



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

**WRIT PETITION NO. 3462 OF 2005**

Padmakar s/o Hiranman Patil  
Age : 39 years, Occu. : Nil,  
R/o. Joshi Galli, Paithan,  
Tq. Paithan, Dist. Aurangabad.

.. Petitioner

**Versus**

1. Jijamata Mahila Mandal, Paithan,  
through its President, Bhagwat  
Galli, Paithan, Tq. Paithan,  
Dist. Aurangabad.
  2. The Head Master,  
Jijamata Mahila Primary School,  
Bhagwat Galli, Paithan, Tq. Paithan,  
Dist. Aurangabad.
  3. The Education Officer (Primary),  
Zilla Parishad, Aurangabad.
- .. Respondents

Mr. S. R. Barlinge, Advocate a/w Mr. Kalyan V. Patil, Advocate for the  
Petitioner.

Mrs. M. A. Kulkarni, Advocate for Respondent Nos. 1 and 2.

Mr. S. W. Munde, Advocate for Respondent No. 3.

**CORAM : KISHORE C. SANT, J.**

**Date on which reserved for order : 27<sup>th</sup> February, 2025.**

**Date on which order pronounced : 10<sup>th</sup> March, 2025.**

**FINAL ORDER :-**

. Heard the parties for final disposal at the stage of admission by  
consent of the parties.

2. The petitioner has approached this Court challenging an order passed by the learned Presiding Officer, School Tribunal, Aurangabad thereby dismissing an application for condonation of delay that was caused in filing appeal by the petitioner. The petitioner was working with respondent No. 2 school run by respondent No. 1 management as a primary teacher. The respondent No. 3 is Education Officer (Primary), Zilla Parishad, Aurangabad.

3. Few facts giving rise to the petition are as under :

4. The petitioner was appointed as primary teacher on probation basis by order dated 23.06.1997. The approval was granted to the appointment of the petitioner for a period of two (02) years vide letter dated 17.03.1999. The petitioner was thereafter confirmed by the management by order dated 05.04.2000. The said also came to be confirmed by respondent No. 3 vide order dated 06.05.2000. On 08.04.2000 he was even given charge as in-charge Headmaster. The said appointment was also approved by respondent No. 3. It is the case thereafter that, the petitioner was required to proceed on leave from 07.01.2002. He even submitted an application for grant of leave on medical ground. The said leave was sanctioned, however, when he came back to the school for joining, he was not allowed to join. The school sought fitness certificate and also medical certificate. The

petitioner therefore made representations to the management and to the Education Officer seeking directions to allow him to join the duties. The Education Officer directed the management to allow the petitioner to join his duties, however, in spite of that, the respondent Nos. 1 and 2 refused to allow him to join the duties. It is his case that, thereafter, the respondent No. 1 demanded Rs. 30,000/- (Rs. Thirty Thousand only) to allow him to join the duties and he was threatened that otherwise he would be terminated. On reopening of the school he again went to school on 10.07.2002 to join the school. He ultimately realized that the management do not want to continue his services. The communication dated 10.07.2002 by respondent No. 1 was taken as termination. The petitioner thus approached the learned School Tribunal by filing an appeal No. 103/2002.

5. In the said appeal, it was the stand of the respondents that the petitioner was not duly appointed to the school as Assistant Teacher. One Jayshree Deshpande was appointed as Assistant Teacher in the said school. However, she was not possessing requisite qualification of D.Ed., her services were also terminated and the appeal was pending. It is the case of the management that, the petitioner was appointed in her place. The petitioner was never appointed against clear vacant post. When he was given the charge of post of Headmaster, he illegally gave

an appointment to one Shri S. D. Kokate as Assistant Teacher by taking some bribe. The appointment of Shri S. D. Kokate was not even informed to the management. The learned School Tribunal accepted the stand of the management. It is prayed for dismissal of an appeal.

6. The learned School Tribunal also dismissed the appeal on the ground of delay of more than six months. The said order has gone unchallenged by the petitioner. The petitioner thereafter again filed another appeal bearing No. 62/2004 before the learned School Tribunal along with an application for condonation of delay. The learned Presiding Officer, School Tribunal rejected the application for condonation of delay on the ground that there was no satisfactory explanation of the delay and the decision in the earlier appeal would operate as res judicata. Thus, the petitioner is before this Court.

7. The learned advocate Mr. Barlinge for the petitioner vehemently argued that, there is no dispute that the petitioner was appointed by following due process of law. His appointment was approved by the respondent No. 3. When this was the position, the petitioner could not have been terminated without following procedure as prescribed under Rules 36 and 37 of the Maharashtra Employees of Private Schools (Conditions Of Service) Rules, 1981 (hereinafter referred to as "M.E.P.S. Rules"). The learned Presiding Officer, School Tribunal has

adopted hyper technical approach and has rejected the delay condonation application. The finding that the application is barred by principles of res judicata is totally erroneous. Earlier there was no application for condonation of delay for that. Thus, there was no reason to make this observation. It was necessary for the learned School Tribunal to consider the matter on merits, however, the same is not done. He thus submits that, the petition needs to be allowed by condoning the delay with direction to the learned School Tribunal to consider the appeal on merits.

