

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12881 OF 2019

Prakash s/o Jagannath Pingle,
Age : 57 years, Occu. Nil,
R/o Radhey, Tilak Chowk,
Chalisgaon, District Jalgaon

PETITIONER

VERSUS

1. Chalisgaon Education Society,
Office A.B. High School Compound,
Chalisgaon, District Jalgaon,
through its Chairman
2. Chalisgaon Education Society,
Office A.B. High School Compound,
Chalisgaon, District Jalgaon,
through its Secretary
3. A.B. High School,
Tq. Chalisgaon, District Jalgaon,
through its Head Master
4. The Education Officer (Secondary),
Zilla Parishad, Jalgaon
5. The State of Maharashtra,
Education and Sports Department,
Mantralaya, Mumbai-32

RESPONDENTS

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Mr. L.V. Sangeet, Advocate holding for Smt. M.L. Sangeet,
Advocate for the petitioner
Mr. P.S. Shendurnikar, Advocate for respondent Nos.1 to 3
Mr. K.B. Jadhavar, A.G.P. for respondent Nos.4 and 5

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CORAM : MANGESH S. PATIL, J.

DATE OF JUDGMENT RESERVED : 17.11.2021
DATE OF JUDGMENT PRONOUNCED : 24.11.2021

JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. Learned Advocate Mr. P.S. Shendurnikar waives for respondent Nos.1 to 3 and learned A.G.P. Mr. K.B. Jadhavar waives service for respondent Nos.4 and 5. At the request of the parties, the matter is heard finally at the stage of admission.

3. The petitioner is taking exception to the order passed by the School Tribunal thereby rejecting his application for condonation of delay in preferring an appeal under Section 9(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('MEPS Act', for short), challenging the order of his termination passed by respondent No.1 Education Society dated 04.08.2016.

4. Mr. L.V. Sangeet, learned Advocate for the petitioner, on the line of his stand in the application for condonation of delay, submits that the Management issued a notice to him on 17.08.2015, calling upon him to show cause as to why a disciplinary proceeding be not initiated against him. He chose to challenge such action by filing Regular Civil Suit No.104 of 2016 in the civil court. In the meantime, the Management proceeded to conduct the disciplinary enquiry and simultaneously raised an objection in the suit regarding its maintainability on the ground of jurisdiction. By the

order dated 04.08.2016, pursuant to the disciplinary enquiry, the Management terminated his service. Simultaneously, the civil court rejected the plaint under Order VII Rule 11 of the Code of Civil Procedure by the order dated 02.08.2017. The petitioner was *bona fide* pursuing a remedy in the form of the civil suit and therefore, did not challenge the order of termination promptly and waited for the civil court to decide the issue regarding maintainability of the suit. This had resulted in his failing to prefer the appeal under Section 9 of the MEPS Act within the statutory period of 30 days. Soon after the plaint was rejected, he chose to prefer the appeal on 31.08.2017. Though the limitation started running from the date order of termination was passed i.e. 04.08.2016 and there was a delay of almost a year, there were no mala fides on his part and the delay ought to have been condoned considering the provisions of Section 14 of the Limitation Act, 1963. The learned Advocate would submit that there were no circumstances to indicate any mala fides on his part. He was not to gain anything by not preferring the appeal. He is an employee, who has been illegally terminated and the justice could have been met by granting him an opportunity to file the appeal. No prejudice was likely to be caused to the Management if the appeal was allowed to be decided on its merits.

5. Per contra, Mr. P.S. Shendurnikar, learned Advocate for the contesting respondents, referring to the affidavit-in-reply, would submit that there is no question of invoking the provision of Section 14 of the Limitation Act. All the while, the petitioner was alive to the fact that the

disciplinary enquiry was going on and even had the knowledge of his termination. Still, he had chosen not to file the appeal in time and pursued a wrong remedy even while objection to the jurisdiction of the civil court was alive. He would submit that in order to invoke the provision of Section 14 of the Limitation Act, it is necessary that the remedy that is resorted to incorrectly and the remedy that is available to a party should be the same. Before the civil court the petitioner was challenging the vires of the show cause notice whereas he is expected to pursue a remedy of an appeal under Section 9 of the MEPS Act for challenging his termination. The two remedies were not identical and therefore, he is not entitled to invoke the provision of Section 14 of the Limitation Act.

