



2025:DHC:580



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 29.01.2025

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**W.P.(C) 917/2025, CM APPL. 4532/2025, CM APPL. 4533/2025
& CM APPL. 4534/2025****CHOWGULE PUBLIC SCHOOL****..... Petitioner****Through: Ms. Tamali Wad, Sr. Advocate with
Mr. Sameer Abhyankar, Ms. Ayushi
Bansal and Mr. Aakash Thakur,
Advocates****versus****ANITA BHOLA & ORS.****..... Respondents****Through: Mr. Anuj Aggarwal, Ms. Kritika
Matta and Mr. Pradeep Kumar,
Advocates for R-1
Mr. Yeeshu Jain, ASC with Ms. Jyoti
Tyagi, Advocate for R-3****CORAM:****HON'BLE MR. JUSTICE PRATEEK JALAN****PRATEEK JALAN, J. (ORAL)**

1. The petitioner-School has filed this petition, under Article 226 of the Constitution, challenging an order of the Delhi School Tribunal dated 05.12.2024, by which delay in filing of an appeal by the respondent No. 1 has been condoned.
2. The petitioner-School is a recognized private unaided linguistic minority school, established by the Maratha Mitra Mandal – respondent No.2 herein. Respondent No. 1 was appointed as a Trained Graduate Teacher [“TGT”] (Computer Science) in the petitioner-school in the year 1991, and confirmed in the year 1992. She was subsequently promoted to



PGT (Computer Science) in the year 1998 and granted senior scale with effect from 01.09.2014.

3. By a communication dated 01.03.2021, the petitioner purported to convey a decision of its Executive Committee stating that respondent No.1 “*will be retiring w.e.f.-01.04.2021*”. It is the admitted position that respondent No.1 would have attained the age of superannuation a few months later, i.e., on 31.07.2021. However, the petitioner cited the financial status of the school and the issue of funds requirement, as justification. The copy of the communication filed with the writ petition, bears an endorsement of respondent No.1 stating, “*Received under protest, for further discussion on terminal benefits.*”

4. Respondent No.1 addressed a complaint dated 25.03.2021 to the Hon’ble Lieutenant Governor, with copies endorsed to various other officials, including the Deputy Commissioner of Labour Department and the Directorate of Education. It appears that conciliation proceedings under the Industrial Disputes Act, 1947 [“the Industrial Disputes Act”], were thereafter commenced, to which the petitioner-school objected by a communication dated 08.12.2022, including on the grounds of jurisdiction.

5. In the writ petition, the petitioner-School has stated as follows –

“3. Brief facts of the case, so far as relevant for the purpose of the present writ petition (pertaining to the issue of delay in filing the Appeal), are given as under.

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(ix) On 25.03.2021, Respondent No.1, approached the Conciliation Officer, Govt. of NCT of Delhi under the Industrial Disputes Act, 1947 (“ID Act”). Vide order dated 08.12.2022, the proceedings before the Ld. Conciliation Officer, Govt. of NCT of Delhi, were closed. It may be noted that the proceedings were closed on account of the fact that the parties had failed to reach any solution. Hence, Respondent No. 1 was advised to file their claim, if any, before the competent authority.

True copy of the orders passed by the Conciliation Officer, Govt. of NCT



of Delhi are annexed hereto as Annexure P-5 (Colly)."

6. A copy of the order of the Conciliation Officer dated 08.12.2022 has also been placed on record, which states that the matter has been prolonged and both parties have failed to reach any solution. The complainants were, therefore, advised to file their claims before the competent authority, and the proceedings were closed.
7. Respondent No.1 has thereafter filed an appeal under Section 8(3) of the Delhi School Education Act, 1973 ["the Act"], before the Delhi School Tribunal ["Tribunal"] on 21.03.2023.
8. The Tribunal, in the impugned order, has decided the question of limitation, with reference to Section 11 of the Act and Section 5 of the Limitation Act, 1963 ["the Limitation Act"]. The period of limitation for filing of an appeal, provided under Section 8(3) of the Act, is three months. The Tribunal has computed the delay as 13 days, counting the period of 103 days, from the closure of the proceedings before the Conciliation Officer on 08.12.2022, until the filing of the appeal 21.02.2023.
9. Relying upon the judgment of this Court in *Management of S.E.S. Baba Nebhraj Sr. Secondary School v. Raj Kumari Khanchandani*¹ [hereinafter, "*Nebhraj*"], the Tribunal observed that it has the power to condone delay. It rejected the submission on behalf of the petitioner-School that Section 14 of the Limitation Act cannot be applied as the Conciliation Officer is not a Court. Applying a liberal approach, the Tribunal has condoned the delay.
10. Ms. Tamali Wad, learned Senior Counsel for the petitioner - school,

