

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 806 of 2021

Vivekanand Education Society and Another
Vs.
Kamlakar s/o Yadavrao Nikhade and Others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. G.M. Shitut, Advocate for the petitioners
Mr. A.Z. Jibhkate, Advocate for the respondent No.1

CORAM : MANISH PITALE, J.

DATED : JUNE 30, 2021

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. By this Writ Petition, the petitioner – Management has challenged order dated 25/02/2020, passed by the School Tribunal at Nagpur, whereby an application for condonation of delay filed by the respondent No.1 in preferring appeal before the Tribunal has been allowed.

3. According to the learned counsel appearing for the petitioners, the Tribunal erred in allowing the application by observing that there was delay of 83 days in filing the appeal. The Tribunal failed to appreciate that the respondent No.1 himself was not clear about the date of accrual of cause of action. It

was further submitted that, in fact, an order terminating service of the respondent No.1 was not on record and that it was allegedly a case of otherwise termination of service. That being so, it was incumbent upon the Tribunal to have first ascertained whether a cause of action had actually arisen for respondent No.1 and then to have considered the question of condonation of delay.

4. The learned counsel appearing for the contesting respondent No.1 submitted that if the documents on record are perused in the correct perspective, the respondent No.1 in a letter written to the Principal of the Polytechnic run by the petitioner – Management, on 24/03/2017, had clearly stated that he was restrained from joining duty from 21/12/2016. All along the case of the respondent No.1 had been that of otherwise termination of service and that the time period being reckoned from such assertions made by the respondent No.1 justified the extent of delay stated on behalf of the respondent No.1 and the explanation given thereto.

5. This Court has perused the application for condonation of delay filed before the Tribunal on behalf of respondent No.1. It is clear from the same that the respondent No.1 approached the Tribunal with a grievance of otherwise termination from service. It is evident from the documents brought to the notice of this Court that it was sometime in December 2016 that the respondent No.1 was restrained from performing

his duty. This aspect of the matter clearly shows that the respondent No.1 did indicate the cause of action that arose for him and on that basis number of days of delay was calculated. The explanation given in the application for condonation of delay appeared to be reasonable and sufficiently explained the delay in approaching the Tribunal to raise grievance regarding otherwise termination of service.

6. In the impugned order, the Tribunal has referred to these aspects of the matter and having found in favour of the respondent No.1, it has allowed the application for condonation of delay of 83 days. Considering the facts and circumstances of the present case and particularly when the Tribunal has condoned delay by exercising power under Section 9(3) of the The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, on the basis of a view that appears to be reasonable and sustainable, this Court in writ jurisdiction is not inclined to interfere with the impugned order.

7. In view of the above, the Writ Petition is dismissed.

8. The Tribunal shall make an endeavor to dispose of the appeal as expeditiously as possible.

JUDGE