8. The learned advocate Smt. Kulkarni for respondent No. 1 and 2 vehemently opposed the petition. It is the case of the management that, the appeal filed by the petitioner bearing No. 103/2002 was terminated on merits. The said order is not challenged by the petitioner and thus, the petitioner has accepted the said order. After having accepted the order, the petitioner could not have filed another appeal on the same cause of action. In any case, there was delay which was not satisfactorily explained. The learned School Tribunal therefore rightly rejected the application. There is also bar of principles of res judicata. On merits it is submitted that, the petitioner on his own illegally abandoned the services. He did not produce any medical certificate to show that he was not well. In fact, he never came for

joining the service. Now, the case of termination is concocted by the petitioner by after thought. There is communication that the management had asked him to submit medical certificate, however, this fact is not disputed by the petitioner. In Appeal No. 103/2002 it is clearly held by the learned School Tribunal that, the petitioner failed to prove that his termination is otherwise termination. After accepting the judgment in the earlier appeal, now it is not open for the petitioner to challenge the same again.

9. The learned advocate Mr. Munde appearing for respondent No. 3 also vehemently opposes the writ petition. He submits that, no case is made out to entertain the petition.

10. This Court has gone through the order dated 13.07.2005 wherein, this Court had dismissed the writ petition. The said order was carried in L.P.A. No. 128/2007. It is observed by the Division Bench that the real controversy for considering the question, the Single Judge has not considered the case on merits. It is observed that, the management has not come up with a case that the termination of services was on any particular date. It is held that, it is therefore for the employee to point out the cause of action. The delay or limitation need to be computed from the date of termination. In view of this order, this Court has to consider the challenge as well.

11. The question is therefore as to what is the date of termination. It is the case of the petitioner that he was terminated on 10.07.2002 when he received a undated communication from respondent No. 1 and thus, he had taken the said date as date of otherwise termination. The order passed in the earlier appeal by the learned School Tribunal, the learned School Tribunal had answered the issue as to whether the respondent No. 1 terminated the services of the appellant with effect from 10.07.2002. The answer given is no. It is held that, the appeal was not within limitation. Though earlier two issues were answered in favour of the petitioner that his appointment was made by following procedure under Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as "M.E.P.S. Act") and as to whether the post was approved by the Education Officer. In spite of answering issues about appointment and vacant post in favour of the petitioner, still the appeal was dismissed on the ground of limitation and no date of termination was shown.

12. From the record it does appear that, there was approval granted by the respondent No. 3 to the appointment of the petitioner on probation. Subsequently, by order dated 05.04.2000 there is approval granted by respondent No. 3, however, the wording shows that the

appointment was for further period of temporary nature and the said can be terminated without giving any notice. However, again it is seen from the order dated 06.05.2000, the approval was given for temporary period subject to approval of staffing pattern as per Section 9 of the M.E.P.S. Act and subsequently he was appointed as in-charge Headmaster. There is also a communication dated 19.06.2002 by the petitioner to respondent No. 3 and respondent No. 1 stating that, the Headmaster is not allowing him to join the services. It is thus taken that he was terminated from 10.07.2002.

13. In view of the order passed in L.P.A. No. 128/2007 this Court has to see what is the exact date of termination except stating that the petitioner was terminated with effect from 10.07.2002. There is nothing on record. From the reply of respondents it is seen that, a criminal case was filed against the petitioner and therefore, the petitioner was absconding and therefore, he illegally abandoned the service. There was no application filed for condonation of delay in the appeal. The petitioner has never shown readiness to join. Even from the communication dated 17.06.2002 it does appear that, the petitioner on his own stated that from 21.01.2002 he tried to resume the duty, however, he was not allowed by the Headmistress to join. On his own he stated that, though he submitted applications, no endorsement of

receipt is given to him. This clearly shows that there is no proof to show that the petitioner has ever tried to join the duty. It was open for him to sent communication through post, however, that is also not appearing on the record. This Court holds that the petitioner failed to prove date of termination and also fact of termination.

14. This Court finds substance in the argument of the learned advocate for the respondents that, the petitioner did not challenge the judgment in appeal No. 103/2002. In the judgment in Appeal No. 103/2002 the learned School Tribunal has specifically recorded a finding that the date of termination as 10.07.2002 is not proved. On the aspect of limitation also the said finding attained finality. This clearly indicates that the petitioner accepted that order. In view of this, filing of the appeal thereafter certainly is barred by limitation and also principles of res judicata.

15. No illegality or perversity is found in the judgment and order of the learned School Tribunal. Considering all above facts, this Court is not inclined to cause interference.

16. With this, the writ petition stands dismissed.

( KISHORE C. SANT, J. )

PS.B.