

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

971 WRIT PETITION NO.7337 OF 2022

**SOCIAL CULTURAL ASSOCIATION THROUGH ITS PRESIDENT ANIL
MAHADU CHOUDHARI AND ANOTHER
VERSUS
SACHIN ARUNLAL JAIN AND OTHERS**

...

Advocate for Petitioners : Mr. V.D. Hon, Senior Advocate i/b Mr. Hon
Ashwin V.

AGP for Respondent/State : Mr. P.G. Borade

CORAM : MANGESH S. PATIL, J.

DATE : 14.07.2022.

PER COURT :

Heard Learned Senior Advocate Mr. Hon for the petitioners.

2. The petitioner management is aggrieved by the order passed by the School Tribunal condoning the delay of about 13 months in preferring the appeal by the respondent No. 1 under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

3. The learned Senior Advocate Mr. Hon would submit that the delay of 13 months was not sufficiently explained. Accepting the respondent No. 1's version, the oral termination had taken place in July 2016. He did nothing till he approached the Deputy Director of Education Nashik on 24.12.2016. In spite of his protest having been turned down on 09.06.2017, he took few more days before filing the appeal with the application for condonation of delay on 4.09.2017. He would, therefore, submit that the delay was not explained by putting forth sufficient cause.

4. Learned Senior Advocate would further submit that even the

decisions cited on behalf of the petitioners were not considered by the trial court. He would further rely on the decisions in the following matters :

- (i) **Londhe Prakash Bhagwan Vs. Dattatraya Eknath Mane and others;**(2013) 10 Supreme Court Cases 627.
- (ii) **Gurvail Singh Alias Gala Vs. State of Punjab;** (2013) 10 Supreme Court Cases 631.
- (iii) **Executive President, Pune Vidyarthi Griha and others Vs. Bhaskar Bhagwant Yadav and others;** 2001 (1) L.L.N. 662.
- (iv) **Employees' State Insurance Corporation Vs. Mukund Iron an Steel Works, Ltd.;** 2001(1)L.L.N. 666.
- (v) **Mathuradas Mohta College of Science, Nagpur Vs. R.T. Borkar and others;** 1997(2) L.L.N. 441.
- (vi) **State of Punjab and others Vs. Harnam Singh and others;** 1997(2) L.L.N. 445.

He submits that cause has to be explained with sufficient clarity. Merely because an appeal can be preferred belatedly by showing cause, that does not dispense with proof regarding the cause being put forth. The tribunal has clearly overlooked all these facts, circumstances and law and has readily condoned the delay.

5. I have carefully considered the submissions and perused the order as also the decisions cited at the bar.

6. It is the basic principle to be borne in mind while deciding a request for condonation of delay that a party is not to gain any thing by allowing his rights to lapse by passage of time. Over and above, so long as it cannot be demonstrated that the request for condoning the delay and the reason for not availing of the remedy in time were prompted by

some *mala fides* the delays are to be condoned. If one bears in mind the aforementioned trite principles reiterated by the apex court in number of decisions, there was absolutely nothing before the Tribunal and is none before me to demonstrate that the respondent No. 1 has been acting *mala fide* and the delay had occasioned because of some ulterior design in his mind.

7. It is to be borne in mind that this is a case of otherwise termination. No order in writing was served to him. In such peculiar circumstances, the respondent No. 1's version that he was prevented from joining the duty and thereafter had approached the petitioner cannot be said to be wholly unbelievable. A person in his place would make attempts to reconcile with the management to save his employment. Only after his efforts do not bear fruit that he would approach the authorities of the education department as has been done by him in the present matter by approaching the Deputy Director of Education on 24.12.2016. Since even this attempt had failed on 09.06.2017 which knowledge he got on 10.06.2017 that he approached the advocate and preferred the appeal after lapse of 13 months from the oral termination which had taken place in July 2016.

8. To my mind, all the aforementioned facts and circumstances taken together clearly demonstrate a sufficient cause for the delay.

9. The decisions cited by the learned Senior Advocate were peculiar to the facts and circumstances of each of these cases. In the matter of **Londhe Prakash Bhagwan (supra)** the delay was of more than 9 years and 11 months and was not sufficiently explained.

10. In the matter of **Bhaskar Bhagwant Yadav and others (supra)** the delay was three and half years and was not attempted to be explained. The grounds were found to be totally vague. In the matter of **R.T. Borkar (supra)** the appellant had absolutely failed to explain the delay and to

furnish the cause to the satisfaction of the Tribunal. Though the delay therein was of around 7 months, it was not formally explained by assigning sufficient cause.

11. In the matter in hand, as is observed herein above and noticed by the Tribunal, the delay of 13 months in the facts and circumstances of the case were explained by putting forth the aforementioned grounds.

12. A pragmatic rather than pedantic approach is needed in deciding such applications. To repeat there was nothing before the Tribunal and even before me to show that the respondent No. 1 was to gain anything by allowing his right to challenge the otherwise termination to be barred by limitation and there are no *mala fides* attributable to him.

13. In my considered view the approach of the Tribunal in condoning the delay cannot be said to be illegal, perverse or arbitrary.

14. The Writ Petition is dismissed.

(MANGESH S. PATIL, J.)

mkd/-