

(2020) 01 BOM CK 0128
In the Bombay High Court
Case No : Writ Petition No. 251 Of 2020

Anmol

APPELLANT

Vs

Nagsen Shikshan Sanstha Nagpur And Others

RESPONDENT

Date of Decision : 20-01-2020

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Act,
1977 — Section 9
Limitation Act, 1963 — Section 14
Constitution Of India, 1950 — Article 23

Citation : (2020) 01 BOM CK 0128

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : A.D. Bhate, P.N. Shende, V.A. Dhabe, K.R. Deshpande

Final Decision : Dismissed

Judgement

1] The petitioner is the original appellant before the School Tribunal in Miscellaneous Application No.10/2018, filed by him on 24.8.2018 seeking condonation of delay of 57 months caused in filing the appeal for challenging his order of dismissal from service dated 14.5.2015. The appellant is aggrieved by the order dated 18.12.2019 passed by the School Tribunal by which, the miscellaneous application has been rejected and the delay caused has not been condoned.

2] The learned Advocates for the respective sides have advanced extensive submissions on 14.1.2020, 15.1.2020, 16.1.2020 and today. The petitioner has preferred an additional affidavit along with case law. The respondent management has relied upon several documents. An additional affidavit has now been filed by the petitioner along with several documents.

3] Learned Advocate Shri Shende appears on behalf of respondent No.1, who claims to be the other faction in the management, and has supported the case of the appellant by submitting that the other faction was ordered by the Education

Officer that no adverse action should be taken.

4] I find that the MEPS Act and the MEPS Rules do not define the jurisdiction of the Education Officer so as to direct the management that it should not conduct the disciplinary proceedings or should not pass orders if there are two factions in the management. It is for the Assistant Charity Commissioner to consider as to how such two groups can be restrained in the interest of the educational trust. Moreover, in Writ Petition No.5357/2015 filed by one faction of the Education Society, an order was passed by the learned Division Bench on 2.4.2016 wherein certain restrictions were imposed on the two groups. However, this order has been passed on 2.4.2016 when the appellant was already dismissed from employment on 14.5.2015.

5] I need not reproduce the extensive submissions of the litigating sides in this matter for the fact that most of their submissions are with regard to the allegations made by the appellant against the management and vice-versa. The issue that needs to be considered is as to whether the School Tribunal has rightly rejected the application for condonation of delay of 57 months or whether it should have allowed the said application with certain conditions.

6] It is undisputed that the order of dismissal is dated 14.5.2015. The appellant claims to have received the order on 12.6.2015 under the Right to Information Act. The management has an envelope containing the order of dismissal which was issued to the appellant by R.P.A.D. The original receipt of the Indian Post Department mentions the Receipt No.EM293792163IN, dated 15.5.2015 registered at 15.48 Hrs. at the Nagpur Post Office. The weight of the envelope is 1.70 grams and the management paid postal fare of Rs.28/-. The original envelope is shown to the Court and the envelope carries the same address of the appellant which is mentioned in the cause title of this petition. The postal envelope indicates that initially the door of the appellant's house was found locked on 16.5.2015. On 18.5.2015, he has refused to accept the same. Consequently, it was returned to the sender. The learned Advocate for the appellant denies these aspects emerging from the original envelope.

7] The management published the order of termination dated 14.5.2015 in Marathi Dainik Lokmat, Nagpur Edition on 17.5.2018. Copy of the said paper publication which also carries a large photograph of the appellant is placed before the Court at page 156. I find the said publication to be of a substantial size which can be easily noticed and which rules out the contention of the appellant that he did not notice such a large sized proclamation.

8] The appellant approached this Court by preferring Writ Petition No.3816/2015 on 29.6.2015 which, admittedly, is after he (himself concedes) received the order of his dismissal on 12.6.2015. I have perused the prayers put-forth in the said petition and I have also gone through the petition paper book. It was conceded in paragraph 33 that the appellant had received the order of dismissal and yet, no prayer as regards the dismissal was set out. Instead, it was prayed that that

the management should be restrained from initiating adverse action against the three petitioners including the appellant and they should be continued in employment. On 4.9.2015, the said petition was withdrawn unconditionally and was disposed off by the learned Division Bench of this court vide its order dated 4.9.2015.

9] The petitioner then preferred Writ Petition No.1483/2016 on 22.2.2016. In this petition, the petitioner sought to challenge the communication of the Education Officer dated 18.2.2016, vide which, he had informed that the appellant cannot be paid his salary as he was already dismissed from service on 14.5.2015 and unless the dismissal order is set aside, there cannot be relief of payment of wages / salary. There is no dispute about the fact that the appellant was an Assistant Teacher. The learned Division Bench of this Court delivered its judgment on 2.5.2018 in the said W.P. No.1483/2016. Vide the said judgment, the petition was dismissed.