6. On facts, Mr. Shendurnikar would submit that during his cross-examination in the suit, the petitioner specifically admitted that he had participated in the disciplinary enquiry and was even having the knowledge about having been terminated pursuant thereto. Not only that but even he specifically admitted the knowledge about the remedy to be had by preferring an appeal before the School Tribunal. He would submit that inspite of such state-of-affairs, the petitioner chose not to prefer the appeal promptly and therefore, his conduct does not demonstrate that he was prosecuting the remedy before the civil court bona fide. Learned Advocate would place reliance on the following decisions:

- (i) ***Anmol V. Nagsen Shikshan Sanstha and Others;
2020 SCC OnLine Bom 169***
- (ii) ***Kalpana d/o Deorao Lenze V. Gurudeo Krushanashram
Dharmik Trust, Navegaon Bandh and others;
(2007)3 Mah LJ 486***
- (iii) ***Commissioner, M.P. Housing Board and Ors. V
M/s Mohanlal and Company;
AIR 2016 SC 3592***
- (iv) ***Madhavrao Narayanrao Patwardhan V.
Ram Krishna Govind Bhanu and others;
AIR 1958 SC 767***

7. I have carefully gone through the papers and considered the rival submissions as also the decisions cited at the bar and also the catena of judgments of the Supreme Court touching the aspect of condonation of delay.

8. As can be appreciated, so far as the events are concerned, there is absolutely no dispute. The only question that needs to be addressed is as to whether in the peculiar facts and circumstances, the delay could have been condoned. True it is that except resorting to the provision of Section 14 of the Limitation Act, the petitioner is not putting forth any other ground or showing any other cause for not preferring the appeal in time. It is equally a matter of record that the petitioner was always alive to the fact that he was facing the disciplinary enquiry, which had resulted in passing the order of his termination and not only this, but was alive to the remedy of appeal to the School Tribunal that was available to him. It can, therefore, certainly be said that he had chosen not to prefer

the appeal which was his voluntary act.

9. Section 14 of the Limitation Act reads as under:

14. Exclusion of time of proceeding *bona fide* in Court without jurisdiction. -

(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2)

(3)

10. In the matter of *Commissioner, M.P. Housing Board and Ors.* (supra), the observations of the Supreme Court in the case of *Consolidated Engineering Enterprises V. Principal Secretary, Irrigation Department and others; (2006)6 SCC 239* were referred with approval in following words:

“16. In Consolidated Engineering Enterprises (supra), the Court, while dealing with the conditions in which Section 14 will be applicable, enumerated five conditions which are as follows:

“(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceeding had been prosecuted with due diligence and in good faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must

relate to the same matter in issue and;

(5) Both the proceedings are in a court.”

In the said case, it has also been stated that:

“... While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity....”

17. From the aforesaid passage, it is clear as noon day that there has to be a liberal interpretation to advance the cause of justice. However, it has also been laid down that it would be applicable in cases of mistaken remedy or selection of a wrong forum. As per the conditions enumerated, the earlier proceeding and the latter proceeding must relate to the same matter in issue. It is worthy to mention here that words “matter in issue” are used under Section 11 of the Code of Civil Procedure, 1908. As has been held in Ramadhar Shrivastava v. Bhagwandas the said expression connotes the matter which is directly and substantially in issue. We have only referred to the said authority to highlight that despite liberal interpretation placed under Section 14 of the Act, the matter in issue in the earlier proceeding and the latter proceeding has to be conferred requisite importance. That apart, the prosecution of the prior proceeding should also show due diligence and good faith.”

