

(2013) 02 BOM CK 0112
In the Bombay High Court
Case No : Writ Petition No. 7085 of 2012

Ashok Patel (Patil)

APPELLANT

Vs

The State of Maharashtra, Education Officer (Secondary),
Zilla Parishad, Nandurbar, Adarsh Shikshan Prasarak Mandal
Chinode and Head Master, Mahatma Gandhi Madhyamik
Vidyalaya, Chinode

RESPONDENT

Date of Decision : 11-02-2013

Acts Referred:

Citation : (2013) 2 ABR 749 : (2013) 3 ALLMR 134 : (2013) 4 BomCR 244 :
(2013) 138 FLR 204 : (2013) 2 LLN 331 : (2013) 3 MhLj 853

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : S.R. Sapkal, for and Mr. V.D. Sapkal, for the Appellant; K.J. Ghute
Patil, A.G.P. for Resp. Nos. 1 and 2 and Mr. S.P. Brahme, Advocate for
Respondent No. 3, Respondent No. 4, for the Respondent

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. Heard finally with the consent of the parties. This writ petition takes exception to the order dated 21st June, 2012 passed by the Presiding Officer, School Tribunal, Nashik Region, Nashik in Appeal No. 3 of 2000.

2. The back ground facts for filing the writ petition, as disclosed in the petition, are as under:-

It is the case of the petitioner that, respondent No. 3 is the registered Educational Institution. The petitioner is working as a Peon in the said institution.

It is the case of the petitioner that, he was appointed by respondent No. 3, on 14th June, 1996 on the post of Peon. His services were orally terminated on 20th June, 1998. Being aggrieved by the oral termination, the petitioner approached to the School Tribunal, Nashik, by filing Appeal No. 3 of 2000. There was delay in filing the appeal. On 23rd February, 2006 the delay was condoned. The Presiding Officer, School Tribunal heard the appeal and decided the same on merits on

23rd March, 2006. The Tribunal held that, termination dated 20th June, 1998 is illegal and void and same was quashed and set aside. The respondent management was directed to reinstate the appellant to his original post of Peon with benefit of seniority and continuity in service. The School Tribunal further directed the management to pay full back wages on the date of filing of the appeal. Such compliance was ordered within 40 days from the receipt of the order.

3. It is the case of the petitioner that, the petitioner approached the respondent management by filing the application alongwith copy of the judgment of the School Tribunal requesting them to allow him to resume duties. Such letters were filed on 12th December, 2006 and 19th June, 2006, however, the petitioner was not allowed to joint the duties.

4. Respondent Nos. 3 and 4 herein challenged the order of the School Tribunal before the High Court by filing Writ Petition No. 5765 of 2006. The High Court after hearing respondent Nos. 3, 4 and the petitioner issued "Rule", and by way of interim relief, stay to the extent of payment of back wages was ordered. This Court specifically directed the respondents to reinstate the petitioner within three weeks from the date of passing of the order.

5. It is the case of the petitioner that, after order was passed by the School Tribunal, the petitioner was allowed to resume duties on 13th December, 2006, by the respondent Nos. 3 and 4. It is the case of the petitioner that, after reinstatement he is continuously working since 13th December, 2006 with respondent Nos. 3 and 4. It is further case of the petitioner that, the petitioner was allowed to resume duty on post of Peon on 13th December, 2006. Thereafter, the respondents are extracting work from the petitioner, however, the petitioner was not being paid salary for his work. The petitioner made his grievance before the respondent Nos. 2 to 4, however, same was not considered by the said respondents. Therefore, the petitioner filed Contempt Petition No. 302 of 2007 before the High Court against the Education Officer and Head Master. The respondents herein, filed reply in said contempt petition. It is further case of the petitioner that, in the said contempt petition, the High Court passed order on 24th April, 2008 and management was directed to take effective steps to pay the salary of the petitioner within four weeks.

It is the case of the petitioner that, in spite of direction, no salary was paid. The petitioner, therefore, filed another Writ Petition No. 6937 of 2009 before the High Court. The High Court, after perusal of the earlier order, passed further order on 16th June, 2010. The directions were issued to the State Government to take appropriate action as per law against the management for non payment of salary to the petitioner either by deducting non salary grant if available to the management or by invoking provisions for de-recognition of the school. The High Court issued directions to the management to deposit the entire amount towards salary of the petitioner from the date of reinstatement within six weeks in the registry of the High Court.

