

Sayali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7967 OF 2025

SAYALI
DEEPAK
UPASANI

Digitally signed by
SAYALI DEEPAK
UPASANI
Date: 2026.02.06
14:36:31 +0530

The principal A. P. Greg
Foundation Trust Silver Oak
High School ... Petitioner
V/s.
Ashok Tulshiram Jadhav ... Respondent

**WITH
WRIT PETITION NO.7969 OF 2025**

The principal A. P. Greg
Foundation Trust Silver Oak
High School ... Petitioner
V/s.
Bharat Zipru Kor ... Respondent

**WITH
WRIT PETITION NO.7972 OF 2025**

The principal A. P. Greg
Foundation Trust Silver Oak
High School ... Petitioner
V/s.
Vilas Damodar Avhad ... Respondent

**WITH
WRIT PETITION NO.8712 OF 2025**

The principal A. P. Greg
Foundation Trust Silver Oak
High School ... Petitioner
V/s.
Bhagwant Madhav Shelke ... Respondent

**WITH
WRIT PETITION NO.8713 OF 2025**

The principal A. P. Greg
Foundation Trust Silver Oak
High School ... Petitioner
V/s.

Sunita Nivrutti Avhad

... Respondent

**WITH
WRIT PETITION NO.8711 OF 2025**

The principal A. P. Greg
Foundation Trust Silver Oak
High School

... Petitioner

V/s.

Rajesh Nohn Ohol

... Respondent

**WITH
WRIT PETITION NO.8714 OF 2025**

The principal A. P. Greg
Foundation Trust Silver Oak
High School

... Petitioner

V/s.

Javed Karim Shaikh

... Respondent

**WITH
WRIT PETITION NO.8715 OF 2025**

The principal A. P. Greg
Foundation Trust Silver Oak
High School

... Petitioner

V/s.

Rajendra Shivaji Sonawane

... Respondent

Mr. Arvind Kothari i/b Ms. Kinnari Mehta, for
Petitioners.

Ms. Pavitra Manesh, for Respondent No. 1.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 30, 2026

P.C.:

1. Since the present batch of Petitions raises common questions of law and fact and arises out of a substantially identical factual matrix, it is appropriate to dispose of the same by a common

judgment and order.

2. On 18th June, 2005, the petitioners terminated the services of the respondents purportedly in exercise of powers under *Sections 2(oo)* and 25F of the Industrial Disputes Act. Aggrieved thereby, the respondents instituted complaints before the Labour Court at Nashik. It is not in dispute that in September 2005 the respondents encashed the cheques issued by the petitioners. By judgment and order dated 31st May, 2011, the Labour Court dismissed all the complaints. The respondents, thereafter, preferred revision applications before the Industrial Court, Nashik in the year 2011. By order dated 21st June, 2015, the Industrial Court allowed the revision applications and remanded the matters to the Labour Court for fresh adjudication. Upon rehearing, the Labour Court, by order dated 03rd December, 2015, allowed the complaints and directed reinstatement of the respondents with continuity of service and full back wages from 18th June, 2005.

3. The petitioner challenged the aforesaid order by filing revision applications before the Industrial Court, Nashik. By a common order dated 16th April, 2018, the Industrial Court dismissed the revision applications and affirmed the order passed by the Labour Court. Thereafter, on 26th April, 2022, the respondents instituted recovery applications under Section 50 of the MRTU and PULP Act for recovery of the amounts due under the award. By order dated 09th February, 2023, the Labour Court condoned the delay in filing the recovery applications. By order dated 01st February, 2023, the Labour Court allowed the recovery applications and directed the petitioner to pay the amounts as

claimed. The petitioner appeared and contested the recovery proceedings. Consequently, on 21st November, 2023, the Labour Court issued recovery certificates. Pursuant thereto, by order dated 26th December, 2023, the Collector, Nashik directed the Tahsildar to initiate recovery proceedings. In furtherance thereof, the Tahsildar issued a notice of attachment on 01st August, 2024 and ultimately passed an order of attachment on 03rd March, 2025. It is in this backdrop that the petitioner has instituted the present Petitions on 08th May, 2025 challenging the judgment and order dated 16th April, 2018 passed by the Industrial Court.

