

(2005) 01 BOM CK 0058

In the Bombay High Court

Case No : Writ Petition No. 4221 of 2004

Chanda Shikshan Prasarak Mandal and Another

APPELLANT

Vs

Parshuram Madhav Awari and Another

RESPONDENT

Date of Decision : 31-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1908 — Article 132, 179
Limitation Act, 1963 — Section 12, 12(2), 30
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 9
Maharashtra Universities Act, 1994 — Section 115, 115(16), 115(2), 21, 23A
Nagpur University Act, 1974 — Section 42

Citation : (2005) 4 BomCR 850 : (2005) 2 MhLj 330

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : A.S. Chandurkar, for the Appellant; M.P. Khajanchi and Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—By this writ petition under Article 226 of Constitution of India, the petitioner number 1 management and petitioner number 2 Principal of the College run by it challenge the order dated 11th August, 2004 passed by the University and College Tribunal, Nagpur in Misc. application No. 23 of 2003 whereby the said Tribunal has condoned delay in filing appeal u/s 59 of Maharashtra Universities Act, 1994 before it. The contention of petitioner is that the Tribunal functioning under Maharashtra Universities Act (hereinafter referred to as Universities Act) does not have jurisdiction to take cognizance of the termination of respondent number 1 which has taken place way back on 20th March, 1989 as proviso to Section 59 of said Act expressly states that it has no jurisdiction if the cause of action has accrued at any time before the date on which said Act came into force if period for filing appeal has already expired. The respondent number 1 is out of employment since 1989 and hence the contesting

parties urged for final disposal and accordingly advanced the arguments and also supplied Xerox copies of citations on record.

2. Petitioner number 1 is a society registered under the provisions of Society's Registration Act and also a Public Trust registered as such under the provisions of Bombay Public Trust Act. It runs and manages the College of which petitioner number 2 is the Principal. Respondent number 1 herein was appointed as lecturer in zoology on 15 December, 1986 by petitioners and by the order dated 20th March, 1989 the then officiating principal of petitioner number 2 College informed him that his services would stand terminated with effect from 23rd April, 1989. This termination order was challenged by respondent number 1 by filing regular Civil Suit No. 135 of 1989 before Civil Court at Chandrapur on 19th April, 1989 for declaration that the order of termination was null and void. The petitioners state that the jurisdiction of Civil Court was objected on the ground that respondent number 1 has remedy of approaching College Tribunal which was then functioning under the provisions of Nagpur Universities Act. The Second Joint Civil Judge, Junior Division, Chandrapur, decided this issue and other issues on merits and held that the Civil Court had no jurisdiction to take cognizance of the dispute and appropriate forum was College Tribunal. Hence on 2nd May, 2003 respondent number 1 preferred appeal u/s 59 of Universities Act before the University and College Tribunal (ref. to as Tribunal hereafter) at Nagpur. As there was delay in presenting said appeal, he also moved applications for condonation of delay which was registered as Misc. application No. 23 of 2003. Said application was opposed by petitioners on the ground that in view of proviso to Section 59(1) of the Universities Act which came into force on 22nd July, 1994, the University and College Tribunal had jurisdiction only to entertain the appeal of respondent number 1 if his termination has taken place after said date or within one month before said date. However, the learned Presiding officer of University and College Tribunal has found that provisions of Section 59(3) of Universities Act permit it in appropriate cases to entertain appeal even after expiry of period of 30 days which is prescribed as limitation. Accordingly the University and College Tribunal by order dated 11th August, 2004 condoned the delay and directed registration of appeal for its hearing on merits. Rule. Rule is made returnable forthwith and heard finally by consent of the parties.

3. Advocate Chandurkar appearing for petitioners contended that the College Tribunal has exercised jurisdiction not available to it by condoning the delay. He argues that Section 59(1) which prescribes the forum, through its proviso create a bar and Tribunal cannot entertain the appeals, if the cause of action has accrued before coming into force of the 1994 Act i.e. Universities Act under which the Universities and College Tribunal is created if period of 30 days prescribed for filing appeal had already expired. He states that this is also clear from proviso to Section 59(2) and power to condone delay given by Sub-section (3) cannot be used to expand the scope of its jurisdiction by Tribunal. He also invites attention of this Court to Section 115(2) clause 16 of Universities Act to urge that even this provision demonstrates absence of jurisdiction in Tribunal in

the matter. He has relied upon certain cases to show how the proviso is to be viewed and interpreted.

