



\$~17

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9796/2018 & CM APPL. 44143/2019

POONAM SHARMA

.....Petitioner

Through: Ms. Banisha Verma and Mr. S.M.
Pandey, Advocates.

versus

VIKAS BHARTI PUBLIC SCHOOL & ORSRespondents

Through: Mr. Khagesh B Jha, Advocate.
Mr. V. Balaji and Mr. Nizamuddin
Advocates for Respondent (DOE).

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

%

03.03.2025

1. The petitioner has filed this petition under Article 226 of the Constitution, challenging an order of the Delhi School Tribunal [“the Tribunal”] dated 01.06.2018, by which an appeal filed by her against the order of the respondent – Vikas Bharti Public School [“the School”] dated 31.03.2017 was dismissed. By the aforesaid order, according to the petitioner, her services as a Physical Education Teacher were terminated by the School, whereas the School characterises the position as one of resignation.

2. The respective cases of the parties on merits need not detain us at this stage because the Tribunal has dismissed the petitioner’s appeal only on the ground of delay.

3. The Tribunal has noted that the petitioner was appointed by the respondent – School on an *ad-hoc* basis with effect from 07.10.2009 and placed on probation in May 2011. The impugned termination took place



in March 2017, after which the petitioner approached the Tribunal by way of an appeal filed on 09.10.2017.

4. Pursuant to the order of this Court dated 15.01.2025, the School has placed on record a copy of the Tribunal's record, in which an affidavit filed by the School shows that it took an objection as to limitation, as well as on the merits of the case. In the rejoinder to the affidavit, the petitioner disputed this position, relying upon a judgment of the Supreme Court in *Raj Kumar v. Directorate of Education and Others* [(2016) 6 SCC 541] and of this Court in *Management of Ring Midways v. Ms. Shashi Rawat and Anr.*, [W.P.(C) No. 117/2017, decided on 09.01.2017].

5. In the impugned order, the Tribunal found the judgment in *Management of Ring Midways (supra)* to be distinguishable and, therefore, held as follows:

*“26. The appeal is prima facie filed after the expiry of period of limitation of 3 months from the date of alleged acceptance of resignation of the appellant. **No application for condonation of delay has been filed nor there is any pleadings in the appeal with regard to condonation of delay. Considering all the facts and circumstances of this case, this Tribunal is of view that the delay in filing the present appeal could have been and should have been condoned but for any application of condonation of delay or any pleading in the appeal to this effect.** In these circumstances, this Tribunal is left with no option but to hold that appeal is barred by limitation hence not maintainable, consequently the same is dismissed.”*

[Emphasis supplied.]

6. Ms. Banisha Verma, learned counsel for the petitioner, states that despite the petitioner having taken a position in the writ petition that the appeal was within time, the petitioner may be permitted to file such an application for condonation of delay within two weeks from today.



7. Having heard learned counsel for the parties, I am of the view that the appropriate course is to permit the petitioner a final opportunity of filing an application for condonation of delay before the Tribunal. The petitioner's failure to file an application earlier may have been ill-advised, but her submission for a further opportunity to do so ought not to be negated for that reason. Having regard to the fact that the statute provides for an appellate remedy, and that the consequences of termination of services impinge upon the livelihood of the employee, deprivation of the remedy would be too harsh a consequence. I also note that the Tribunal proceeded in this manner only because there was no application for condonation of delay, and in fact, observed that if an application had been filed, it "*could have been and should have been condoned*". The writ Court must ultimately act in the interest of justice.

8. Mr. Khagesh B Jha, learned counsel for the School, submits that the petitioner, in fact, delayed the filing of the appeal deliberately, so as to avail of terminal benefits, which were, in fact, paid by the School prior to the filing of the appeal. He also submits that in the further time that has lapsed during the pendency of the writ petition before this Court, the School has made alternative arrangements, which would render re-instatement of the petitioner difficult. It is clarified that these submissions are reserved, for the School to agitate before the Tribunal. The intention of the Court is not to condone the delay in filing of the appeal, but to give the petitioner an opportunity to persuade the Tribunal in this regard.

9. For the same reason, it is made clear that the observations of the Tribunal quoted above, in the order dated 01.06.2018, will not be treated as binding upon the Tribunal while deciding the application to be filed by



the petitioner. It is open to the Tribunal to take an independent decision in accordance with law, upon considering the averments in the proposed application and the School's reply thereto. If the Tribunal decides to condone the delay, the appeal will be decided on its merits, and the Tribunal is at liberty to pass such orders as it considers appropriate after considering the cases put forth by both the parties.

10. The impugned order dated 01.06.2018 is set aside, and the appeal is restored to the file of the Tribunal. The petitioner is granted a period of two weeks to make an application for condonation of delay. If the application is not filed by 17.03.2025, the Tribunal may proceed on the basis that the petitioner does not seek condonation of delay. If the application is filed within the aforesaid time, the Tribunal will grant time to the School to file a reply thereto, and adjudicate the application thereafter.

11. The petition, alongwith the pending application, is disposed of with these directions.

PRATEEK JALAN, J

MARCH 3, 2025
SS/JM/