

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

WRIT PETITION NO. 5458 OF 2021

PETITIONERS : 1. Jamdar High School Education Society,
Ori. Respondent Reshimbagh, Nagpur through its
President/Secretary, Office at Jamdar
High School, Reshimbagh, Nagpur.

2. Head Master, Jamdar High School,
Reshimbagh, Nagpur.

//VERSUS//

RESPONDENTS : 1. Gopalkrushna S/o. Marotirao Burde,
Ori. Appellant aged about 67 years, Occu. Retired, R/o.
Behind Hirudkar Jewellers, Ogale Road,
Chitnavis Park, Mahal, Nagpur.

Ori. Respondent 2. The Education Officer (Sec.), Zilla
Parishad, Nagpur.

Mr. A.D. Mohgaonkar, Advocate for the Petitioners.
Mr. V.V. Tekade, Advocate for Respondent No.1.
Mr. S.M. Ukey, Addl. G.P. for Respondent No.2.

CORAM : **VINAY JOSHI, J.**
DATED : **22nd NOVEMBER, 2022.**

ORAL JUDGMENT

Rule. Rule made returnable forthwith. The writ
petition is heard finally with the consent of the learned counsel

appearing for the parties.

02] The petitioner-management raises a challenge to the judgment and order dated 5th September, 2019, passed in M.A. No.11/2018 of Presiding Officer, School Tribunal, Nagpur, ('Tribunal') by which delay in filing appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('MEPS Act') has been condoned.

03] It is petitioners' contention that respondent No.1 has neither satisfactorily explained delay nor made out sufficient cause for condonation and thus the order of condonation is wholly unjustifiable. The learned Counsel for the petitioners took me through the delay condonation application to impress that it is bereft of the reasons for delay. It is submitted that the delay runs into more than a decade and therefore, the Tribunal seriously erred in condoning the delay in absence of making out a case of sufficient cause.

04] Per contra, learned Counsel for Respondent No.1 has justified the order of the Tribunal by submitting that the respondent No.1 has made out a cause for delay to the satisfaction of Tribunal, which resulted into condonation. It is stated that after first round of litigation, the respondent No.1 lost his memory and

suffered a mental shock and for the said reason, he had not applied to the Tribunal assiduously. Moreover, it is submitted that the delay condonation application was not contested by Education Department and therefore, the petitioners cannot dispute the cause. Lastly, it is stated that there are several decisions of Supreme Court interpreting the terms “sufficient cause” stating that the same must receive liberal construction to advance the cause of justice.

05] The respondent No.1 was in service on the post of Junior Clerk with the School run by the petitioners. He was appointed in the year 1983 and later on dismissed from service *vide* order dated 10.05.2007. Being aggrieved by the dismissal, respondent No.1 has filed a complaint before Labour Court in terms of Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Labour Court has dismissed the complaint by holding that the complaint is not maintainable before Labour Court. Inasmuch as, Labour Court has also recorded a finding on merit that the respondent No.1 failed to establish unfair labour practice.

06] After gap of 10 years, the respondent No.1 has filed an appeal to the Tribunal alongwith application for condonation of

delay in terms of Section 9(3) of the MEPS Act. The respondent No.1 has canvassed a ground for delay as loss of memory and mental shock. It is stated in delay condonation application that after recovery from mental shock, he has applied to the Labour Court on 16.08.2016 for certified copies, which he received on 24.08.2016. In the wake of such possession, he has filed an appeal alongwith delay condonation application in the School Tribunal somewhere in the month of June, 2018.

07] The scope of this petition is restricted to the aspect of condonation of delay only. The learned counsel for the petitioners has submitted that the reason canvassed in the application is cryptic as well as vague. Moreover, there are no supporting documents to satisfy existence of sufficient cause. By placing reliance on the decision of this Court in the case of ***Mathuradas Mohta College of Science, Nagpur Vs. R.T. Borkar and Others*** reported in ***1997(2) Mh.L.J. 168***, it is submitted that, in absence of sufficient cause, the Tribunal loses jurisdiction to entertain the appeal.

08] The learned Counsel for respondent No.1 took me through the decision of the Supreme Court in the case of ***Dr. Ashok Rajmal Mehta Vs. Shree Tirthankar & Co.*** reported in

2018(1) Mh.L.J. 185, on which, the Tribunal relied while condoning the delay. The term “sufficient cause” has not been explained in the Statute. Always it is a factual aspect to decide whether the cause canvassed can be termed as sufficient one. No doubt, it is consistent view that the Court shall adopt a liberal justice oriented approach while condoning the delay. However, at the same time, the limitation provided by a Statute cannot be thwarted in absence of cause.

09] Section 9(3) of the MEPS Act empowers the Tribunal to condone the delay on satisfaction of “sufficient cause” for not preferring the appeal within the stipulated period. The period provided for filing appeal is of 30 days from the date of dismissal, removal or termination in terms of Section 9(2) of the MEPS Act. The respondent No.1 was terminated on 10.05.2007 whilst appeal alongwith application for condonation is filed on 11.06.2018, meaning thereby after 11 years. In the meantime, the respondent No.1 had approached to a wrong Forum i.e. the Labour Court, however, for want of jurisdiction, it was came to be dismissed on 12.11.2008.

10] It is evident that from the year 2008 till the year 2016 i.e. for next 8 years, the respondent No.1 has even not applied for

certified copies. Moreover, though he received the copies on 24.08.2016, however, for next 2½ years, he has not bothered to file an appeal to the Tribunal. It is not the respondent No.1's case that he was unaware about dismissal of his complaint by Labour Court on 12.11.2008. Since respondent No.1 is endeavouring to plug the gap of 8 years by stating a reason in single line, there must be supporting material to consider the same. However, the respondent No.1 has neither produced documents apart from even pleading as to what sort of treatment, he has undertaken. It would be a mockery of the justice, if on a single word of loss of memory, a delay which is running into decade has been condoned. Under guise of adopting justice oriented approach, the law of limitation cannot be totally ignored. The purpose of imposing a period of limitation is that there should be end of litigation resulting into finality to the adjudication. Unless there are convincing grounds, one cannot be permitted to re-agitate the cause, which has become a deadwood.

11] The respondent No.1 has not claimed exclusion of time under Section 14 of the Limitation Act. Even if for a moment that benefit has been accorded still the delay remains to be of 10 years as per respondent No.1's own contention. After

mental fitness, he has applied on 16.08.2016 for certified copies which he received on 24.08.2016. There is no whisper in the entire application as to what was the reason for delay of next 2½ years. Merely making of representations cannot be construed as a ground for not applying within the period. The law would help to the vigilantes and not to the persons who have slept over rights for years together. Due to dismissal of the original complaint by Labour Court or rather for non-challenge of the dismissal order of the year 2007 for next 10 years has created a valuable right in favour of other side, which cannot be snatched without a reason. Merely because respondent No.1 was a removed Clerk, everything cannot be pushed under carpet. In substance, the respondent No.1 has not made out a sufficient cause to condone the delay. The Tribunal has erred in allowing the application.

12] In view of above, petition is allowed.

13] Impugned order of School Tribunal dated 5th September, 2009 is hereby quashed and set aside. Delay application is rejected. Needless to say resultant appeal also stands disposed.

14] Cost amount, if any, deposited by respondent No.1 in School Tribunal shall be refunded to him.

15] Rule is made absolute in the above terms. No order as to costs.

(VINAY JOSHI, J.)

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