

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO.9740 OF 2022

MUKUND YESHWANTRAO GAJBHARE
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS

.....
Advocate for Petitioner : Mr. Ghatge Mahesh V.
AGP for Respondents 1 to 4: Mr. S.G. Karlekar
.....

**CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.
DATED : 10th NOVEMBER, 2022.**

PER COURT :-

1. The petitioner has put forth prayer clauses "B", "C", "D" and "E" as under:-

- "B) The impugned order dated 10.06.2008 passed by respondent management awarding the punishment by which two increments of petitioner were permanently withheld, be held illegal and may kindly be quashed and set aside.
- C) The respondent authorities may kindly be directed to revise pay fixation of the petitioner and pay arrears of salary by granting benefits of the increments in the year 2008 and 2009, with effect from July 2008 onwards to the petitioner in accordance with law.
- D) The respondent authorities may kindly be directed to revise pay fixation of the petitioner by granting benefits of the increments in the year 2008 and 2009, with effect from July 2008 and pay pension to the petitioner in accordance with law.

E) In the alternative, The Hon'ble Court may kindly issue directions to respondent Deputy Director of Education, Latur Division, Latur to decide appeal of petitioner in accordance with law."

2. It is undisputed that the petitioner was subjected to disciplinary action and two increments are withheld permanently by way of punishment. Until 2017 when he filed an appeal, which is a period of 9 years, the petitioner has not challenged the said action. The grounds set out in the petition, in support of raising the challenge today after 14 years, in verbatim, are as under:-

I. The respondent Appellate Authority/Deputy Director of Education Officer is acting in arbitrary and unreasonable manner.

II. The respondent Appellate Authority/Deputy Director of Education has failed to exercise its jurisdiction under Maharashtra Employees of Private Schools Act.

III. The respondent Appellate Authority/Deputy Director of Education cannot delay the decision on the appeal of the petitioner.

IV. The punishment awarded to the petitioner is in total contravention of law.

V. The co-accused have been granted lenience by the respondent management and there cannot be any discrimination made between the delinquents.

VI. It is undisputed that the act attributed to the petitioner are not

grievous and certainly not at par with the employees who are exonerated.

VII. The impugned punishment awarded to petitioner is illegal and arbitrary and deserves to be set aside.”

3. The learned advocate for the petitioner places reliance upon the judgment delivered by the Hon'ble Supreme court in **Dehri Rohtas Light Railway Company Limited vs. District Board, Bhojpur, District Board Shahabad, 1993 AIR (SC) 802** and specifically points out paragraph No.13, as under:-

“13 The rule which says that the Court may not inquire into belated and stale claim is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must depend upon its own facts. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. The principle on which the relief to the party on the grounds of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches. The decision in Trilok Chand (AIR 1970 SC 898) (supra) relied on is distinguishable on the facts of the present case. The levy if based on the net profits of the railway undertaking was beyond the authority and the illegal

nature of the same has been questioned though belatedly in the pending proceedings after the pronouncement of the High Court in the matter relating to the subsequent years. That being the case, the claim of the appellant cannot be turned down on the sole ground of delay. We are of the opinion that the High Court was wrong in dismissing the writ petition in limine and refusing to grant the relief sought for. We however agree that suit has been rightly dismissed."

4. Having considered the submissions of the learned advocate for the petitioner and having gone through the pleadings set out, we do not find that the ratio laid down by the Hon'ble Supreme Court in the case of ***Dehri Rohtas Light Railway Company Limited (supra)*** would be applicable to the case of the petitioner.

5. At this juncture, the learned advocate for the petitioner submits that he would forgo the entire monetary benefits for the period 2008 till filing of the appeal. It is further conceded that the stoppage of increments, by way of punishment, can be challenged by the petitioner under Rule 29 of the Maharashtra Employees of Private Schools (Condition of Service Regulation) Act, 1977 within 45 days. The explanation is that the petitioner was in the good books of the management and hence, did not desire to enter in a confrontation with the management. Nevertheless, his appeal preferred before the Deputy Director of Education, respondent No.2, under Rule 29 is pending, without filing an application for condonation of delay. It is prayed that a simple direction be issued that the appeal be decided.

6. Considering the above factors, this petition cannot be entertained to the extent of prayer clauses A to D. Nevertheless, issuing an innocuous direction that respondent No.2 should decide the pending appeal would not, in our view, be barred.

7. The learned A.G.P. submits that the application dated 23.11.2017, which is not in the form of an appeal and without being accompanied with an application for condonation of delay, cannot be considered by respondent No.2. The learned advocate for the petitioner submits that respondent No.2 has commenced the hearing and thereafter, hearing was aborted.

8. In view of the above, this petition is disposed off.

9. Respondent No.2 may consider the application dated 23.11.2017. We make it clear that we have not expressed any view as regards the merits of the claim of the petitioner. All contentions of the petitioner as well as the management are kept open, including the issue as to whether the application could be entertained without an application for condonation of delay and as to whether the delay of 9 years could be condoned.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE , J.)