6. It is further case of the petitioner that, in view of the order passed in Writ Petition No. 6937 of 2009 which is pending before the Division Bench, the petitioner did withdraw the contempt Petition No. 302 of 2007. It is further case of the petitioner that, in spite of directions given to the management to deposit arrears of salary from the date of reinstatement, respondent Nos. 1 and 2 have not deposited the said amount till the date of filing this petition.

It is the case of the petitioner that, in spite of order passed by the High Court in Writ Petition No. 5765 of 2006 giving directions to the respondents to pay salary to the petitioner, same was not adhered. The petitioner was constrained to file Contempt petition and also Writ Petition No. 6937 of 2009, however, the respondents did not complied the directions given by the School Tribunal or the High Court. Therefore, the petitioner was constrained to file another Contempt Petition No. 333 of 2011 wherein the respondents have contended that, they have deposited Rs. 2,00,000/- in the bank account provided by the petitioner, and said statement was not disputed by the petitioner. It is further case of the petitioner, that respondent Nos. 1 and 2 gave undertaking that, further they will deposit Rs. 2,00,000/-.

7. It is further case of the petitioner that, the High Court on 29th March, 2012 decided Writ Petition No. 5765 of 2006 with observation that, no proper opportunity was given to the petitioner and the respondents to traverse with the application for condonation of delay, therefore, matter was remanded back to the Presiding Officer, School Tribunal, Nashik Division, Nashik to decide it upto 13th July, 2012. The School Tribunal, Nashik Region, Nashik heard the application for condonation of delay on 21st June, 2012 and rejected the same. Hence, this writ petition.

8. Learned Counsel appearing for the petitioner submits that, while deciding the application for condonation of delay, the School Tribunal has touched to the merits of the matter which is not permissible. It is submitted that, the petitioner was properly appointed by the respondents. It is submitted that, in first round of litigation, the delay in filing the appeal was condoned and appeal was adjudicated on merits by the School Tribunal, Nashik. Therefore, there was no reason for the same School Tribunal, in second round of litigation, to reject the application for condonation of delay. It is submitted that, the School Tribunal should have taken liberal view while considering the prayer for condonation of delay in filing the appeal. In fact, in the facts of this case, when the School Tribunal in first round of litigation, condoned the delay and allowed the appeal on merits, it is quite strange and inconsistent that, the School Tribunal has rejected the application for condonation of delay on remand of the appeal by the High Court for fresh hearing. The learned Counsel submitted that, genuine case of the petitioner, is thrown out only on technicalities that, the appeal was not filed within the period of limitation. Learned Counsel for the petitioner pressed into service, an unreported judgment of the Bombay High Court in Writ Petition No. 3989 of 2011 [Dhanraj Digambar Chaudhari vs. Jai Tulja Bhawani Shikshan Prasarak Mandal

and others] decided on 25th November, 2011 and submitted that, the prayer for condonation of delay, ought to have been liberally considered by the School Tribunal. Therefore, relying upon the pleadings in the petition, grounds taken therein and unreported judgment of this Court in the case of Dhanraj Digambar Chaudhari (supra), the Counsel for the petitioner submits that, this petition may be allowed.

9. Affidavit in reply is filed on behalf of respondent Nos. 3 and 4 by one Mr. Bharat Uddhar Patil, resident of Chinoda, Tq. Talode, District Nandurbar stating therein that, the petitioner has suppressed material facts and the documents, the impugned judgment and order is judicious and passed after considering all aspects of the matter and therefore, this Court may not interfere in the impugned judgment and order. It is further stated in the affidavit in reply that, the petitioner has not explained delay of about 18 months properly. The reasons given in support of the prayer for delay condonation are specifically denied by the respondents by filing say before the School Tribunal, Nashik. It is further stated that, the disbursement of payment made by the management to the petitioner is Rs. 6,89,267. It is further stated that, the petitioner does not deserve such payment of salary since he has not worked with the respondent school. It is further stated that, the respondents have to suffer by facing contempt proceedings initiated by the petitioner for no reason. It is stated that, the conduct of the petitioner was objectionable. He was not regularly appointed employee. He was guilty of misconduct and insubordination. He was not punctual in discharging his duties. He was found to be guilty of absenteeism. He was not paid from March, 2012 till June, 2012 because he was overpaid already. It is further stated in the affidavit in reply that, excess amount is paid to the petitioner as he himself has admitted the same fact. In paragraph-9 of the affidavit in reply, the following facts pleaded in the memo of the writ petition are controverted by the answering respondents.

