

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

WRIT PETITION NO.12814 OF 2021

SHRI BALIRAJA SHIKSHAN SANSTHA THROUGH ITS SECRETARY AND
ANOTHER
VERSUS
MAHESH NARAYANRAO BILOLIKAR AND ANOTHER

WITH
WRIT PETITION NO.12829 OF 2021

SHRI BALIRAJA SHIKSHAN SANSTHA THROUGH ITS SECRETARY AND
ANOTHER
VERSUS
DAIVASHALA SADASHIVRAO MATEKAR AND ANOTHER

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Advocate for the Petitioners : Shri Shinde Chandrakant K.
Advocate for Respondents 1 : Shri Ganesh V. Mohekar
AGP for Respondent 2/ State : Shri A.A. Jagatkar

CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 24th February, 2022

Per Court:

1. By the present Writ Petitions, the petitioners, an educational institution registered under the Maharashtra Public Trusts Act and the Societies Registration Act and running the D.Ed. College at Palam, District Parbhani, have approached this Court being aggrieved by the orders passed by the School Tribunal in Misc. Civil Application Nos.21/2018 and 20/2018 dated 10.08.2021 thereby, condoning delay of 1001 days in

institution of the appeals.

2. Heard Shri C.K. Shinde, the learned counsel appearing for the petitioners, Shri G.V. Mohekar, the learned counsel appearing for respondent Nos.1 and the learned AGP appearing for the respondent No.2/ Deputy Director of Education. With their assistance, perused the proceedings in the form of writ petitions along with annexures.

3. Respondent No.1, in both the petitions, on being aggrieved by termination/ discontinuation of services from 04.01.2016, instituted an appeal before the School Tribunal along with an application for condonation of delay. Upon the application being vehemently opposed, since it failed to offer satisfactory explanation justifying condonation of delay and since the petitioner Management raised an objection about maintainability of the appeal, the School Tribunal, vide order dated 11.04.2019, rejected the application questioning the maintainability of the appeal unless the delay is condoned.

This constrained the Management to approach this Court in Writ Petition Nos.8004/2019 and 8028/2019, respectively and by order dated 25.06.2021, this Court directed the School Tribunal to decide the delay condonation application in accordance with law and then proceed to deal with the objection of the petitioner Management about maintainability of the appeal, on its merits. Resultantly, the School Tribunal proceeded with the application for condonation of delay and

under the impugned order dated 10.08.2021, condoned the delay of 1001 days.

This order condoning the delay, is under challenge in these two writ petitions.

4. When the impugned order passed by the School Tribunal is perused, relevant grounds put forth justifying the delay, could be discerned as under:-

The services of the respondents/ employees were discontinued/ terminated by order dated 04.01.2016. Thereafter, the applicants/ employees approached respondent Nos.1 and 2 for redressal of their grievance and preferred the applications on 15.02.2016 and 23.02.2016, but their grievance was not looked into.

One of the employee, who was similarly situated as like the applicants/ employees, filed the writ petition and they continued to wait till the decision, in the said writ petition and when they gained knowledge that the writ petition was disposed of on effecting compromise, they preferred Writ Petitions on 15.12.2017 before the High Court. These Writ Petitions were withdrawn on 15.10.2018, with liberty to avail the alternate remedy. Thereafter, the appeals came to be instituted on 02.11.2018 alongwith application to condone delay of 1001 days in filing the appeals.

5. Perusal of the impugned order/ judgment, would reveal that

the School Tribunal has referred to various precedents, where while wrongful remedy being availed, certain relaxations were granted to pursue the appropriate remedy. Adopting a liberal approach in construing the period of limitation and by condoning the same, the School Tribunal allowed the applications.

Law of limitation being a substantive law, the appeals are to be filed within a specified limit. Filing an appeal within the period of limitation is the rule and condonation of delay is the exception. The power to condone delay must be exercised judiciously and by recording reasons. The reasons offered must be candid and convincing. Condonation of delay cannot be claimed as of right and only on sufficient cause being shown, it can be condoned. Only acceptable reasons can justify its condonation.

In the light of the above settled position of law, I have to appreciate the impugned orders.

6. In the present case, by stating that the respondents No.1/ employees initially filed the petition being aggrieved by their termination/ discontinuation orders after lapse of more than a year and to be precise on 15.12.2017 and the explanation is offered that some other employee approached this Court and they waited for the result of the said writ petition. Be it so, when they approached the High Court, they withdrew the writ petition on 15.10.2018 seeking liberty to approach the appropriate forum. Thereafter, some time was consumed for collecting

documents and on 02.11.2018, the appeals were instituted along with the applications for condonation of delay. The reason offered appears to be justifiable, since the employees were prosecuting the remedy before this Court from 15.12.2017 to 15.10.2018 and therefore, the School Tribunal is justified in granting benefit of the said period, for condoning the delay.

7. The respondents employees have also offered explanation for the delay occasioned from the date of their termination till the filing of the writ petition, by stating that they were waiting for the outcome of the writ petition filed by another employee. It is informed that the group of employees were dismissed and it is obvious that the applicants/ employees were anxious about the result of the writ petition and hence, they approached the High Court only depending upon the outcome of the petition filed by one of the employee, some concession needs to be granted to them. The employees, no doubt, belong to a class, where they are not sure of consequences of their action and when one amongst them had knocked the doors of the Court, they awaited the result. This is not something unusual and candidly they have stated so and the School Tribunal decides to accept this explanation.

8. Since the Court, no doubt, must not deprive the persons, who are entitled to avail the legal remedy before appropriate forum, from justice being eluded to them, though I find the Tribunal's view to be justified once, I deem it expedient to uphold the impugned orders though

based on sketchy reasons, but for the inconvenience to the other side, this shall come with costs of Rs.10,000/- in each petition, to be paid to the petitioner/ Management.

This costs shall be deposited by the respondents/ employees before the School Tribunal within a period of four weeks and the Management shall be permitted to withdraw the same.

Subject to the above, by upholding the impugned orders, the Writ Petitions are dismissed.

kps

(SMT. BHARATI H. DANGRE, J.)