4. In order to explain the delay of approximately seven years in instituting the present Petitions, the petitioner has pleaded that although the impugned order was passed on 16th April, 2018, the Advocate then representing the petitioner failed to advise or communicate the further legal course available. It is averred that the matter was thereafter discussed among different Advocates engaged by the petitioner till December 2018 without any concrete decision being taken. In January 2019, the Law Officer of the petitioner entered into negotiations with the respondents. According to the petitioner, the subsequent outbreak of the COVID-19 pandemic disrupted further action up to March 2020. It is further stated that the then Law Officer, Mr. Chetan Vyas, ceased to be associated with the petitioner on 31st May, 2022 without handing over relevant details concerning the impugned order. Mr. Mahesh Mahale was appointed as in-house legal counsel in or about May 2022, but his tenure ended on 23rd December, 2022. Thereafter, Ms. Sarika Pol was appointed as Law Officer around

October 2022. The petitioner asserts that during this period it was not properly advised regarding the legal remedies available. It is also contended that the respondents did not initiate any proceedings for nearly four years after the impugned order and that only upon receipt of the recovery application dated 26th April, 2022 did the petitioner realise that negotiations had failed. On this basis, it is submitted that the delay stands satisfactorily explained and that a liberal approach ought to be adopted, reliance being placed on the decision of the Supreme Court in *Isha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy*, 2013 AIR (SCW) 6158. In the alternative, it is urged that even assuming delay, the impugned orders being without jurisdiction are nullities in law and can be challenged at any stage.

5. On merits, learned counsel for the petitioner submitted that the exclusive forum available to the respondents was the School Tribunal constituted under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. Placing reliance on the decisions of the Supreme Court in *Municipal Corporation of Delhi v. Gurnam Kaur* (1989) 1 SCC 101 and *Bilkis Yakub Rasool v. Union of India and Others* (2024) 5 SCC 481, it was contended that a decision rendered sub silentio, without consideration of a binding statutory provision, does not constitute a precedent on the point of law. On that premise, it was argued that the decision of this Court in *Balasaheb Dagadu Yeole and Another v. Sangamner Taluka Vikas Pratishthan, Bhairavnath Madhyamik Vidyalaya* 2017 (2) Bom C.R. 557, which holds that the jurisdiction of the Labour Court is concurrent with that of the

School Tribunal, is sub silentio inasmuch as it failed to consider the non obstante clause contained in Section 9 of the MEPS Act. It was therefore submitted that the Industrial Court lacked jurisdiction and that the impugned order can be assailed irrespective of delay.

6. In reply, learned counsel for the respondents contended that the explanation offered for the inordinate delay does not disclose sufficient cause and that the petitioner has failed to demonstrate due diligence. Relying upon the judgment of this Court in *Balasaheb Dagadu Yeole*, it was submitted that a Co-ordinate Bench, after considering earlier binding precedents including those of a Division Bench, has categorically held that the remedy under Section 9 of the MEPS Act is in addition to other available remedies.

7. It was further submitted that this Court, while deciding *Balasaheb Dagadu Yeole*, examined the entire spectrum of relevant judgments of this Court as well as of the Supreme Court and conclusively held that an employee has the option to approach either the School Tribunal or the Labour Court. It was argued that as per settled principles governing judicial discipline, if a Co-ordinate Bench disagrees with an earlier decision, the only permissible course is to refer the matter to a larger Bench. It cannot disregard the earlier judgment on the ground that it is per incuriam. In view thereof, it was submitted that the impugned order cannot be characterised as one passed without jurisdiction and that the writ petitions deserve dismissal.

8.

9. At the conclusion of the hearing, learned counsel for the petitioner sought continuation of the ad-interim relief granted on 30th June, 2025. However, for the reasons recorded separately in the operative part of this order, the request for continuation of the ad-interim relief stands rejected.

