

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12933 OF 2022

The President, Lasalgaon Shikshan Sahayyak
Mandal and Another

...Petitioners

vs.

Deelip Karbhari Deore and Another

...Respondents

VISHAL
SUBHASH
PAREKAR

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Ms. Pranita Hingmire, for the Petitioners.
Mr. Anilkumar Patil, for Respondent No. 1.
Mr. A.P. Vanarse, AGP for Respondent No. 2.

CORAM : N. J. JAMADAR, J.

DATE : AUGUST 17, 2023

P.C.:

1. Heard the learned counsel for the petitioners.
2. The petitioners take exception to an order dated 7th September, 2021 passed by learned Presiding Officer, School Tribunal, Nashik in Misc. Application No. 12 of 2017 whereby the learned Presiding Officer condoned the delay of 10 months in preferring the appeal under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.
3. The respondents/applicant approached the Tribunal with a case that the applicant was appointed as a 'Clerk' in the respondent No. 2 school run by respondent No. 1 trust on 3rd October, 2000. The

respondent terminated the services of the applicant on 7th October, 2016. The respondent had assured the applicant that he would be allowed to resume the duties. Hence, the applicant did not approach the Tribunal immediately. Therefore, there was delay in preferring the appeal.

4. By the impugned order, the learned Presiding Officer condoned the delay opining that the applicant had made out a sufficient cause for condonation of delay.

5. The learned counsel for the petitioners submitted that the applicant/respondent herein had not ascribed a sufficient cause to condone the delay. Secondly, the learned Presiding Officer committed an error in law in adverting to the merits of the matter while deciding the application for condonation of delay. Inviting the attention of the Court to the observations in paragraph 11 of the impugned order wherein the learned Presiding Officer has adverted to the fact that no disciplinary inquiry as contemplated under Rule 16(3) of the MEPS Rules, 1981 was initiated against the applicant and that lent credence to the cause assigned by the applicant for the delay. Therefore, the learned counsel strenuously submitted, the impugned order deserves to be quashed and set aside for

considering the merits of the matter.

6. It is trite an application for condonation of delay receives a liberal consideration. The Courts and Tribunal lean in favour of the condonation of delay so as to advance the cause of substantive justice. In the case at hand, the respondent/ employee claimed to have rendered services for more than 16 years and thereafter the management verbally terminated him. The delay was sought to be explained by ascribing a cause that he was assured by the Management that he would be allowed to resume his duties. While assessing the genuineness of the said cause, the learned Presiding Officer, School Tribunal has adverted to the merits of the matter, especially the conduct of the Management in not initiating disciplinary inquiry against the applicant.

7. It is well settled that while deciding application for condonation of delay, the Court is not expected to delve into the merits of the matter. However, the mere fact that while assessing the genuineness of the reasons, ascribed by the person seeking condonation of delay, if the Court adverts to the merits of the matter, the order of condonation of delay does not become infirm.

8. The Tribunal does not seem to have exercised the discretion to condone the delay on untenable ground. Nor the exercise of the discretion can be said to be perverse. As the Tribunal has exercised the discretion to condone the delay, it would not be justifiable to interfere with the exercise of discretion in extraordinary writ jurisdiction. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **N. Balakrishnan vs M. Krishnamurthy**¹ wherein the difference in the approach expected of a superior Court where the first Court exercised the discretion to condone the delay, was delineated as under:-

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 want of acceptable explanation whereas in certain other cases, delay of 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.

(emphasis supplied)

9. In view of the above, the petition stands dismissed.

¹ 1998 (7) SCC 123.

10. It is, however, clarified that the learned Presiding Officer, School Tribunal shall not be influenced by any of the observations made in the impugned order while deciding the appeal on merits.

(N. J. JAMADAR, J.)