

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.5393 OF 2022**

1) Sangopan Shikshan Sanstha  
Dongri Pada, Ghodbandar Road,  
Thane (w) through its  
Chairman/Secretary

2) Mazi Aai Prathamik Shala, Dongri  
Pada, Ghodbandar Road, Thane (w)  
through its Headmistress.

...Petitioners

Versus

1) Vandana Harishchandra Bhalerao  
Aged 46 years, Occ. Service, R/o.  
1/10, Merry Colony, Philips Creado  
Chawl, Prem Nagar, Kanjurmarg (E),  
Mumbai-400 042

2) The Education Officer,  
Thane Municipal Corporation,  
Education Department, Thane

3) The Under Secretary, School  
Education and Sports Department,  
Government of Maharashtra,  
Mantralaya, Mumbai-400 032.

4) The Director of Education  
[Primary], M.S., Pune-1.

5) The Joint Director of Education  
[Primary],  
M.S., Pune-1.

...Respondents

...

Mr. N.V. Bandiwadekar with Mr. Sagar A. Mane and Mr. Vinayak R.  
Kumbhar i/b. Sou. A.N. Bandiwadekar for the Petitioner.  
Ms Preeti Walimbe for Respondent No.1.  
Mr. C.D. Mali, AGP for Respondent Nos.2 to 5-State.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.**  
**DATED : 6<sup>th</sup> DECEMBER, 2022.**

**P.C.:-**

1. Rule. With consent, rule made returnable forthwith.
2. Heard Mr. Bandiwadekar, learned counsel for the Petitioners, Ms Preeti Walimbe, learned counsel for Respondent No.1 and Mr. C.D. Mali, learned AGP for Respondent Nos.2 to 5.
3. The challenge in this petition is to the order dated 03/03/2021 whereby the School Tribunal, Navi Mumbai, condoned the delay in filing an appeal under Section 9 of the Employees of Private Schools (Conditions of Service) Regulation Act, 1977 against the order of termination dated 12/04/2004.
4. The Respondent No.1 was appointed as Shikshan Sevak in the Petitioner No.2-School. The Petitioners alleged that the Respondent No.1 had tendered resignation w.e.f. 30/04/2004 whereas the Respondent No.1 alleged that she was prevented from attending duties w.e.f. 12/06/2004. She claimed that the Management had

misused the blank paper with her signature for preparing the letter of resignation. The Respondent No.1 filed an appeal before the Grievance Committee of Shikshan Sevak, which was allowed with direction for reinstatement and payment of 1/4th back wages. The Petitioners as well as Respondent No.1 challenged the said order in Writ Petition Nos.5893 of 2008 and 6369 of 2008. The Division Bench of this Court disposed of the said petitions by directing the Education Department of the State Government to take appropriate decision by considering the decision of the grievance committee as recommendation. In addition, the Respondent No.1 was also given liberty to seek appropriate relief against the order of termination. Pursuant to the said order, Respondent No.1 approached the State Government with a request to consider her writ petition No.6369 of 2008 as representation for grant of full back wages. The said representation was dismissed on 27/02/2017. Being aggrieved by the said order, Respondent No.1 filed Writ Petition No.10288 of 2017. The Division Bench held that the remedy of Respondent No.1 was to file a substantive appeal under Section 9 of M.E.P.S. Act before the School Tribunal. The Respondent No.1 therefore sought leave to withdraw the petition with liberty to file a substantive appeal. While allowing withdrawal of the petition, the Division Bench of this Court observed that it is for the Petitioner to

prove to the satisfaction of the Presiding Officer that the delay has not been caused by any act of negligence attributable to her and her inaction but entirely on account of the legal advice tendered to her.

5. Pursuant to the said order, the Petitioner filed an appeal before the School Tribunal with an application under Section 5 of the Limitation Act for condonation of delay. By the impugned order dated 03/03/2021, the School Tribunal allowed the application mainly on the ground that the Respondent No.1, who is a lay person had been pursuing the remedy before different forums in good faith. It was held that the delay was not intentional and does not lack bonafides.

6. Mr. Bandiwadekar, learned counsel for the Petitioners submits that the delay is inordinate. The Respondent No.1 has not assigned any reason for not filing an appeal despite liberty granted by this Court vide order dated 07/03/2016. He submits that the Petitioner having failed to show sufficient cause, the Tribunal was not justified in condoning the inordinate delay.

7. Per contra, learned counsel for Respondents submits that the Respondent No.1 has been pursuing the legal remedy diligently. He

submits that the Respondent No.1 is a lay person and that she had filed the representation as well as writ petition as per the legal advice and that the delay in filing the appeal was bonafide. He has relied upon the decision of the Apex Court in *N. Balkrishnan vs. N. Krishnamurti*, 1998 7 SCC 123 to contend that once the court accept the explanation as sufficient normally the superior Court should not disturb such finding.

8. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

9. Respondent No.1, who was appointed as 'Shikshan Sevak' has been pursuing legal remedy of challenging her termination since the year 2004. She partly succeeded before the Grievance Committee, with an order of reinstatement and payment of 1/4th back wages. The Petitioner filed a writ petition challenging the order of reinstatement whereas the Respondent No.1 filed a writ petition being aggrieved by denial of full back wages. Both these writ petitions were disposed of by this Court by order dated 07/03/2016. Relying upon the decision of the Apex Court in *Secretary, A.P.D. Jain Pathshala and Ors. vs. Shivaji Bhagwat More and Ors. (2011) 13 SCC 99*, it was held that the decision of the Grievance Committee can at the most be

considered as recommendation. The Education Department was directed to take appropriate decision after giving an opportunity of hearing to both the parties, in the light of the decision of the Apex Court in *Secretary, A.P.D. Jain Pathshala* (supra). In addition liberty was also granted to Respondent No.1 to seek appropriate relief against the order of termination. Needless to state that the remedy available to Respondent No.1 was to file an appeal under Section 9 of the M.E.P.S. Act. Instead of filing the appeal, Respondent No.1 challenged the termination order as well as denial of full back wages by filing a representation before the State Government. Upon rejection of the said representation, Respondent No.1 once again filed a writ petition, which was allowed to be withdrawn with liberty to file a substantive appeal under Section 9 of the M.E.P.S. Act.

10. The records thus reveal that the Respondent No.1 has been diligently pursuing her legal remedy, though before wrong forums. The Respondent No.1 has stated in her affidavit that she had been pursuing the remedies that were suggested by her advocates. She had not been negligent and there was no deliberate lapse on her part. The delay, though inordinate, was bonafide and unintentional.

11 In *N. Balakrishnan* (supra) the Hon'ble Supreme Court has observed that :-

“9.It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10.The reason for such a different stance is thus: The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy

the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

12. In the instant case, the Tribunal has recorded a finding that the Respondent No.1 has not adopted dilatory tactics and that the delay was genuine and bonafide. The Tribunal having accepted the explanation to be satisfactory, I find no reason to disturb such findings and to non-suit the Respondent No.1, who in good faith, has been running from pillar to post since decades seeking justice, albeit before wrong forums due to wrong legal advice. Suffice it to say that the

Respondent No.1, who is a lay person, should not be made to suffer for filing the proceedings before the wrong forum on the wrong advice of the advocate.

13. Under the circumstances and for the reasons stated above, the Petition is dismissed. No order as to costs. Rule stands discharged.

**(SMT. ANUJA PRABHUDESSAI, J.)**