

(2010) 09 BOM CK 0144

In the Bombay High Court

Case No : Writ Petition No. 7965 of 2009

Babruwan Venkatrao Jadhav

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 1 ALLMR 149 : (2012) 1 BomCR 862 : (2011) 2 MhLj 85

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : S.V. Warad, for the Appellant; K.G. Patil, A.G.P. for Respondent Nos. 1 and 6 and A.V. Patil, for Respondent Nos. 2, 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Shrihari P. Davare, J.—At the request of Shri S.V. Warad, learned Counsel for the Petitioner leave granted to delete Respondent No. 5. Amendment to be carried out forthwith.

2. Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties, writ petition is taken up for final hearing at admission stage.

3. The petitioner has filed present petition, challenging the judgment and order dated 5.11.2009 passed by the Presiding Officer, School Tribunal, Latur, in Misc. Civil Application No. 7 of 2008, thereby dismissing the said application of the petitioner for condonation of delay of nine days in filing petition for review of the order dated 29.2.2008 dismissing Appeal No. 198 of 2006.

4. Petitioner contends that he was appointed as Assistant Teacher on 15.7.1996 with the Respondents and worked for more than 3 years i.e. upto 26.2.2002. However, the Education Department did not grant approval for the academic years 1997-98 and 1999-2000 and his services were terminated on 26.2.2002. Hence, petitioner had earlier filed writ petition, being writ petition No. 3613 of

2002 on 16.10.2002 for approval to his services. However, since the services of the petitioner were already terminated, this Court directed the petitioner to approach to the School Tribunal to get his grievance redressed and the said writ petition was disposed of accordingly, with liberty to petitioner to approach the School Tribunal.

5. Accordingly, petitioner filed appeal No. 198 of 2006 before the School Tribunal, but the said appeal came to be dismissed on 29.2.2008. Thereafter, present petitioner preferred review petition along with application for condonation of delay, contending that although the order dismissing the appeal No. 198 of 2006 was passed on 29.2.2008, the same was made known to the petitioner only on 2.4.2008 and as such, there was delay of only eight days in filing review petition and the said application for condonation of delay was numbered as Miscellaneous Application No. 7 of 2008. However, the Presiding Officer, School Tribunal, Latur, rejected the said application for condonation of delay by order dated 5.11.2009, depriving the opportunity to the petitioner of contesting review petition on its own merits. Hence, being aggrieved by the said order dated 5.11.2009 passed by the Presiding Officer, School Tribunal, Latur, dismissing Misc. Civil Application No. 7/2008 for condonation of delay, the petitioner has preferred the present petition, impugning the said order of dismissal, under Articles 226 and 227 of the Constitution of India.

6. Perused the impugned order dated 5.11.2009 passed by Presiding Officer, School Tribunal, as well as heard learned Counsel for the parties. Admittedly, roznama dated 29.2.2008 i.e. the date of pronouncement of judgment in appeal No. 198/2006 does not disclose, whether the parties to the said appeal were present or not and, hence, there is room for the belief that the petitioner may not be present before the Tribunal at the time of pronouncement of judgment and hence, apparently, there is substance in the proposition put-forth by the petitioner that, he had no knowledge about the pronouncement of judgment in appeal No. 198 of 2006 on 29.2.2008 which consequently, resulted into 9 days delay in filing review petition and hence the same deserves to be condoned in the interest of justice.

7. Besides that, it appears that the delay of nine days in filing the review petition by the petitioner, is not inordinate and, therefore, liberal approach is required to be adopted while considering such delay. Having the comprehensive view of the matter, it also appears that the said delay is not wilful, deliberate and intentional and, therefore also, same deserves to be condoned in the interest of justice to enable the petitioner to prosecute the review petition on its own merits. Besides that, no prejudice would be caused to the respondents since they would get an opportunity to contest the said review petition on its own merits, if the delay is condoned and petitioner is permitted to prosecute the said review petition on its own merits.

8. In the result, present writ petition is allowed in terms of prayer Clause (B) thereof and the impugned order dated 5.11.2009 passed by the Presiding Officer,

School Tribunal, Latur, in Misc. Civil Application No. 7 of 2008 stands quashed and set aside and delay of nine days in filing the review petition stands condoned. However, it is made clear that the learned Presiding Officer, School Tribunal, Latur shall decide the said review petition on its own merits and in accordance with law, considering the aspect of its maintainability, expeditiously.

9. Writ Petition stands disposed of in aforesaid terms. Rule is made absolute, accordingly.