



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

WRIT PETITION NO. 5102 OF 2022

Shri Kshetra Bhagwan Gad Trust Through Its President Namdeo Bhagwanrao
Sanap And Another

VERSUS

Ajinath Jabaji Kirtane And Another

Mr. Y. B. Bolkar, Advocate for Petitioners

Mr. Ajinkya Kale i/b Talekar and Associates, Advocate for Respondent No. 1

Mr. S. N. Kendre, AGP for Respondents/State

CORAM : R. M. JOSHI, J.

DATE : 25th March, 2025

PER COURT :-

1. This petition takes exception to the order dated 07.04.2022 passed by School Tribunal in Misc. Application No. 18 of 2018 whereby the delay of 3 years 6 months caused in filing appeal under Section 9(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short “**the Act**”). The respondent herein had claimed that he was duly qualified for the post of Assistant Teacher and was appointed against the clear permanent vacant post on 01.07.2010. He upheld from 30.07.2013 as the said appointment was made for a period of 3 years after following due procedure. It is further claimed by him that during this period, he rendered unblemished services. He has referred to the communication of the petitioners dated 24.01.2015, submitting the proposal for approval and instead of submitting the re-proposal, petitioners have orally prevented him from signing the Muster

Roll from 27.01.2015. It is contended in the application that he filed Writ Petition No. 15017/2017 which came to be disposed by order dated 10.07.2018. It is observation that issue sought to be raised in the petition can be agitated before the School Tribunal. Immediately after passing of the order in July, 2018, in August, 2018 application came to be filed before the School Tribunal for condonation of delay in preferring appeal under Section 9 of the Act. The petitioners opposed the contention of the respondents before the Tribunal alleging that this is a case wherein services of respondents are not continued from July, 2013 and that he was not diligent in prosecuting his case. It is also claimed that there is unexplained delay of more than 4 years and, therefore, it is not observed to be condone School Tribunal

2. After hearing both sides and going through the documentary evidence on record passed impugned order condoning delay of 3 years and 6 months in filing appeal under Section 9 of the Act. Being aggrieved by the said order, this petition.

3. Learned counsel for the petitioners submits that the respondents failed to give satisfactory reason for condonation of delay. It is his submission that the Tribunal has committed error in accepting the case of respondents about his termination being effected in the year 2015 and rejecting the contention of the petitioners about severance of employer-employee

relationship in the year 2013 itself. He, by relying upon the judgment of Hon'ble Supreme Court in case of **Lingeswaran etc Vs. Thirunagalingam** **2022 SCC OnLine SC 2233**, seeks interference in the impugned order.

4. Learned counsel for the respondents supported the impugned order.

5. At the outset, this Court needs to take into consideration the judgment cited supra wherein the Trial Court in spite of making observation that the applicant therein has failed to give satisfactory explanation of condonation of delay but allowed the application by using its decision. It is held by the Supreme Court that once the Court comes to the conclusion that there is no satisfactory explanation for condonation of delay, the same cannot be condoned. In the instance case, however, the respondent has specifically provided in the application reasons for condonation of delay. The School Tribunal has not only considered the said reasons but also considering the order passed by this Court dated 10.07.2018 in Writ Petition No. 15017/2017 the same is condoned. Thus the facts of the present case are totally different than the one involved in the judgment cited supra. The said judgment, therefore, does not come to aid of the petitioner, owing to material difference in the facts involved in both cases.

6. It is pertinent to note that this is not stale claim which cannot be

entertained. The respondents filed Writ Petition before this Court and this Court has not rejected the said petition for delay and laches but has granted leave to the petitioner to file appeal under Section 9 of the Act before the School Tribunal. If there was delay and laches on the part of the petitioner, this Court would have dismissed the petition at threshold. This being not so done, the Tribunal was only justified in placing reliance on the order dated 10.07.2018 passed in this petition.

7. Suffice it to say that respondent has satisfactorily explained delay caused in preferring the appeal as such this Court finds no reason to cause interference in the impugned order. Petition stand dismissed.

8. At this stage, learned counsel for the petitioners submits that Tribunal has recorded findings with regard to the termination in the year 2013 or 2015 and if the said findings are permitted to remain on record, the rights of the parties at the time of final hearing before the Tribunal would get prejudiced. Hence, it is clarified that findings recorded by the Tribunal would not come in way of the parties to substantiate their respective case, at the time of hearing of the appeal on merit.

(R. M. JOSHI, J.)

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