11. Alive to the proposition, learned Advocate Mr. Shendurnikar strenuously submitted that the two remedies that were invoked by the petitioner of filing a suit and then trying to prefer an appeal were not pertaining to the same matter in issue. In my considered view, the submission of Mr. Shendurnikar is not legally tenable. The remedy that

was sought to be availed of by the petitioner in the suit may be different than the remedy of preferring an appeal under Section 9 of the MEPS Act. The requirement of law that the matter in issue has to be the same does not mean that even the remedies in both the proceedings should be the same. Commensurate with the then happenings, the petitioner had challenged the show cause notice by filing the suit. Apparently he was waiting for some decision in the suit in his favour. It is subsequently that the order of termination was passed during pendency of the suit and it is thereafter that the plaint was rejected. Therefore, even though he was aware that he could have challenged the order of termination by preferring an appeal to the School Tribunal, the matter in issue in both the proceedings cannot be said to be different. The right of the Management to initiate the disciplinary enquiry was directly and substantially in issue in the suit and the possible appeal.

12. The decision in the case of ***Commissioner, M.P Housing Board and Ors.*** (supra) was rendered in the peculiar facts and circumstances of the case. In that matter, the dispute was referred to the sole arbitrator. Both the parties had appeared before him and on the basis of the material on the record, the arbitrator had passed an award. The respondent contractor was not found entitled to any claim. With his back to the wall, he filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 before the High Court, seeking appointment of an arbitrator to adjudicate the disputes, inter alia contending that clause 29 of the contract

could not be treated as an arbitration clause. It is on this background that the Supreme Court had concluded that the remedy under Section 14 of the Limitation Act was not available. The respondent Management in the instant case, therefore, is not entitled to derive any benefit from this decision of the Supreme Court.

13. Again, the decisions of the coordinate benches of this Court in the matters of *Kalpana* and *Anmol* (supra), the former of which has already been referred to and relied upon by the School Tribunal in the impugned order, were clearly rendered in the peculiar facts and circumstances of the respective matters and do not lay down any ratio.

14. It is trite that the approach of the courts in considering the request for condonation of delay should be pragmatic. It shuts all the avenues that are open to a party and unless there is some clinching material to demonstrate some mala fides on its part, the courts should be liberal in condoning the delay. The principle underlining such an approach has also been reiterated from time to time. A person is not to gain anything by allowing his remedy to be lost by not preferring a proceeding within the period of limitation. The following are the observations, referring to the earlier decisions, from *G. Ramegowda, Major etc.. V. The Special Land Acquisition Officer, Bangalore; AIR 1988 SC 898*:

“The contours of the area of discretion of the Courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. There is, it is

true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. In Katiji's case (supra), this Court said:

"When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay."

"It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

15. Bearing in mind these propositions, when there is no material to show that there was gross negligence or deliberate inaction or lack of bona fides imputable to the petitioner, when it is a matter between a mighty Management and a poor employee facing termination, the propriety demands that the discretion should be exercised in favour of the weaker of the two.

16. For that matter, as the observations of the learned brother judge in the case of **Anmol** (supra) would indicate that in a similar set of facts and circumstances, even the learned brother judge was inclined to allow the writ petition and condone the delay in preferring an appeal of

the petitioner therein with a rider that he would forego all the monetary benefits for the period of delay, which offer was not acceptable to the petitioner therein and the writ petition was dismissed.

17. In the facts and circumstances discussed hereinabove, I am also inclined to adopt the same course, however, without giving any option to the petitioner.

18. The Writ Petition is allowed. The impugned order is quashed and set aside. The delay stands condoned, however, subject to the condition that the petitioner would not be entitled to receive any monetary benefit for the period of delay of almost one year, if at all he ultimately succeeds in the appeal and is reinstated. The Rule is made absolute in above terms.

[MANGESH S. PATIL]
JUDGE

19. After pronouncement of the judgment, learned Advocate Mr. S.H. Tripathi, holding for Mr. P.S. Shendurnikar, Advocate for respondent Nos.1 to 3, submits that to enable the respondents to challenge the order, its operation be stayed for a period of eight weeks.

20. Considering the nature of the dispute, operation of the order is stayed for a period of four weeks.

[MANGESH S. PATIL]
JUDGE