i) The averments of para no. 6 of the memo of the writ petition that though he was allowed to resumed the duties from 13.12.2006 he was not being paid the salary for his work is false and denied.

ii) The contents of para no. 11 that though, orders were passed in writ petition no. 6937/2009 directing the management to deposit the arrears of salary from date of reinstatement no such a payment was paid till this date is denied. It is not true to say that the answering respondents have failed to pay regular salary to the petitioner.

iii) The contentions of para no. 12 of the memo of the writ petition that the answering respondents were paying with the orders of Honourable Court is denied. It is not true to say that order passed in writ petition NO. 5765/2006 was not implemented. It is not true to say that the direction issued Contempt Petition No. 302/2007 for payment of salary was not respected. It is not true to say that the directions issued in Writ Petition NO.6937/2009 was also not respected.

10. Learned Counsel appearing for respondent No. 3 vehemently opposed the prayers in the writ petition and submitted that, the School Tribunal has considered the entire material placed on record and rejected the prayer for condonation of delay. It is submitted that, there was inordinate delay of 18 months which was not properly explained at all. It is submitted that, the contention of the petitioner that, he was pursuing the managing committee members of the respondent Institution/trust, is not supported by any evidence before the School Tribunal. It is submitted that, the Division Bench of this Court in the case of Mathuradas Mohota College of Science Vs. R.T. Borkar and Others, has considered the prayer for condonation of delay in the facts of that case and held that, the provision has been made in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (For short, "M.E.P.S. Act") to entertain time barred appeal on sufficient cause being shown by the appellant and the Tribunal is satisfied. Even though this is a rule of procedure and liberally construed to impart substantive justice, it cannot be forgotten that it is a statutory provision and, therefore, it is necessary for the appellant to show sufficient cause for not preferring the appeal within the time limit prescribed. Absolute absence on the part of the appellant to explain the delay and or to furnish cause to the satisfaction of the Tribunal takes away the jurisdiction of the Tribunal to entertain the appeal. Learned Counsel also pressed into service reported judgment of this Court in the case of The Executive President and Others Vs. Bhaskar Bhagwant Yadav and Others, and submitted that, if the explanation is not offered for prayer to condone the delay, in that case, the provisions of M.E.P.S. Act do not permit entertaining the appeal and the Tribunal has no jurisdiction to entertain such appeal.

11. I have given careful consideration to the rival submissions. With the able assistance of the learned Counsel appearing for the petitioner, respondents and learned A.G.P. appearing for the State, carefully perused the pleadings in the petition, grounds taken therein, annexures thereto, the contents of the application which was filed by the petitioner for condonation of delay and also impugned judgment and order passed by the School Tribunal and reply filed by the respondent Nos. 3 and 4 and after hearing the Counsel for the respective parties, this Court is of the opinion that, in the peculiar facts of this case, the School Tribunal should have taken liberal view while entertaining the prayer of the petitioner for condonation of delay in filing the appeal.

12. Upon careful perusal of the pleadings in the petition, it appears that, the petitioner being aggrieved by the oral termination of his services, approached the School Tribunal, Nashik by filing Appeal No. 8 of 2000. There was delay in filing the said appeal. The School Tribunal, Nashik condoned the delay in filing the appeal, and heard the appeal on merits and decided the same on 23rd March, 2006. The School Tribunal held that, oral termination of the services of the petitioner, dated 20th June, 1998 was illegal and void and same was quashed and set aside. The respondent management was directed to reinstate the appellant to his original post of Peon with benefits of seniority and continuity of

service. It appears that, the School Tribunal further directed the management to pay full back wages from the date of filing the appeal. The compliance of the said directions was ordered to be completed within 40 days from the receipt of the order passed by the School Tribunal.

