

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

WRIT PETITION NO. 38 OF 2019

Public Education Society, through its President Sk. Nasir Sk. Najir
...Versus...

Riyaz Ahmad Khan S/o Niyaz Ahmad Khan and another

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

Court's or Judge's orders

Shri S.M. Vaishnav, Advocate for petitioner
Shri P.A. Kadu, Advocate for respondent No.1
Ms M.A. Barabde, AGP for respondent No.2

CORAM : N.B.SURYAWANSHI, J.
DATE : 20/08/2021

By this petition the petitioner challenges order dated 12/10/2018 passed by the School Tribunal, Amravati, below Exh.1 in Misc. Application No. 20/2016, thereby condoning the delay in filing the appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, (for short "the MEPS Act").

2. The application of condonation of delay was filed by the respondent contending therein that the respondent was appointed with the petitioner on 01/09/2011 on probation of two years as Headmaster. The services of the respondent came to be terminated w.e.f. 26/03/2013. It is the case of the respondent that

he was reinstated on 01/05/2013 and was made permanent. Approval to the appointment of the respondent was cancelled.

3. The respondent challenged cancellation of approval to his appointment by filing writ petition No. 3014/2014. During the course of hearing of the said writ petition, the petitioner came out with the case that the respondent is terminated vide order dated 26/03/2013. The writ petition came to be dismissed by observing that the respondent's services are already terminated. The review application filed by the respondent thereafter was dismissed, so also Special Leave Petition filed by respondent.

4. Thereafter the respondent approached the School Tribunal by filing an appeal under Section 9 of the said Act along with the delay condonation application, which came to be allowed thereby condoning the delay of more than three years in filing the appeal. The said order of condonation of delay is questioned by the petitioner.

5. Heard the learned Advocate for the petitioner and the learned Advocate for the respondents.

6. The learned Advocate for the petitioner submitted that in spite of knowing the fact that his services are terminated, he failed to approach the School Tribunal within limitation. Since in the writ petition, only cancellation of approval was challenged, termination was never questioned by the respondent. Section 14 of the Limitation could not have been relied upon while condoning the delay as the respondent was not prosecuting the wrong remedy with due diligence. According to him, the writ petition was not filed in good faith and the petitioner was deliberately not made party in that petition. No liberty whatsoever was granted by this Court while dismissing this writ petition. In spite of that, School Tribunal has observed in the impugned order that this Court has granted liberty to the respondent to file the appeal. According to him no sufficient ground was made out by the respondent for condonation of delay and the learned Tribunal erred in condoning the inordinate delay without assigning proper reasons. He therefore submits that the writ petition deserves to be allowed by setting aside the impugned order. In support of his submission, he relied upon following decisions ;

1. Aarifaben Yunusbhai Patel and others vs. Mukul Thakorebhai Amin and others,(2020) 5 SCC 449.

2. Anmol Vs. Nagsen Shikshan Sanstha and others, (2020) 6 AIR Bom R 582.

3. Commissioner, Madhya Pradesh Housing Board and others vs. Mohanlal and Company, (2016) 14 SCC 199.

4. Messers Mahabir Prasad Santosh Kumar vs. State of U.P. and others 1970 (1) SCC 764.

5. Natesan Agencies (Plantations) vs. State Represented by Secretary to Government, Environment and Forest Department (2019) 15 SCC 70.

7. Per contra, the learned Advocate for the respondent by placing reliance on Section 9 of the MEPS Act submitted that if sufficient cause is shown, the Tribunal is entitled to condone the delay irrespective of length of delay. He submitted that liberal approach is to be adopted while condoning the delay. According to him after his termination dated 26/03/2013, since the respondent was reinstated on 01/05/2013, he had no occasion to approach the School Tribunal for challenging the termination order. He filed the writ petition challenging the order of the Education Officer cancelling approval. When the reinstatement order was disputed by the petitioner on the ground that it was a fraudulent

document, the respondent after dismissal of the writ petition, his review petition as well as SLP, approached the School Tribunal by filing appeal alongwith delay condonation application and the School Tribunal has, by assigning proper reasoning, rightly condoned the delay. According to him no case is made out by the petitioner to warrant interference in the impugned order. He therefore submitted that the writ petition be dismissed. In support of his submissions he relied upon following decisions:

1. R.B. Ramlingam vs. R.B. Bhvaneswari,(2009) 2 SCC 689.

2. Divisional Manager, Plantation Division, Andaman & Nicobar Islands vs. Munnu Barrick and others, (2005) 2 SCC 237.

3. Baburao S/o Umaji Kawale and another vs. N.R.B. Salary Earner Co-operative Credit Society Ltd., Jalna and others, 2010 (2) Mh.L.J. 887.

