



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4619 OF 2009

- 1 Canossa Convent, Dhule,
Canossa Convent High School,
Dhule, Near Chalisgaon Chaupuli,
80 feet road, Dhule.
- 2 The Head Mistress,
Canossa Convent High School,
Dhule, Near Chalisgaon Chaupuli,
80 feet road, Dhule.

... Petitioners

... **Versus** ...

- 1 Manoj Murlidhar Sonar,
Age 36 yrs., Occ.
R/o Professor Colony, Dhule,
Tq. & Dist. Dhule.
- 2 The Education Officer (Secondary),
Zilla Parishad, Dhule.

... Respondents

...

Mr. S.S. Patil, Advocate for petitioners

Mr. S.B. Yawalkar, Advocate h/f Mr. H.F. Pawar, Advocate for respondent No.1

Mr. A.S. Shinde, AGP for respondent No.2

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CORAM : S.G. CHAPALGAONKAR, J.

RESERVED ON : 01th JULY, 2024

PRONOUNCED ON : 12th JULY, 2024

JUDGMENT :

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 Petitioners impugn order dated 16.04.2009 passed by Presiding Officer, School Tribunal, Nashik below application for delay condonation in preferring Appeal No.DHL/5/2009. Mr. Shrikant Patil, learned Advocate appearing for petitioners submits that respondent No.1 was appointed as Physical Education Teacher in petitioner No.1 school, however, his performance was not satisfactory. He was served with notices and memos. Several complaints were received from students and parents about his conduct. On 16.06.2008 respondent No.1 tendered resignation in his own handwriting which was accepted and approved by Management. Respondent No.1 filed appeal alleging otherwise termination dated 16.06.2008. The appeal was delayed by seven months. Hence, respondent No.1 filed application seeking condonation of delay. Petitioner No.1 opposed prayers by filing reply and pointed out that no sufficient cause has been shown in application to justify inordinate delay of seven months, however, the learned Tribunal allowed the application and condoned the delay vide impugned order dated 16.04.2009.

3 Mr. Shrikant Patil relying upon the observations of this Court in case of **Chandrakant Laxman Kulbhaiyya and another vs. The State of Maharashtra and others** [2015 (2) Mh.L.J. 323] submits that the party seeking condonation has to satisfy the Court of existence of sufficient cause for non preferring appeal within stipulated period of limitation. In absence of explanation for delay the Tribunal could not have allowed the application of respondent.

4 Per contra, Mr. S.B. Yawalkar, learned Advocate appearing for respondent No.1 submits that respondent No.1 ventilated his grievance of otherwise termination before the Education Officer by filing many representations. He had persuaded Management to allow him to join on duty and after unsuccessful efforts, filed appeal along with application seeking condonation of delay. Reasons as stated in the application cannot show sufficient cause within the meaning of Section 5 of the Limitation Act. Learned Tribunal after appreciating rival contentions condoned the delay in exercise of discretion within parameters of law. To buttress his submission he relies upon Division Bench Judgment of this Court in case of **Anil Ramdas Pawar vs. Union of India and others** [2020 (4) Mh.L.J. 280].

5 Having considered submissions advanced, it is apparent that respondent No.1 approached School Tribunal under Section 9 of the M.E.P.S.

Act, thereby challenging his termination. It is not disputed that appeal was filed beyond the stipulated limitation period of 30 days, prescribed under Section 9(2) of the M.E.P.S. Act, 1977. Sub-section (3) of Section 9 of the M.E.P.S. Act empowers Tribunal to entertain appeal beyond prescribed limitation, after recording satisfaction that applicant was prevented by sufficient cause for non preferring appeal within the limitation. Respondent No.1 was under obligation to make out sufficient cause for explaining delay of seven months. Perusal of pleading in application it can be observed that respondent No.1 made continuous representations to respondent No.2 - Education Officer ventilating his grievances of oral termination and also persuaded petitioner No.2 – Head Mistres to permit him to join duty. He also asserts that petitioner No.2 had assured to consider his request after discussing with Management. Application is supported by copies of communications dated 18.06.2008, 26.07.2008, 22.07.2008, 25.02.2008 and 13.09.2008 addressed to Education Officer complaining the otherwise termination and a securing resignation by exerting mental pressure.

6 Although pleadings in application are denied by respondent No.2, nothing is brought on record to indicate that such representations never reached to Education Officer. It is natural for the employee of private school to approach Education Officer, when he has complaints against

Management, particularly the complaint in the nature of securing forcible resignation. The Tribunal has rightly observed that possibly employee was *bona fidely* pursuing his remedy with Education Officer. It is trite that the term “sufficient cause” is flexible and operates differently depending upon facts of each case. One of the considerations is the fallout of the orders of acceptance or refusal to condone the delay.

7 In present case it is not disputed that respondent No.1 was appointed as Teacher and after discharging duties for the period of almost two years, his services are discontinued. The only remedy available to assail otherwise termination is under Section 9 of M.E.PS. Rules. In case of refusal to condone delay great prejudice would be caused to the respondent employee.

8 The Tribunal exercised the jurisdiction within parameters of law thereby accepting explanation tendered by respondent No.1 as sufficient cause to condone the delay. In this background, when petitioners intend to assail the order passed by Tribunal before this Court, it would be apposite to refer the parameters of jurisdiction of this Court under Article 227 of the Constitution of India. The Hon’ble Supreme Court of India in case of **Mrs. Garment Craft vs. Prakash Chand Goel** [AIR 2022 SC 422] observed in paragraph No.18 as under :

“The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.”

9 Keeping in mind aforesaid parameters, no case is made out to interfere with the impugned order. Consequently, writ petition stands dismissed. Rule is discharged.

10 It appears that present writ petition was pending since 2009. The period of 15 years is consumed. It would be, therefore, just and desirable that the Tribunal shall make endeavour to expeditiously decide the pending appeal of respondent No.1 and dispose the same within the period of one year from the date of this order. Parties shall cooperate for early disposal of Appeal.

(S.G. CHAPALGAONKAR)
JUDGE

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