As per pleadings in the petition, it appears that, the petitioner approached the respondents by filing the application alongwith copy of the judgment of the School Tribunal to allow him to resume his duties. It further appears that, respondent Nos. 3 and 4 challenged the order of the School Tribunal before the High Court by filing the Writ Petition No. 5765 of 2006. The High Court after hearing respondent Nos. 3 and 4 and the petitioner passed necessary order on 15th November, 2006. It appears that, Rule was issued in the writ petition and interim relief only to the extent of payment of back wages was granted. The respondent management was directed to reinstate the petitioner within three weeks from 15th November, 2006. It further appears that, the petitioner herein, filed contempt petitions and also writ petition for compliance of the order of the School Tribunal and order passed by the High Court in Writ Petition No. 5765 of 2006. It is not necessary to refer the said proceedings in this writ petition. It appears that, Writ Petition No. 5765 of 2006 was taken up for hearing by the High Court on 29th March, 2012. This Court while disposing of the said writ petition, recorded the statement of the Counsel for the respondent management in paragraph-2 that, prayer for condonation of delay by the petitioner before the School Tribunal, was allowed without offering any opportunity of hearing to the petitioner in the said writ petition i.e. respondent Nos. 3 and 4 herein. It further appears that, in paragraph-3 this Court has recorded the statement of learned Counsel appearing for the respondent Management that, the petitioner herein "Ashok" is continued as a Peon in the Institute and he will be continued in the same position, including releasing his admissible wages in the category as a Peon. This Court in paragraph-4 observed that, since no proper opportunity was given to the parties to traverse with the application for condoning delay, the matter is remitted to the learned Presiding Officer, School Tribunal, Nashik Region, Nashik to decide afresh. The Presiding Officer was directed to decide the application for condonation of delay and appeal afresh on or before 31st July, 2012. The parties were directed to appear before the School Tribunal on 9th April, 2012 and accordingly, the writ petition came to be disposed of.

13. The petitioner has placed on record the order passed by the School Tribunal on an application for condonation of delay on 23rd March, 2006. Upon careful perusal of paragraph-1 of the said order at page-27 of the compilation of the writ petition, it appears that, specific point was framed by the Presiding Officer, School Tribunal that, whether the appellant has shown sufficient cause for not filing the appeal within period of limitation and said point is answered in the affirmative. While assigning the reasons, the Tribunal observed that, on 20th June, 1998 the respondent No. 2 did not allow the petitioner to sign the muster roll as per the directions of the Chairman. The petitioner met the Chairman and requested him to allow him to sign the muster roll, however, the petitioner did

not get any response from the Chairman and therefore, he filed application on 8th November, 1999 to the respondent No. 3 Education Officer. It was the case of the petitioner that, the respondent management wanted to appoint some other person in his place, therefore, on 29th November, 1999 he sent notice through his Advocate to the respondents and asked them to allow him to resume duties. The petitioner received reply from the management on 16th December, 1999 in which it was contended that, the petitioner has never worked as their employee and thereafter, the appeal was filed by the petitioner before the School Tribunal alongwith application for condonation of delay. The School Tribunal even heard the respondent management, as it reveals after perusal of paragraph-3 of the said order. Therefore, it appears that, in the first round of litigation, the Presiding Officer, School Tribunal, Nashik after framing proper issue in respect of delay in filing the appeal and after hearing the respondent management has recorded the reasons and condoned the delay. Not only this, but the Tribunal proceeded further with the hearing of the appeal and the appeal filed by the petitioner was allowed giving directions to the respondent management to reinstate the petitioner with consequential benefits.

14. I have carefully perused the contents of the application for condonation of delay which was filed before the School Tribunal by the petitioner. It is stated in the application that, the petitioner/appellant was working in the respondent management as a Peon from the year 1996. On 20th June, 1998 the services of the petitioner are orally terminated by the respondent management. It is further stated that, there is a delay of about 18 months in filing the appeal challenging the oral termination dated 20th June, 1998. It is further stated that, the respondent school has started functioning after getting permission of the Government in the year 1995. Initially, the respondent school was not receiving any grant in aid from the State Government. It is further stated that, the respondent school was at the verge of receiving grant in aid from the Government in the year 1998-99, many new teachers by offering donation to the respondent management, shown readiness to serve in the respondent school. In the aforesaid background, the Chairman of the respondent Institution asked the appellant/petitioner to give donation else resign from the services of the respondent. However, the appellant/petitioner refused to give donation and therefore on 20th June, 1998, the head master of the school did not allow the petitioner to sign the muster roll. When the petitioner/appellant made inquiry with the head master, the head master told the petitioner that, there is direction by the Chairman not to allow the petitioner to sign the muster roll. The appellant met Chairman of the respondent Institution and requested that, he should be allowed to sign the muster roll, however, the Chairman did not respond to his request. The petitioner on 8th November, 1999 made written complaint with the Education Officer stating therein that, though he repeatedly made complaints and requested to the Chairman of the respondent Institution that, he should be allowed to sign the muster roll, however his request was not considered/accepted. The Chairman of the respondent Institution told the petitioner that, the