4. N. Balakrishnan vs. M. Krishnamurthy (1998) 7 SCC 123.

8. In the facts of present case, the contention of the respondent that after his termination on 26/03/2013 since he was reinstated vide order dated 01/05/2013 (Annexure-C) and was made permanent, hence

there was no occasion for him to file appeal challenging the termination, appears to be probable and is prima facie liable to be accepted.

9. It is settled legal position that in the matter of condonation of delay liberal approach needs to be adopted. Admittedly the respondent has not gained any benefit by belatedly approaching the Tribunal. If the delay is not condoned then the respondent would to be rendered remedyless.

10. The Hon'ble Apex Court in N. Balkrishnan vs. M. Krishnamurthy, 1998 7 SCC 123 held thus:

A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari*, MANU/SC/0335/1968 : [1969] 1SCR1006 and *State of West Bengal v. The Administrator, Howrah municipality*, MANU/SC/0534/1971 :

[1972]2SCR874a.

In R.B. Ramlingam vs. R.B. Bhvaneswari, (2009) 2 SCC 689, it is held :

6. A large number of judgments were cited before us by learned counsel. It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the court as such.

In Divisional Manager, Plantation Division, Andaman & Nicobar Islands vs. Munnu Barrick and others, (2005) 2 SCC 237, it is held thus:

23. In a case of this nature where serious questions of law were raised by the appellant, in our opinion, the Division Bench of the High court should have taken a liberal view on the application for condonation of delay filed by the appellant wherefor the respondent workmen could have been adequately compensated on monetary terms.

In Baburao S/o Umaji Kawale and another vs. N.R.B. Salary Earner Co-operative, 2010 (2) Mh.L.J. 887, held thus :

4. A matter of condonation of delay is within the discretion of the Court. Unless it is noticed that the discretion is exercised in perversity, it would not be permissible for this Court to sit in an appeal over the decision of the Court, condoning the delay. It is equally settled law that the length of delay is not relevant. What is relevant is as to whether a party has been in a position to make out as to whether “there was sufficient cause in condoning delay or not “. As to what is sufficient cause would also depend on the facts of each case.

11. Taking into consideration the settled legal position, it is clear that delay has to be liberally condoned and in the facts of the present

case, in my view, the Tribunal has rightly condoned the delay. Assuming the argument of the learned Advocate for the petitioner that there was no liberty granted to the respondent by this Court for approaching the Tribunal, to be true that cannot be a ground to deny condonation of delay. The aggrieved person always has a right and liberty to challenge the termination order before the School Tribunal. In that view, it is not possible to accept the argument of the learned Advocate for the petitioner that the delay was not liable to be condoned in the facts of the present case. The delay is sufficiently explained by the respondent and I do not find any error committed by the School Tribunal in condoning the delay.

12. The learned advocate for the petitioner relied on the decision in **Aarifaben Yunusbhai Patel** (supra). In that case instead of filing objection petition under Order XXI Rule 19, the petitioner had filed a writ petition therefore, it was concluded that writ petition was not filed in good faith or by due diligence and hence Apex Court held that objection filed therein was barred by limitation and the exclusion under section 14 of Limitation Act was not permitted.

13. In the instant case, admittedly the

respondent had not challenged his termination order in the writ petition or in the SLP. Even if the argument of the petitioner that prosecuting the writ petition cannot be termed as prosecuting a wrong remedy and therefore, period spent by the petitioner in prosecuting the writ petition and special leave petition cannot be excluded under section 14 of the Limitation Act is accepted, still I do not find it appropriate to interfere in the order of condonation of delay. In the peculiar facts of the present case, if the delay is not condoned, the respondent would be rendered remediless which cannot be permitted to happen. The other decisions relied upon by the petitioner are on similar lines.

14. In the light of aforestated reasons, there is no merit in the writ petition and the writ petition is dismissed with no order as to costs.

JUDGE