4. As against this, Advocate Khajanchi who appears for respondent number 1 employee contended that the wordings of the section itself are very clear and it is therefore not necessary to consider the purpose and function of proviso. It is argued that the law as laid down by this Court in its various judgments earlier stated that in such cases the Civil Court also had jurisdiction along with Tribunal, and for the first time this Court in its judgment reported at Satyawadi Pimple and another Vs. Sow. Aruna Narwade and another, held that the remedy before Civil Court is impliedly barred. He contended that if the arguments of petitioners are accepted, it would result in creating a vacuum and respondent number 1 will be rendered without any remedy and the very purpose of enacting the special law for his protection would be frustrated. He relies upon the judgment of Hon"ble Apex Court reported at Dhannalal Vs. Kalawatibai and Others, in support of his contention. He argues that even if any lacuna is to be observed in the scheme of Section 59 of the Universities Act, still the interpretation to be put by this Court upon such provision will have to be for the purpose of advancing the cause of justice and to avoid such lacuna. He states that the Tribunal has observed that Civil Court ought to have returned the plaint to respondent number 1 for presenting it to appropriate forum and it is further found that the respondent number 1 has taken steps for filing the appeal without wasting any time. It is further found that on merits respondent number 1 has good case. Therefore it is concluded that there is sufficient cause to condone the delay. The learned counsel therefore argues that no case is made out for interference in writ jurisdiction.

5. Respondent number 2 Joint Director of Higher Education is a formal party and is represented by the learned AGP who supports the impugned order.

6. It is thus clear that the provisions of Section 59 of Universities Act fall for consideration in this matter. Said section (relevant part) reads as under :--

"Section 59. (1) Notwithstanding anything contained in any law or contract for the time being in force, any employee (whether a teacher or other employee) in any university, affiliated College or recognised institution (other than that managed and maintained by the State Government, Central Government or a local authority) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank by the university or management and who is aggrieved, shall have a right of appeal and any appeal against any such order should lie to the Tribunal;

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by Court or Tribunal of competent jurisdiction or is pending before such Court or Tribunal on the date of commencement of this Act or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the management at any time before the date on

which this Act comes into force and in which case the period for filing an appeal had expired,

2) Such appeal shall be made by the employee to the Tribunal, within 30 days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be;

Provided that, where such order was made before the date of commencement of this Act, such appeal may be made if the period of 30 days from the date of receipt of such order has not expired.

3) Notwithstanding anything contained in Sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of 30 days, if it is satisfied that the appellant had sufficient cause, for not preferring the appeal within that period.

4) Not relevant as it deals with filing fee and hence not reproduced."

7. The exact meaning of this section falls for consideration in this petition. Whether there is any ambiguity in the section which requires use of any external aid is also to be seen. Hence, first an attempt to ascertain plain and simple meaning of this section as per natural meaning of words used in it will have to be undertaken. Sub-section (1) above begins with non obstante clause and it confers right of appeal upon respondent number 1. If on the date of commencement of Universities Act, the controversy about impugned order is already adjudicated upon, or it is pending for consideration before any competent Court or Tribunal, the Tribunal does not get jurisdiction to entertain appeal in relation thereto. If the impugned order is passed by management before such date of commencement of Universities Act, the Tribunal gets jurisdiction only if period prescribed for filing of appeal against it has not expired. Sub-section (2) prescribes limitation of 30 days from the date of receipt of impugned order by employee for filing of appeal. Proviso to this sub-section further states that if such impugned order is made before the commencement date of the Act, the appeal can be filed if period of 30 days from the date of receipt of such order by employee has not expired. Thus, it is clear that the University and College Tribunal has been given jurisdiction to take cognizance of disputes in relation to orders of managements which are passed prior to its establishment that is prior to the date of commencement of the Universities Act. Sub-section (3) again begins with non obstante clause and it permits University and College Tribunal to entertain an appeal even if it is made after expiry of said period of 30 days if it is satisfied that there were just and sufficient reasons for not preferring the appeal within time. The "said period of 30 days" mentioned in Sub-section (3) is prescribed by Sub-section (2) and in view of non obstante clause with which Sub-section (3) opens, it is clear that it has got overriding effect over entire sub-section 2. The period of 30 days is prescribed in substantive part of Sub-section (2) and also in its proviso. The proviso relates to the orders which are passed against employees like petitioners before the date of commencement of the