respondent school is likely to get grant in aid and therefore, the petitioner/appellant should not make any complaint against the respondents before the State authorities which would deprive the respondent school from receiving grant in aid from the Government. The appellant further stated in the application that, the petitioner/appellant realised that, the respondents are likely to appoint some other person in his place, immediately the complaint is lodged with the Education Officer. The appellant/petitioner also sent notice to the respondent management on 29th November, 1999 through Advocate by Registered Post stating therein, that the respondents should allow the petitioner to resume duty. However, the respondent management sent reply to the notice of the petitioner on 26th December, 1999 stating therein, that the appellant has never served in the respondent Institution. Upon reading reply of the respondents, the petitioner was surprised and decided to file appeal out of compulsion. It is stated in the application for condonation of delay that, the petitioner was hopeful that, he will be allowed to resume duties by the respondents and under the said hope, the petitioner waited for the response of the respondents. However, when he read reply sent by the respondents, stand was taken by the respondents that, the petitioner has never worked with the respondents and therefore, there is no question of oral termination of the services of the petitioner/appellant.

15. Upon perusal of the contents of the reply filed by the respondents to the application for condonation of delay, the respondents have stated that, the appellant was not in regular service of the respondents. The contention of the petitioner/appellant that, his services were orally terminated with effect from 20th June, 1998 is false and misleading and therefore, same is not acceptable to the respondents. The contention of the petitioner/appellant that, the Chairman asked to pay donation or else resign from the services of the respondents, is false and same is denied by the respondents. The other contentions are also raised by the respondents in Paragraph-3. There is also allegations made in the reply that, father and brother of the petitioner were office bearers in the respondent Institution and by tampering the school record, the petitioner/appellant tried to show that, he is highly qualified and eligible for the post of teacher. It is also stated that, the petitioner/appellant gave insulting treatment to the headmaster and insisted for giving him appointment as a teacher/clerk. There is also allegation that, the appointment letter of the petitioner/appellant is forged document. The respondents have also denied the contents of the notice sent by the petitioner.

16. Upon careful perusal of the contentions raised by the respondents and their reply which was filed for the application for condonation of delay, it clearly emerges that, the respondents have raised the contentions on merits of the matter. The respondents have not specifically denied that, the petitioner was working in the respondent school from 1996 as a Peon till his services are orally terminated.

The school tribunal framed issue, whether the delay in filing the appeal filed by

the petitioner can be condoned? and whether the petitioner/appellant is eligible for granting such relief. Upon careful perusal of the reasons recorded by the school tribunal, it appears that, the school tribunal in paragraph-9 has observed that, the petitioner/appellant has not stated the reasons in the application for condonation of delay but only has explained existing /prevailing circumstances in the application for condonation of delay. In paragraph-10 the tribunal has observed that, the explanation offered by the petitioner/appellant is not specific and the explanation/reasons shown/circumstances existing are stated in a scattered manner.

17. Upon careful perusal of the reasons recorded by the School Tribunal, it appears that, the school tribunal has only discussed the contentions raised in the application or the reply filed by the respondents and has not assigned cogent reasons for rejecting the application for condonation of delay in filing the appeal. The contention of the petitioner/appellant that, the Chairman of the respondent institution told him not to make any complaint against the respondents since the school is likely to get grant in aid from the Government, and if he makes complaint, school may be deprived from getting grant in aid due to such complaint, is not appreciated by the Presiding Officer, School Tribunal. In fact, the appellant stated that, he met Chairman under hope that, some or other day, he will be allowed to sign muster roll and resume duties, he did not make complaint against the respondent school to any Government authorities since he was told by the Chairman that, the respondent school is likely to get grant in aid in future. It is beyond comprehension to understand that, the petitioner/appellant who was in desperate need of the employment and who was constantly pursuing the respondents to allow him to resume duties, would cause deliberate delay in filing the appeal, thereby causing loss to himself. The appellant was not in the employment and therefore, there was no question of receiving any salary, and therefore by delaying filing the appeal, the petitioner/appellant has not gained any undue advantage out of it. On the contrary, he was out of employment and as a result, he was without payment of salary for the said period.