¹ 2011 (124) DRJ 235.



submits that the Act and Rules do not confer any power upon the Tribunal to condone the delay in filing of an appeal under Section 8(3) of the Act. She contends that the judgment in *Nebhraj*² relied upon by the Tribunal, has been wrongly decided, ignoring the law laid down in several decisions of the Supreme Court on the question of whether a Tribunal has the power to condone delay. By way of example, Ms. Wad cites the judgments of the Supreme Court in *Fairgrowth Investments Ltd. v. the Custodian*³ and *Commissioner of Customs & Central Excise v. Hongo India Private Limited & Anr*⁴ [hereinafter “*Hongo India Private Limited*”].

11. Without prejudice to this submission, Ms. Wad further submits that Section 14 of the Limitation Act has also been wrongly applied by the Tribunal for several reasons, including that the Conciliation Officer does not fall within the definition of “*Court of first instance or of appeal or revision*,” that the proceedings before the Conciliation Officer were not with regard to the same matter in issue, that the proceedings were not prosecuted with due diligence and good faith, and that the said proceedings had not been closed due to a defect of jurisdiction or other cause of like nature. Ms. Wad submits that the Tribunal has failed to apply its mind to these ingredients of Section 14 of the Limitation Act, while deciding the question of condonation of delay.

12. Mr. Anuj Aggarwal, learned counsel for respondent No.1, on the other hand, submits that the judgment of the Co-ordinate Bench in *Nebhraj*⁵ concludes the question of power of the Tribunal to condone the delay. He

² Supra (Note 1).

³ (2004) 11 SCC 472.

⁴ (2009) 5 SCC 79.

⁵ Supra (Note 1).



submits that the question of applicability of Section 14 of the Limitation Act has also been correctly decided, in view of the purpose of conciliation proceedings under the Industrial Disputes Act. He argues that the purpose of Section 14 of the Limitation Act is to permit postponement of legal proceedings on account of incorrect or erroneous proceedings having been adopted at the first instance.

13. Having heard the learned counsel for the parties, I am of the view that the view taken by the Tribunal, condoning the delay in the present case, does not call for interference in exercise of power under Article 226 of the Constitution.

14. Taking the question of the Tribunal's jurisdiction to condone the delay first, the very same question has been decided by a co-ordinate bench in *Nebhraj*⁶. It may be noted that the judgment of the Supreme Court in *Hongo India Private Limited*⁷, which has been cited by Ms. Wad, has been noticed in *Nebhraj*⁸ while extracting the judgment of another co-ordinate bench in *Uttam Sucrotech International (P) Limited v. Union of India & Anr*⁹.

15. The Court in *Nebhraj*¹⁰, came to the following conclusion:

“37. I have discussed both the different situations. In one situation negative cap is there, where delay cannot be condoned beyond the maximum limit prescribed. In other situation, no clear cut provision provided if, the aggrieved person is prevented by the circumstances beyond control. In the instant case under Section 11(6) of Delhi School Education Act, 1963 the Tribunal enjoy some power as vested in a Court of Appeal by the Code of Civil Procedure, 1908 under Delhi School Education Act, 1963 no such negative cap is given.

⁶ Supra (Note 1).

⁷ Supra (Note 4).

⁸ Supra (Note 1).

⁹ 2011 (184) ECR 90 (Delhi).

¹⁰ Supra (Note 1).



38. In my opinion, the law is very clear; there is a principle of interpretation of statute that the plain or grammatical construction which leads to injustice or absurdity is to be avoided. Section 11 of the Delhi School Education Act, sub-clause 6 thereof undoubtedly confers on the tribunal appellate powers which it exercises as if it were a court of appeal upon Code of Civil Procedure, **therefore, to my mind would have the power to condone delay in appeal before it by recourse to Section 5 of the Limitation Act.** The judgments cited and relied upon by counsel for the petitioner do not foreclose the powers of a tribunal if powers of a court of appeal are bestowed upon it by statute itself.