Reasons and Analysis

10. The law on delay and laches is well crystallised. When a litigant approaches the writ court after considerable lapse of time, the Court must scrutinise both the cause shown for the delay and the overall conduct of the party during the interregnum. Relief under Article 226 is discretionary. That discretion cannot be exercised in favour of a party who fails to demonstrate diligence and bona fides.

11. A bare recital that there were consultations with advocates, attempts at negotiation, changes in legal officers, and disruption due to the pandemic does not amount to sufficient cause. These broad assertions must be supported by material particulars. The explanation must show that the petitioner was genuinely prevented from acting and that despite reasonable care, the remedy could not be pursued in time.

12. In the present case, there are no specific dates of meetings, no copies of communications exchanged with counsel, and no internal notings or resolutions showing that the matter was actively under consideration. It is not shown when advice was first sought after the order dated 16 April 2018, what opinion was rendered, or why a decision to litigate was deferred. The pleadings

do not disclose any concrete steps taken to explain limitation.

13. Equally significant is the absence of contemporaneous record. If the petitioner had indeed intended to challenge the order, one would expect some documents indicating that the filing of a writ petition or an application for condonation was under active consideration. No such material is produced. The explanation thus rests largely on general statements.

14. The reference to successive law officers also remains vague. There is no indication of the steps taken by each officer in relation to the impugned order. Institutional transfer cannot justify complete inaction for years together.

15. The reliance on the pandemic must also be assessed realistically. The order sought to be challenged was passed in April 2018. The pandemic disruptions began in March 2020. There is an unexplained period of nearly two years prior to that. Even after courts resumed functioning and limitation periods were regulated by specific directions, the petitioner has not shown that it acted with promptness. The pandemic, therefore, cannot serve as a explanation.

16. The fact that the respondents did not initiate recovery proceedings for some time does not advance the petitioner's case. The need to challenge an adverse order arises from the date of knowledge of that order. It does not depend on when the opposite party chooses to enforce it. The petitioner admittedly had knowledge of the Industrial Court's order dated 16 April 2018. From that date onwards, the responsibility to seek appropriate

remedy lies on the petitioner.

17. What is absent is any attempt to move this Court within a reasonable time. No draft petition, no legal notice, no interim application is shown to have been prepared or contemplated shortly after the impugned order. The first step appears only after coercive recovery proceedings commenced. Such facts does not satisfy the test of due diligence.

18. Viewed collectively, the explanation lacks the degree of details, consistency and bona fide effort. The Court is therefore unable to hold that sufficient cause has been made out.

19. The petitioner has sought to overcome the objection of delay by advancing the submission that the impugned orders are nullities, having been passed without jurisdiction, and therefore can be assailed at any stage. The argument proceeds on the premise that limitation or laches cannot validate an order which is void ab initio. The application of preposition depends upon the nature of the defect alleged and the nature of the jurisdictional challenge raised.

20. There is a distinction between a void order and a voidable order. An order passed by an authority having no jurisdiction whatsoever over the subject matter may indeed be treated as a nullity. Such an order is legally non existent. It does not get legitimacy by passage of time. In contrast, an order suffering from error in interpretation or even misapplication of law, remains binding unless set aside in appropriate proceedings. That category of error renders the order voidable, not void.

21. It is therefore necessary to examine whether the petitioner has demonstrated absence of inherent jurisdiction. To accept contention of a plea of nullity it must be shown that the forum in question had no legal authority to entertain the matter under any circumstance. . A bald assertion that another forum was available does not automatically negate jurisdiction of the forum that has adjudicated.

22. In the present case, the controversy centres around the interpretation of Section 9 of the Maharashtra Employees of Private Schools Act and whether the remedy before the School Tribunal is exclusive or whether concurrent jurisdiction survives. Earlier decision of this court in *Balasaheb Dagadu Yeole* has analysed the statutory scheme and concluded that the remedy under Section 9 is in addition to other remedies. That view may be debated, but it cannot be said to be without legal foundation.

