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WP 8014.24 R.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8014 of 2024

**SHRI CHATRAPATI SHIVAJI SHIKSHAN PRASARAK MANDAL
AND OTHERS.**

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS.

...

Dr. R.J. Godbole, Advocate for petitioners.

Mr. K.B. Jadhavar, AGP for the State.

CORAM : S.G. CHAPALGAONKAR, J.

DATE :- 1st AUGUST, 2024.

ORDER :-

1. The petitioner impugns the order dated 14.9.2023 passed by the Presiding Officer, School Tribunal, Aurangabad in Miscellaneous Application No. 25 of 2023, thereby condoning the delay of 1176 days caused in filing the appeal filed by respondent No.3.

2. Dr. R.J. Godbole, learned advocate for petitioner submits that the application for condonation of delay caused in filing appeal by respondent employee was placed for hearing before School Tribunal on 11.9.2023 and it was adjourned to 9.10.2023. However, later-on, the Roznama was changed and matter was preponed to 14.9.2023 for order below Exhibit 6 and on that day, the application is allowed. He would further submit that inordinate delay of 1176 days has been condoned although the application is bereft of sufficient cause. He would further

submit that in cases of inordinate delay at least the claim of back wages could have been foreclosed for that period. In that view of the matter, he urges to quash and set aside impugned order.

3. I have considered submissions advanced and also perused the record tendered into service. It appears from the Roznama that the petitioner (management) was served with the copy of the Misc. Application seeking condonation of delay. That service report was submitted on 22.6.2023. Since petitioners (original respondent Nos. 1 and 2) were absent, the matter was proceeded ex-parte. Thereafter, the application was taken up for arguments on 11.9.2023. Roznama records that case is adjourned for argument and next date was given as 9.10.1023. However, on same day i.e. on 11.9.2023, again it was preponed and the matter appears to have been posted on 14.9.2023 for judgment.

4. Apparently, petitioners were proceeded ex-parte. Assuming that on 11.9.2023, the matter was for arguments and it was adjourned to 9.10.2023, the correction of Roznama is carried out on same day and after hearing the arguments, the matter was posted for judgment on preponed date i.e. 14.9.2023. Therefore, even assuming that there is some irregularity in recording the Roznama, no prejudice is caused to the petitioners,

5. The next contention raised on behalf of petitioner is that sufficient cause is not made-out to condone huge delay. Apparently, the oral termination dated 30.12.2019 was subjected to challenge in appeal. The appeal ought to have been filed on or before 29.1.2020. However, it

can be observed that during 15.3.2020 to 28.2.2022 the period of 715 days has been exempted from counting limitation owing to COVID-19 pandemic. The learned Tribunal noted that actual delay counts to 461 days and after satisfying with reasons stated in application, delay has been condoned.

6. It is trite that liberal approach needs to be adopted in the matter of condonation of delay. Unless it is found that a party has derived disadvantage by making delay in lodging proceeding, it shall not be non-suited on technical reason. In the present case, respondent no.3 has filed appeal under Section 9 of the MEPS Act, alleging otherwise termination. In case of rejection of application, the respondent No.3 would be remediless. No prejudice would be caused to the petitioners, if appeal is heard on merit. However, there is merit in contention of Mr. Godbole that petitioner shall not be benefited in terms of back wages at least for period of delay. Therefore, it is made clear that in case the respondent No.3 succeeds in appeal, the Tribunal shall keep in mind the period of delay in filing appeal, while considering claim of respondent No.3 for grant of back wages and pass appropriate orders in accordance with law.

7. Therefore, no case is made out to cause interference in impugned order of Tribunal under Section 227 of the Constitution of India, hence writ petition stands dismissed with observations made above.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-