case that the petitioner kept on assuring him that he would be reinstated in service. Thereafter, he approached the Grievance Committee. The Grievance Committee observed that injustice was done to respondent No. 1 and directed the petitioner-institution to pay difference in salary to respondent No. 1 from the date of joining the service. Since the directions of the Grievance Committee were not complied with, respondent No. 1 approached this Court by filing Writ Petition No. 4041/2016 which was disposed of on 26th September, 2018. Thereafter, respondent No. 1 preferred appeal before the University and College Tribunal. Delay of 5 years, 11 months and 4 days was committed in preferring appeal. The learned Tribunal, after hearing all the parties, condoned the delay observing that respondent No. 1 has made out a sufficient case for condonation of delay. It also observed that wrong advice given by counsel is sufficient cause for condonation of delay. This order is impugned in

this writ petition.

3. Shri Sandesh Patil, learned counsel for the petitioner vehemently submitted that the Tribunal has committed gross error in allowing the application for condonation of delay. He argued that respondent No. 1 was very well aware that his services were terminated but he did not prefer appeal within the prescribed period of limitation. He submitted that for one and half years, respondent No. 1 remained silent. Thereafter he approached the Grievance Committee and thereafter he approached this Court and in the end, he challenged the order of termination before the Tribunal. He submitted that this shows that respondent No. 1 was all along negligent in assertion of his rights. He submitted that law protects the diligent and not the negligent. He further submitted that respondent No. 1 did not receive a wrong advice but he consciously did not challenge his termination before the Grievance Committee. He did not raise any objection about his termination either before Grievance Committee or before this Court. But he made monetary claim. This shows that despite having been fully aware of his oral termination, he did not prefer proper remedy as is permissible in law. Therefore, the learned Tribunal committed gross error in allowing the

application for condonation of delay. He placed reliance on judgments in the matter of D. Gopinathan Pillai vs. State of Kerala and another reported in 2007 DGLS (Soft) 50 : 2007 AIR (SCW) 4713, Maqbool Fatma vs. Deputy Custodian General reported in 1996 DGLS(Soft) 1005 : 1996(5) SCC 493, Anmol Devaji Goswami vs. Nagsen Shikshan Sanstha, Nagpur reported in 2021(1) ALL MR 544.

4. Shri Khanapure, learned counsel for respondent No. 1 submitted that initial one and half years were lost as respondent No. 1 kept on meeting the Management for his reinstatement. He was assured by the Management that he would be reinstated in service. He submitted that respondent No. 1 preferred the remedies as were advised to him by his counsel. He submitted that if respondent No. 1 had been advised in the beginning itself that the appropriate remedy is to prefer appeal before University and College Tribunal, he would have done so. Because of wrong advice, he preferred wrong remedies. Therefore, the learned Tribunal was perfectly justified in holding that wrong advice is also a sufficient cause. He, therefore, supported the order of the learned Tribunal.

5. Shri Girase, learned counsel for respondent No. 2 relied

on the judgment in the case of Rafiq and others vs. Munshilal and others reported in AIR 1981 SC 1400, Lachi Tewari and others vs. Director of Land Records and others reported in AIR 1984 SC 41, Tahil Ram vs. Ramchandra and others reported in AIR 1993 SC 1182 and Malkiat Singh vs. Joginder Singh reported in AIR 1998 SC 258 and submitted that the Honourable Supreme Court also has held that client should not suffer for the faults of the advocate.

6. Perused the papers. All the facts are admitted. Respondent No. 1 was terminated from service in the year 2012. Admittedly, his termination was oral. There is no provision by which an employee can be orally terminated by an educational institution. Therefore, there appears substance in the contention of respondent No. 1 that he kept on approaching the petitioner for his reinstatement in service and that petitioner assured that some decision favourable to respondent No. 1 would be taken. Thereafter, respondent No. 1 approached the Grievance Committee and thereafter he approached this Court by filing aforesaid writ petition. He did not challenge his termination before both the forums. Chronology of these events show that he was not properly advised by his Advocate. Learned counsel Shri Patil argued that respondent No. 1 did not specifically contend

in the application for condonation of delay that he was wrongly advised and on that count, he did not approach the University and College Tribunal within the prescribed period of limitation. This submission cannot be accepted. The record speaks for itself. Respondent No. 1 should have been advised in the beginning itself to approach the University and College Tribunal instead of Grievance Committee and this Court. If he had been correctly advised, he would not have wasted time in preferring wrong remedies. Therefore, the learned Tribunal did not commit any error in observing that because of wrong advice, he did not approach the Tribunal. No fault can be found with this conclusion.

7. In the case of D. Gopinathan Pillai vs. State of Kerala (supra) delay of 3320 days was committed. The Honourable Supreme Court observed that the Court cannot condone delay only on sympathetic ground without assigning any reasonable, satisfactory, sufficient and proper reason. This is not the factual situation in the case at hand. The learned Tribunal has given cogent reasons.

8. In the case of Maqbool Fatma vs. Deputy Custodian General (supra) the facts were that revision was preferred after 14

years by which time the person in possession had perfected the title by prescription. Therefore, the Honourable Supreme Court refused to condone the delay as the party committing delay was not diligent. This decision of the Honourable Supreme Court has no application to facts of the case at hand. In the case at hand, respondent No. 1 has assigned sufficient cause for the delay.

9. In the case of Anmol Goswami vs. Nagsen Shikshan Sanstha (supra), the appellant was dismissed from service. Yet he pursued several other remedies pertaining to infighting in management of Education society. It was observed that the appellant knowingly and consciously did not challenge dismissal order. The distinguishing fact is that appellant Anmol did not challenge his termination before the appropriate forum consciously. In paragraph No. 16 of the judgment it was observed thus:-

“16. The above factor therefore indicates that the appellant has consciously and thoughtfully not challenged his dismissal order dated 14.5.2015 though he had made a statement, as noted above, in the first petition in paragraph 34 that he would be challenging it separately. This one factor indicates that Section 14 of the Limitation Act would not be applicable.

The above observations clearly show that the petitioner

had made a statement that he would be challenging his dismissal separately. In the case at hand, nothing is brought on record to indicate that respondent No. 1 did not challenge his termination consciously. On the contrary, record indicates that he did not challenge his termination before the appropriate forum because of wrong advice by his counsel.

10. Learned counsel Shri Patil placed reliance on judgments of the Honourable Supreme Court in the case of Rajesh Kumar Srivastava vs. State of Jharkhand and others reported in **(2011) 4 Supreme Court Cases 447** and B.T. Krishnamurthy vs. Sri Basaveswara Education Society, reported in **(2013) 4 SCC 490** for the proposition that oral termination is permissible. In the case of Rajesh Kumar Srivastava (supra), a Munsif was discharged by an order in writing. Therefore, it is not a case of oral termination. Therefore, this case has no application to the facts of the case at hand. In the case of B.T. Krishnamurthy (supra), the petitioner therein was appointed orally. There was no appointment order in writing as he was temporary/part time lecturer in the college. Therefore, he was asked not to come which was treated as oral termination. In the case at hand, appointment order was issued by

the petitioner appointing respondent No. 1 as a lecturer. Therefore, facts of this case also do not apply to the facts of the case at hand.

11. In this view of the matter, the learned Tribunal was perfectly justified in observing that because of wrong legal advice, respondent No. 1 committed delay in preferring the appeal. Petition is, therefore, bereft of any merit. Hence, it is dismissed with no order as to costs.

(M. G. SEWLIKAR)
Judge

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