23. Where jurisdiction depends upon construction of statutory provisions and where coordinate bench has taken a particular view after considering the legislative framework, the matter falls within the realm of interpretative disagreement. In such circumstances, even if another interpretation is possible, the order passed by the coordinate bench cannot be termed as one rendered without jurisdiction in the strict sense.

24. It must also be borne in mind that the Industrial Court did not act suo motu or in disregard of statutory boundaries. It entertained revision applications arising from proceedings before the Labour Court. The respondents invoked remedies recognised in

industrial jurisprudence. The question whether those remedies were maintainable was a legal issue capable of adjudication. The forum decided that issue, implicitly or explicitly, while exercising powers vested in it under the relevant enactments. Such an exercise cannot be equated with an assumption of power where none exists.

25. An order passed on a debatable question of law, after hearing parties and considering submissions, is not rendered non est merely because one party asserts that another forum was preferable or exclusive. If such a broad proposition were accepted, every erroneous interpretation of a statute would become a jurisdictional defect immune from limitation. That would unsettle settled positions and erode the finality of judicial decisions.

26. The doctrine that a nullity can be challenged at any time must therefore be applied with caution. It is confined to cases of patent lack of inherent jurisdiction. It does not extend to situations where jurisdiction is arguable, or where concurrent remedies are recognised by a binding precedent. In the present matter, the existence of judicial authority upholding concurrent remedies decisively undermines the contention that the Industrial Court lacked legal competence altogether.

27. Accordingly, the impugned orders cannot be characterised as nullities in the strict sense of the term. They were passed in exercise of statutory powers, on a question that was open to contest and subject to interpretation. Such orders, even if assumed to be erroneous, remain operative unless set aside within a

reasonable period. The petitioner, having failed to act with due diligence, cannot invoke the doctrine of nullity to circumvent the consequences of inordinate delay.

28. The decision of the Co-ordinate Bench in *Balasaheb Dagadu Yeole* considered earlier precedents and concluded that Section 9 provides an additional remedy and does not exclude concurrent jurisdiction of the Labour Court. The petitioner seeks to characterize that decision as sub silentio for failure to notice the non obstante clause. The doctrine of a decision being sub silentio applies where a binding constitutional or statutory provision was overlooked to the extent that the decision cannot stand as precedent on the specific point. This Court cannot lightly treat a considered judgment of a Co-ordinate Bench as per incuriam when it considers prior authorities and the statutory scheme. The rule of judicial discipline requires that a Co-ordinate Bench should either follow the earlier decision or refer the issue to a larger Bench. The petitioners offer no convincing reason why this Court should depart from the settled coordinate-bench approach. The issue is one of construction of statutory text and of judicial precedent. On the materials before the Court the reasoning in *Balasaheb Dagadu Yeole* cannot be held to be a nullity merely because an alternative interpretation is urged now.

29. On the applicants' reliance on authority for the proposition that sub silentio decisions are not binding, this Court accepts the legal proposition in principle. *Gurnam Kaur* and *Bilkis Yakub Rasool* stand for the limited proposition that where a binding statute or precedent is ignored, the resulting decision cannot be

treated as authoritative on that point. That principle does not mean that every decision with which a later court disagrees is to be treated as lacking effect. The test is whether the earlier decision manifestly overlooked a binding provision or precedent so as to vitiate its reasoning. The petitioner has not demonstrated such a manifest oversight in the decision relied upon. The Co-ordinate Bench in *Balasaheb Dagadu Yeole* expressly considered prior authorities and reached its conclusion. *Balasaheb Dagadu Yeole* is therefore a binding coordinate-bench decision for present purposes until a larger bench decides otherwise.

30. For the reasons stated above the explanation for delay is inadequate. The objection on jurisdiction does not establish that the impugned orders are nullities. The petitioners have not made out sufficient cause to grant relief in writ jurisdiction after the inordinate delay.

31. The writ petitions are therefore dismissed.

32. No order as to costs.

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 6 February 2026. Corrections in paragraph 2 are shown in italicize.