39. Additionally, this issue has already been decided in the case of Geeta Bal Bharti Sr. Sec. School (supra) that Delhi School Education Act, 1973 the powers are bestowed upon the Tribunal to dispose of appeals under the Act as if it were appellate court within the meaning of the Code of Civil Procedure, therefore, **would have the power to condone delay in filing provided the Tribunal was satisfied that sufficient cause had been shown as required under Section 5 of the Limitation Act, 1963.** The said Tribunal is headed by a District Judge appointed by Lt. Governor, NCT of Delhi after no objection given by the Hon'ble the Chief Justice of this Court. The presiding officer of the Tribunal is not an administrative body but a quasi-judicial armed with sub-section 6 of Section 11."¹¹

16. The contention of Ms. Wad, that the conclusion arrived at in *Nebhraj*¹² is *per incuriam*, is not based upon any binding judgment which deals with the same statutory scheme, but instead that the reasoning of the Court and application of the principles laid down in other judgments, are incorrect. The judgment of a co-ordinate Bench is undisputedly binding and stands as authority for the proposition which it decides. The clear and unequivocal ratio of the judgment in *Nebhraj*¹³ is that the Tribunal has the power to condone delay in an appeal filed before it, and I am bound by this view.

17. It may also be noted that this Court has, over the years, condoned delay in filing of appeals before the Tribunal in several cases, although

¹¹ Emphasis supplied.

¹² Supra (Note 1).

¹³ Supra (Note 1).



without any challenge having been raised on the question of the Tribunal's jurisdiction. Reference may be in this connection to *Gulzar Singh v. Guru Harkishan Public School*¹⁴, *Ganesh Ram Bhatt v. Sharda Devi Sanskrit Vidyapeeth*¹⁵ [hereinafter "*Ganesh Ram Bhatt*"], and *G.D. Goenka Public School and Another v. Vinod Handa and Another*¹⁶ [hereinafter "*G.D. Goenka Public School*"]. In the decision in *Ganesh Ram Bhatt*¹⁷, the Court also noted that the order sought to be challenged before the Tribunal was an order of removal from service, which affects the right to livelihood of the petitioner therein under Article 21 of the Constitution. In *G.D. Goenka Public School*¹⁸, the Court held that condonation of delay is essentially a discretionary issue, to be exercised by the appellate authority concerned and normally not to be interfered with, unless it is shown to suffer from manifest arbitrariness or legal infirmity.

18. The next question addressed by learned counsel for the parties concerns the applicability of Section 14 of the Limitation Act. While parties have joined issue on this question, I am of the view that it does not, strictly speaking, require conclusive determination in the facts of this case. Even assuming the contentions of Ms. Wad on the strict applicability of Section 14 of the Limitation Act to be correct, the consequence would be that the time spent before the Conciliation Officer would not be excluded in computing the period of delay. The effect would be on the quantum of delay in filing of the appeal, and whether the petitioner has shown sufficient cause for condonation of the longer delay. This question can be examined, even on

¹⁴ 2015 SCC OnLine Del 9278.

¹⁵ 2017 SCC OnLine Del 8226.

¹⁶ 2019 SCC OnLine Del 9540.

¹⁷ Supra (Note 15).



the basis that Ms. Wad is correct in her submission with regard to application of Section 14 of the Limitation Act.

19. In this context, it may be noted that the impugned communication of the petitioner-school is of 01.03.2022, at which time the orders of the Supreme Court in *In Re: Cognizance for Extension of Limitation*¹⁹, regarding extension of limitation, were applicable. The Supreme Court ultimately granted a period of 90 days from 01.03.2022 for filing of proceedings, which would have been otherwise barred by limitation during the period of moratorium. That period ended on 29.05.2022, but the appeal was filed by respondent No.1 on 21.03.2023. For the sake of argument, taking this entire period as the period of delay in filing of the appeal, I am of the view that the admitted pendency of conciliation proceedings until 08.12.2022, demonstrates sufficient cause for the delay in filing of the appeal. The purpose of the conciliation proceedings was to attempt a resolution, and respondent No.1 ought not to be left remediless because she pursued the said proceedings, and did not file the appeal during the pendency thereof. After the conclusion of the conciliation proceedings on 08.12.2022, the appeal was filed on 21.03.2023. Considering the period of limitation of three months granted under Section 8 of the Act as an indicator, I am of the view that the delay has been adequately explained, and the order of the Tribunal does not warrant interference under Article 226 of the Constitution.

20. The writ petition, alongwith the pending applications, is therefore, dismissed. It is made clear that the observations in this judgment are only for

¹⁸ Supra (Note 16).

¹⁹ Suo Motu Civil Writ Petition 03/2020, decided on 10.01.2022.



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the purpose of deciding the writ petition and will not prejudice the parties before the Tribunal in the hearing of the appeal on merits.

PRATEEK JALAN, J

29th January, 2025/'SV'/kb/