10] In Writ Petition No.1483/2016, the learned Division Bench had granted ex parte relief against the management on 1.3.2016. On 2.12.2016, this Court noted that after interim relief was granted to the appellant and he was permitted to sign the muster roll, he was not permitted to work. It was observed by the Court that the State Government has been paying the salary of the appellant through the public exchequer from the date of his termination till 2.12.2016, though the appellant has not worked. The management is happily watching the situation. The management was, therefore, directed to deposit the entire amount of salary paid to the appellant with the Registry of this Court within a period of four weeks.

11] The strenuous contention of the appellant today is that he has been paid the salary under the Court orders and the said amount cannot be recovered from him. It is claimed that he had worked during this period. However, the observations of this Court in the order dated 2.12.2016 indicate that he was only permitted to sign the muster roll, he was not permitted to work and he was drawing salary from the State Government without working. These observations have not been challenged by the appellant before the Hon'ble Apex Court, inasmuch as, no review application was filed.

12] The judgment of the learned Division Bench dated 2.5.2018 in Writ Petition No.1483/2016 clearly indicates that though the appellant knew that he was dismissed from service on 14.5.2015, admittedly after he received the documents under the Right to Information Act on 12.6.2015 and notwithstanding the paper publication in the largest circulated newspaper, he had not challenged his termination and he had involved himself in making allegations against the management. Both his petitions were directed only against the management insofar as the internal squabbles of the purported two factions in the management. He had prayed for appointment of an Administrator and he had also prayed that the management should be restrained from taking adverse decision against him, though he was admittedly dismissed from service on

14.5.2015. It requires no debate that his grievance against the dismissal dated 14.5.2015 could not have been entertained by this Court in view of statutory remedy available under Section 9 of the MEPS Act before the School Tribunal. Yet, he did not choose to challenge it under Section 9.

13] The issue therefore, before this Court and which was raised before the School Tribunal is as to whether the petitioner has knowingly and consciously not challenged his dismissal order despite having full knowledge and had approached this Court on other disputed issues or whether he had preferred his two petitions in this Court being completely oblivious and ignorant about his dismissal from service and, therefore, had pursued wrong remedies and had approached the High Court unknowingly, as a result of which Section 14 of the Limitation Act could have been invoked.

14] There can be no debate as regards crystallized law that if a person follows wrong remedies bona fide under a belief that the forum that he had approached could alone deal with his grievance and if such forum disposes off such proceedings as being untenable thereby informing the litigant that his statutory remedy lies elsewhere, Section 14 of the Limitation Act can be invoked. This is apparent because the litigant had approached the wrong forum and had prayed for reliefs which could have been granted to him by another forum.

15] In the instant case, it is crystal clear that the appellant was aware of his dismissal. He approached this Court in Writ Petition No.3816/2015 in which, he set out other prayers in the petition filed on 29.6.2015. It, therefore, appears that he consciously did not challenge his dismissal order before the School Tribunal under Section 9 of the M.E.P.S. Act though he was aware that he was dismissed from service considering his pleadings in paragraphs 33 and 34. I find from paragraph 34 that the appellant contended that his termination was in violation of the MEPS Rules and the principles of natural justice and he has made a statement in paragraph 34, that "the petitioner No.1 shall take appropriate steps to question the same" (his dismissal order dated 14.5.2015) "before the appropriate Court of law". He has further stated in the same paragraph, "the petitioner No.1 is still in employment which can be seen from the copy of muster roll for the month of June, 2015 wherein he has put his signature till 26.6.2015." Even by consideration of these statements it is obvious that the petitioner appellant was not in employment on 29.6.2015 when he filed his first writ petition as he had not signed any muster roll after 20.6.2015. This petition was withdrawn by the appellant unconditionally as noted above.

16] The above factor therefore indicates that the appellant has consciously and thoughtfully not challenged his dismissal order dated 14.5.2015 though he had made a statement, as noted above, in the first petition in paragraph 34 that he would be challenging it separately. This one factor indicates that Section 14 of the Limitation Act would not be applicable.

17] The petitioner thereafter has preferred his second Writ Petition

No.1483/2016. He devoted the entire petition for agitating the undesirable acts being committed by the warring factions of the school management. In the said petition, he relies upon the decision taken by the education department by which his salary was directed to be released by a note-sheet dated 3.8.2015 in the records of the Education Officer. Based on such noting of the Education Officer, the salary of the appellant was released and some portions of the salary have been paid to him, despite the dismissal order dated 14.5.2015 which has not been withdrawn by the management.

