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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4816 OF 2018

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| 1. Jai Hind Education Trust
Through its Chairman,
Shri Arun Zulalrao Salunkhe,
Age – Major Occ – Doctor
Having office at Jai Hind Colony,
Late Nanasaheb Z. B. Patil Marg,
Deopur, Dhule | PETITIONERS |
| 2. Zulal Bhilajirao Patil College,
Through its Principal,
Shri. P. H. Pawar,
Age – Major, Occ – Service
Having office at Jai Hind Colony
Late Nanasaheb Z. B. Patil Marg,
Deopur, Dhule | |

VERSUS

- | | |
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| Dilip Vitthal Chavan,
Age – Major, Occ – Nil
R/o 4, Rupam Apartment,
Suyog Nagar,
Deopur, Dhule | RESPONDENTS |
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Mr. Shrikant S. Patil, Advocate for the petitioners
Mr. Rahul D. Khadap, Advocate for the respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd DECEMBER, 2021

JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocates for the parties.

2. This petition is directed against order dated 6th September, 2017 passed by the University and College Tribunal, Aurangabad (for short "the Tribunal") in Miscellaneous Application No.4 of 2014, thereby condoning the delay of 660 days caused in filing appeal by the respondent challenging the order of termination.

3. The respondent was a teacher serving in petitioner No. 2 college run by petitioner No.1 trust. After holding departmental inquiry, the respondent was terminated vide order dated 18th January, 2013. The respondent challenged the order of his termination before the Tribunal by filing an appeal on 22nd December, 2014. Along with the appeal, an application seeking condonation of 660 days' delay was filed.

4. The application for condonation of delay was resisted by the petitioners. The tribunal, however, allowed the Miscellaneous Application and condoned the delay of 660 days, by imposing costs of Rs.7000/- on the respondent. This order is impugned in the present writ petition.

5. Heard learned advocate for the petitioners and learned advocate for the respondent.

6. Learned advocate for the petitioners vehemently submitted

that in the delay condonation application, false grounds were raised, no documents in support of the statements made in the delay condonation application were placed on record and the ground of lack of funds mentioned in the application is not proper, in view of the fact that the respondent was drawing salary. The medical certificates filed on record are unacceptable. According to learned advocate for the petitioners, the grounds given by the respondent for condonation of delay were pertaining to the period prior to the order of termination issued to the petitioner and not subsequent to the termination order. He, therefore, submitted that the impugned order of condonation of delay is unsustainable.

7. In support of his submissions, he relied on following rulings.

- i. "Pundlik Jalam Patil (Died) LRs V/s Exe. Eng. Jalgaon Medium Project and Another", 2008 (6) Bom. C. R. 513*
- ii. "Mathuradas Mohta College of Science, Nagpur V/s R. T. Borkar and Others" 1997 (supp) Bom.C.R. 298*
- iii. "Executive President, Pune Vidyarthi Griha, Pune V/s Bhaskar Bhagwant Yadav and Others" 2001 (2) Mh.L.J.2226*

- iv. "Pune District Central V/s Hiralal Ramchandra Gaikwad" 1998 LLJ (III) 7 Bom*
- v. Writ Petition No.306 of 2005 dated 20th September 2006 ("Shri Sati Devi Public Trust and Others V/s Ravindra Tukaram Deore and Another")*
- vi. "Varhyan Narendra Singh Chhatwal and Others V/s Kala Narendra Singh Chhatwal and Others" 2014 (6) Bom. C. R. 603*
- vii. "Dr. Gopinathan Pillai V/s State of Kerala and Another" 2007 DGLS (SC) 44*
- viii. "B. Madhuri Goud V/s B. Damodar Reddy" 2012 DGLS (SC) 832*

8. Learned advocate for the respondent, on the other hand, supported the impugned order contending that a well reasoned order is passed by the Tribunal, which is not liable to be interfered with in the writ jurisdiction.

9. The respondent has assigned reasons for approaching belatedly to the Tribunal that there was family dispute pending between him and his wife. Thereafter he was prosecuted by his wife and he was arrested in connection with the said prosecution. Due to the family dispute, the respondent suffered

anxiety induced hypertension, vertigo, migraine and was required to take treatment of Dr. Sadanand Borse at Pune. Due to the said reasons as well as since he was dismissed from service, he was unemployed, therefore, due to lack of funds, he could not approach the Tribunal at earlier point of time. The reasons given by the respondent appealed to the Tribunal. The Tribunal also noted that the inquiry report and the dismissal of the respondent have been resulted as a consequence of *ex parte* hearing and the Tribunal has rightly held that liberal approach is required to be adopted for doing substantial justice to the parties and hence, condoned the delay, however, by imposing costs of Rs.7000/- on the respondent.

10. The respondent has availed statutory remedy of appeal challenging his termination order. Though there was a delay, only on that count, the statutory remedy of appeal cannot be denied to the respondent.

11. The authorities cited by the learned advocate for the petitioners at serial No. 1 to 5 have been considered by the Tribunal while condoning the delay. The authorities cited at serial No. 6 to 8 are rendered in different facts of the case and are not applicable to the facts of the present case.

12. It is a settled legal position that liberal approach has to be adopted in the matters of condonation of delay. The respondent could not have gained any benefit by belatedly approaching the Tribunal. In the case in hand, merely because the respondent has belatedly approached the Tribunal, statutory right of appeal challenging termination order should not be denied to him.

13. At the cost of repetition, it needs to be observed that for approaching belatedly, the statutory right of appeal challenging termination order should not be denied to the respondent. The Tribunal has passed a well reasoned order and has rightly exercised discretion in favour of the respondent. No illegality or perversity is found in the order impugned in the present writ petition. The petitioners have failed to make out any case to warrant any interference in extraordinary writ jurisdiction of this court. There is no substance in the challenge raised by the petitioners in the present writ petition. The writ petition is, therefore, dismissed with costs of Rs.10,000/- to be paid to High Court Legal Aid Services Authority, Sub Committee, Aurangabad within a period of four weeks from today.

[NITIN B. SURYAWANSHI]
JUDGE