The important point which requires to be considered, in the facts and circumstances of this case, is as to whether the present petitioner, who did file appeal along with application for condonation of delay before the School Tribunal, has been benefited in any manner by delaying the filing of appeal challenging the oral termination? In this context, it would be apposite to reproduce certain guidelines laid down by the Supreme Court in case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, in para 3, which read thus:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

7. Upon perusal of 1st parameter laid down by the Supreme Court, the petitioner herein is not benefited by lodging the appeal late. On the contrary, he has put himself to loss. If the petitioner has merit in the case, if his application for condonation of delay is not allowed, his case on merits will be thrown out without adjudication of the matter on merits.

18. The case in hand stands on different footing. In the present case, in first round of litigation, the application for condonation of delay filed by the present petitioner alongwith appeal came to be allowed by order dated 23rd March, 2006. Not only that, the School Tribunal allowed the prayer of the petitioner/appellant for condonation of delay, and the appeal filed by the petitioner was allowed by the judgment and order dated 23rd March, 2006, by the Presiding Officer, School Tribunal, Nashik Region, Nashik. The operative order of the said order reads thus:

1. Appeal is allowed.

2. The action of resp. No. 2 Head Master in not allowing the appellant to sign the muster register on 20/06/98 in amounts to otherwise termination of his service, same is illegal, void and hence hereby set aside.

3. The respondent management is directed to reinstate the appellant to his original post of Peon with benefit of seniority and continuity of service attached to the said post and shall pay him full back wages from the date of filing of this appeal till his reinstatement.

4. The respondent management shall report compliance of this order within a period of 40 days of the receipt of this order.

5. Parties to bear their own cost.

Therefore, taking into consideration the peculiar facts involved in the case, in my considered opinion, the order passed by the tribunal in this petition, rejecting the

application for condonation of delay in filing the appeal, cannot sustain. It is beyond comprehension to understand/accept that, the same tribunal, by framing specific point that, whether the appeal filed by the petitioner is within limitation or not, accepted "sufficient cause" disclosed in the application for condonation of delay and condoned delay by its order dated 23rd March, 2006. However, the said "sufficient cause" which was accepted by the school tribunal for condonation of delay on 23rd March, 2006, becomes "insufficient" now, while entertaining the prayer for condonation of delay in second round of litigation. It is not in dispute that, in pursuant of the judgment and order dated 23rd March, 2006, the petitioner/appellant was granted certain benefits and now his entire cause/career is thrown out on the ground that, the appeal preferred by him before the school tribunal challenging the oral termination of his services is not within limitation. It cannot be forgotten that, age of the petitioner as disclosed in the title clause is 44 years. If his appeal is thrown out merely on the ground that, same is not filed within limitation, the petitioner will have to loose his entire career. He may not have opportunity in future to apply for employment due to his overage. Therefore, in my considered opinion, the case of the petitioner/appellant is squaquely covered under the parameters laid down by the Supreme Court in the case of Collector, Land Acquisition, Anantnag (supra). Therefore, the petition deserves to be allowed, however, the respondents are required to be compensated for litigating in the proceedings instituted by the petitioner by imposing costs of Rs. 5000/- (Rs. Five thousand only) on the petitioner. Hence, the following order.

:ORDER:

- (1) Rule is made absolute in terms of prayer clauses (B) to (D) in the writ petition, subject to depositing costs of Rs. 5,000/- by the petitioner before the School Tribunal within four weeks from today.
- (2) On depositing costs of Rs. 5000/- by the petitioner, respondent Nos. 3 and 4 herein, will be entitled to withdraw the same, unconditionally.
- (3) Upon depositing costs of Rs. 5000/-, the school tribunal shall proceed with the appeal on merits and decide the same, as expeditiously as possible, however, within six months from the first date of hearing. The school tribunal shall not grant unnecessary adjournments to the parties unless there exists extraordinary circumstance to grant same.
- (4) It is made clear that, depositing amount of Rs. 5000/- (Five thousand only) towards costs is a precondition to allow this petition in terms of prayer clauses (B) to (D). In case, the amount is deposited towards costs within four weeks from today, the appeal to proceed on merits.
- (5) The writ petition is disposed of.