18] It is surprising that he has mentioned in paragraph 33 of the said second petition memo that his dismissal order is inconsequential, has not been given effect to and he is still in employment since he signed the muster roll till 26.6.2015, when, he filed this petition on 22.2.2016. No statement is made in the second petition as to why the appellant has not challenged his dismissal order though he had made such a statement in paragraph 34 of the earlier petition filed on 29.6.2015.

19] The learned Advocate for the appellant strenuously submits that because he signed the muster roll till 26.6.2015, his dismissal order was not brought into effect. He further contends that he was paid some portion of the salary after his dismissal since the Education Officer had issued a note that he should be paid his monthly salary.

20] The learned Advocate for the management submits that immediately after the dismissal, the Education Officer directed the management not to pay the salary of the appellant. A change in the Education Officer occurred and the new In-charge Education Officer (Secondary) - Mr. Baraskar, issued such instructions and compelled the management to forward the salary bills for certain period though the appellant had not worked.

21] The learned Advocate for the appellant points out from an observation made in the order dated 10.8.2018 in paragraph 10 by which this Court had noted that the applicant was prosecuting Writ Petition No.1483/2016 bona fide and, therefore, it is stated that the appellant was before this Court bona fide.

22] I find the submission of the learned Advocate for the appellant to be fallacious for the reason that the appellant had never challenged his dismissal order in any of the writ petitions filed before this Court. He had clearly stated in the body of the first writ petition memo that he was dismissed from service on 14.5.2015. He canvassed several issues as regards the dispute in the two purported factions of the management and this fact proves that he was pursuing those reliefs seriously. The first writ petition was withdrawn unconditionally and the second writ petition was dismissed by a detailed judgment of this Court dated 2.5.2018 in which the learned Division Bench has made the following observations in paragraph 10 as under:

"10. Considering the above orders passed earlier in this petition, it appears that before granting stay in this matter he was terminated by the Management. The

submissions put forth on behalf of the petitioner that there is faction in the management, i.e. respondent No.5 and 7 and though respondent No.5 is Secretary in Schedule-I but by Resolution the change report is filed before the Assistant Charity Commissioner and therefore the respondent No.7 is Secretary of the Society. The said submission put forth on behalf of petitioner cannot be accepted. The petitioner was terminated by respondent No.5 w.e.f. 14/05/2015 and therefore the impugned order passed by respondent No.4 - Education Officer (Secondary) not to include the name of dismissed employee in the salary bill is justified. The submission put forth on behalf of petitioner that before passing the impugned communication dated 18/2/2016 by respondent No.4, he was not heard also cannot be accepted. It is to be noted that the said communication is based upon order of termination dated 14/5/2015 of the petitioner and therefore no illegality is committed by respondent No.4 - Education Officer while issuing the same. It is for the petitioner to challenge his termination order before appropriate authority and get his grievance redressed. Respondent No.5 by filing reply-affidavit denied the allegations made in the petition."

(emphasis supplied)

23] The issue to be considered for condonation of delay in this case is as regards invoking Section 14 of the Limitation Act and whether the conduct of the litigant would disentitle him from seeking condonation of delay. The law on condonation of delay is well settled in the matter of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107] and in the matter of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others [2013(12) SCC 649]. As such, in the peculiar facts and circumstances of this case, the factors available before the School Tribunal when it delivered the impugned order refusing to condone the delay of 57 months indicate that the appellant voluntarily did not challenge his dismissal order by preferring any appeal under Section 9 of the MEPS Act. Though in the first petition filed within two months of his dismissal on 29.6.2015, he made a statement in paragraph 34 that he would challenge his dismissal, no such challenge was put-forth until 24.8.2018. Even in the second petition that was dismissed by judgment dated 2.5.2018, he had stated in the petition that he has been dismissed from service. Yet, he pursued several other issues pertaining to the infighting in the management of the Education Society and consciously did not challenge his dismissal.

24] The question that was raised before the School Tribunal and which is also canvassed before this Court is as to whether the period spent by the appellant in this Court in the two petitions could be excused and whether Section 14 of the Limitation Act could have been invoked. Pursuing a remedy before a wrong forum is surely a ground to be taken into account as it proves that there were no laches on the part of the litigant since he had approached a wrong forum under a wrong legal advise. This is not the case in this matter. As noted above, the appellant was aware of his dismissal and consciously did not challenge it.

