

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

WRIT PETITION NO. 5501 OF 2021

Vivekanand Education Society's Polytechnic, Sitasaongi and anr.

Vs.

Gautam s/o Bhauji Bhinzade

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. G.M. Shitut, Advocate for petitioners.

Mr. N.S. Warulkar, Advocate for respondent.

CORAM : MANISH PITALE J.

DATE : 22.04.2022.

By this writ petition, the petitioner – Management has challenged order dated 27.10.2021, whereby the School Tribunal has allowed an application for condonation of delay filed by the respondent in approaching the Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 (hereinafter referred to as 'M.E.P.S. Act').

2. By the impugned order, delay of 484 days in filing the appeal has been condoned. The principal contention raised on behalf of the petitioners in the present writ petition is that the respondent had failed to

show sufficient cause for condonation of delay and yet the Tribunal has proceeded to condone the delay.

3. Mr. Shitut, learned counsel appearing for the petitioner – management submitted that the Tribunal by a cryptic order has condoned delay, merely because the respondent had filed writ petitions before this Court and representations before certain authorities and thereafter, he chose to file the appeal before the Tribunal. Merely because, the respondent was pursuing remedies before the wrong fora, it could not be a ground for condonation of delay, particularly because the respondent admittedly prayed for relief of reinstatement in a pending writ petition and at the same time filed the appeal before the Tribunal after delay of 484 days.

4. It is submitted that after the impugned order was passed condoning delay, the respondent withdrew the prayer clause concerning the question of reinstatement in the pending writ petition. Such conduct, according to the learned counsel for the petitioner – management, disentitled the respondent from the relief of condonation of delay. It was also submitted that even if this Court were to confirm the impugned order, for the period of delay the respondent ought to be deprived of financial benefits.

5. On the other hand, Mr. Warulkar, learned counsel appearing for the respondent submitted that in view of earlier orders passed by this Court, as also for the reason that in the representation made to the concerned authorities, no observation was made by the said authorities on the question of reinstatement, it was evident that the respondent had been pursuing his grievance against the petitioner – management continuously since his otherwise termination of service.

6. It was further submitted that as per the advice of the counsel, the respondent had made a prayer for grant of reinstatement in Writ Petition No.158 of 2019, which is still pending before this Court. But, on 09.03.2022, a Division Bench of this Court recorded a statement on behalf of the respondent that he does not desire to prosecute the prayer pertaining to reinstatement. It was submitted that in these circumstances, the respondent ought not to suffer due to the advice of the counsel and hence, the impugned order does not deserve interference.

7. Heard learned counsel for the rival parties and perused the material on record. There is no dispute about the fact that there was delay of about 484 days in filing the appeal before the Tribunal. Merely because

the number of days of delay is considerable, it cannot be a ground for rejecting the prayer for condonation of delay. It needs to be examined whether the respondent had demonstrated sufficient cause for condonation of delay. It is also a settled position that once a subordinate Court or Tribunal has condoned delay stating reasonable grounds for condonation of delay, the higher Court would be slow to interfere with such an order.

8. In the present case, the reasons given by the Tribunal are found in paragraph 8 of the impugned order dated 27.10.2021. The Tribunal has taken into consideration the remedies to be pursued by the respondent on the advice given by counsel, before this Court and by means of filing representations before the concerned authorities. Having taken the said aspect into consideration, the Tribunal found it fit to condone the delay.

9. This Court has also perused the impugned order. It is the case of the respondent that when he along with other employees started agitating the question of payment of adequate salary before the Management, the respondent and other employees were prevented from performing their duties. It is claimed

that this amounted to otherwise termination of service. In this context, attention of this Court was invited to order dated 02.07.2018, passed by this Court in Writ Petition No. 6260 of 2016, whereby the petitioner and others had agitated the question of salary rightfully due to them. By the said order, this Court found that the petitioner and other similarly situated persons could make appropriate representations before the concerned authorities with regard to the aforesaid grievance.

10. The material on record shows that in pursuance of the said order passed by this Court a representation was indeed made on 26.07.2018 by the petitioner before the All India Council for Technical Education (AICTE) and the Director of Technical Education of the State of Maharashtra. It appears that since the respondent was prevented from performing his duty, a prayer was incorporated in the said representation for reinstating the respondent.

11. The aforesaid representation was disposed of by the concerned authorities, but there was no observation made as regards the question of reinstatement sought to be agitated by respondent. Thereafter, Writ Petition No.158 of 2019 was filed by the petitioners and others for direction to the AICTE and

Director of Technical Education, State of Maharashtra to ensure that the salaries of the petitioners therein were released. In the said writ petition, at prayer clause (iii) the respondent and other petitioners in the said writ petition sought a specific direction of their reinstatement in service along with consequential benefits.

12. It is the case of the respondent that the said prayer was made in Writ Petition No. 158 of 2019, which is still pending, on the advice of the counsel and in the light of such a prayer being made, the respondent did not invoke the provisions of the M.E.P.S. Act. It appears that thereafter, the respondent was advised to file appeal before the Tribunal by invoking Section 9 of the M.E.P.S. Act. By the time the appeal was filed, admittedly there was a delay of 484 days in filing the appeal before the Tribunal.

13. The aforesaid chronology of events does show that the respondent did have grievance about alleged otherwise termination of service in June 2018. The respondent was advised to pursue remedies either before the authorities in the form of representations or to incorporate a prayer for grant of reinstatement and other benefits in the aforesaid Writ Petition No. 158 of 2019, which is pending before this Court.

14. It is a settled position of law that the litigant ought not to suffer because of the mistake of his counsel. Equally, it is found in the facts and circumstances of the present case that the respondent had nothing to gain by delay in seeking redressal of his grievance as regards his otherwise termination of service. In fact, the respondent did agitate the said issue in the form of representations and in the aforesaid writ petition, which is pending before this Court.

15. In these circumstances, this Court is of the opinion that eventually the respondent was advised to invoke the provisions of the M.E.P.S. Act and Rules, as a consequence of which the appeal came to be filed. In fact, after filing of the said appeal and the Tribunal condoning delay, the respondent indeed approached this Court in the pending Writ Petition No.158 of 2019, to make a statement that he does not desire to prosecute prayer clause (iii) pertaining to the question of reinstatement and consequential benefits.

16. Thus, it is evident that as on today the respondent cannot be accused of having invoked parallel remedies for the same cause of action. As noted above, the respondent as an employee whose service was terminated had nothing to gain by delaying invocation

of the provisions of the M.E.P.S. Act and Rules. In the facts and circumstances of the present case, the Tribunal has taken a reasonable view in the matter while condoning delay.

17. The prayer on behalf of the petitioner management for a direction that the respondent ought to be deprived of financial benefits for the period of delay is found to be unacceptable, for the reasons stated above.

18. Hence, Writ Petition is dismissed.

JUDGE

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GABHANE

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