25] The learned Advocate for the appellant has tried to canvass that though his review application was rejected by the learned Division Bench, it was mentioned that the interim order passed in the writ petition would establish his bona fides and the School Tribunal should look into the matter appropriately and decide the appeal, if delay is condoned. I find that the submission of the appellant would not be sustainable since the learned Division Bench of this Court did not direct the Tribunal to condone the delay. It only concluded that he had approached this Court in two writ petitions, in which he had admittedly not challenged his dismissal and, therefore, the School Tribunal was directed to decide the appeal expeditiously, if the delay was condoned.

26] There are instances when this Court has passed orders that the period from the date of dismissal till the date of the filing of the appeal would be excluded for grant of monetary benefits if the appellant succeeds before the School Tribunal. To make things clear, this Court has called upon such litigants to file an affidavit that the monetary benefits for the period from the date of dismissal till the filing of the appeal, would be waived so that the management or the State Government is not burdened financially as a litigant cannot be permitted to take advantage of his own wrong.

27] In tune with the above, when this matter was heard extensively on 14.1.2020, I had called upon the learned Advocate for the petitioner appellant to take instructions from the appellant himself as to whether he would waive this period of monetary benefits considering the above peculiar factors involved in this case. Time was sought and the matter was posted on 15.1.2020. Again it was adjourned to 16.1.2020. The appellant attempted to play a trick by calling upon his Advocate to make a request that now the appellant desires to engage a Senior Advocate. The learned Advocate was informed that such tactics should not be played on the Court and if he does not desire to waive the monetary benefits for the said period, he may not file such an affidavit as it is a personal choice. The learned Advocate then sought time and the matter was posted today when two additional affidavits have been filed by the appellant along with several documents and case law, and this petition was prosecuted.

28] At the time of the commencement of the dictation of this order, the learned Advocate for the petitioner, stated that the appellant is willing to waive the monetary benefits only for that period for which he was not paid his salary. This was a qualified statement being made by the appellant virtually trying to place a condition on the Court. The learned Advocate for the management strenuously opposed the said request contending that the appellant had manipulated the In-charge Education Officer and based on the noting of such Education Officer - Mr. Baraskar, this Court had also taken note that the appellant was being paid salary for some period, without actually working. This was actually a trick played on the Court and this occurred as the appellant and Mr. Baraskar were hands in gloves. It is after considering such factors that the learned Division Bench of this Court delivered its judgment on 2.5.2018 and dismissed Writ Petition No.1483/2016

filed by this appellant.

29] In view of the above, considering the peculiar facts of the case and taking into account the stand taken by the appellant that he would not waive the monetary benefits for the period of delay of 57 months and he does not desire that the salary paid to him for the same period to be adjusted against the legal dues, if he succeeds in the appeal, I find that such an unfair stand cannot be accepted and no relief can be granted to the appellant. He has disintitiled himself for any relief due to his adamant stand.

30] The learned Advocate for the appellant places reliance upon a short order passed by the Hon'ble Apex Court in the matter of Ram Chet Verma & Anr. V/s. The State of Uttar Pradesh & Ors., dated 11.1.2019 which reads as under:

"Heard the learned counsel appearing for the parties.

Leave granted.

Since the appellants have served as per the interim order, obviously they have to be paid the salary for the period they have rendered their services. Non-payment of salary to them for the period they have served under the interim order or otherwise would tantamount to taking begar from them, which is prohibited under Article 23 of the Constitution of India.

Therefore, we direct that the appellants shall be entitled to salary for the period they have rendered their services. The salary, if not paid, shall be paid to the appellants within four weeks from today. Signature Not Verified it is made clear that if the appellants have been Digitally signed by JAYANT KUMAR ARORA Date :2019.01.18 12:17:55 IST Reason:

Paid the salary for the aforesaid period, the same shall not be recovered from them.

In view of the aforesaid directions, the appeal is disposed of."

31] It requires no debate that an employee cannot be deprived of the salary for the period he has worked.

If the salary is paid and the person has worked, the salary paid cannot be recovered even if it was paid under a wrong impression of the Education Officer or interim orders of the Court, provided the employee has actually worked. The learned Advocate for the management Shri Dhabe submits that the appellant had manipulated the In-charge Education Officer and had surreptitiously signed the muster roll dated 26.6.2015. He had not worked as he was dismissed from employment and the management had not allowed him to deliver lectures and impart education to the school students and the time schedule / time table prepared by the management did not include his name for delivering any lecture on any date.

32] In view of these facts, this petition is dismissed.

33] The management prays that the salary, undeservedly paid to the petitioner, be refunded. The petitioner opposes.

34] This Court need not deal with the said issue, being beyond the scope of this petition and the same is left open, for the parties, to be agitated before the proper forum.