Universities Act. As already stated above said date of commencement is 22nd July, 1994. The proviso therefore enables an employee of a College to approach Tribunal in appeal if order against him is passed during preceding 30 days before 22nd July, 1994. The question is what should be the fate of the employees in whose case such orders are passed more than 30 days before the date of commencement of 1994 Act i.e. Universities Act. Whether by recourse to Sub-section (3) the period in excess of 30 days which is prior to the date of commencement can also be condoned by the Tribunal. If such an interpretation is accepted, what is the purpose of proviso to Sub-section (1) and of proviso to Sub-section (2). Proviso to Sub-section (2) specifically states that where the impugned order was passed by management against employee at any time before the date on which 1994 Act came into force, appeal shall not lie to the Tribunal if period for filing the appeal has expired. If delay can be condoned even in such cases, whether this declaration by said part of the proviso is rendered superfluous. Even the function of proviso to Sub-section (2) needs to be evaluated in this background.

8. Advocate Chandurkar has relied upon the judgment of Hon'ble Apex Court reported at Ali M.K. and Others Vs. State of Kerala and Others, . In this case the Full Bench judgment of Kerala High Court was challenged before Hon'ble Apex Court and question was of application of 4th proviso and note one appearing to in Rule 8 of Kerala State and Subordinate Service Rules. The dispute was in relation to inclusion of names in promotion list of persons who subsequently joined co-operative department and were originally appointed in rural development department. These persons claimed benefit of above Rule 8 and the appellant before Hon'ble Apex Court opposed it by relying upon 4th proviso while the respondents relied upon note 1 to submit that their appointment in co-operative department is made in the exigencies of public service. It is in this background that the Hon'ble Apex Court considered the function of a proviso and in paragraph 10 observed that :--

"10. The normal function of the proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in *Mullinns v. Treasurer of Survey* referred to in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha and Calcutta Tramways Co. Ltd v. Corporation of Calcutta*, when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso. The proper function of a proviso is to except and to deal with the case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general to be quite accurate. As a general rule, a proviso is added to enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. "If the language of the enacting part of the statute does not contain the provisions which are said to

occur in it you cannot derive these provisions by implication from a proviso." Said Lord Watson in *West Derby Union v. Metropolitan Life Assurance Company*. Normally a proviso does not travel beyond the provision to which it is a proviso. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other."

In same ruling, in paragraph 12 the Apex Court has observed that a proviso to a section cannot be used to import into the enacting part something which is not there but where the enacting part is susceptible to several possible meanings it may be controlled by the proviso.

Advocate Chandurkar has also relied upon the judgment of Hon'ble Apex Court reported at *Antonysami Vs. Arulanandam Pillai (D) by Lrs. and Another*, In this case, a decree for specific performance of contract for sale was passed on 23-7-1966 and according to it judgment debtor was to measure and demarcate the land on or before 23-9-1966 and decree holder was to deposit in Court by same the balance sale price. After all this the judgment debtor was to execute sale deed and in default the Court was to execute it. The decree holder accordingly deposited balance amount but the judgment debtor did not carry out the measurement and the demarcation by that date and he did it in 1973. Decree holder filed execution on 19-4-1980 and requested Court to execute sale deed in default of judgment debtor. Judgment debtor objected to it on the ground of limitation and executing Court held that it was within limitation as decree became enforceable only in 1973. The appellant Court as also the High Court however held execution to be barred by limitation. Hon'ble Apex Court in paragraph 17 observed as under :--

"The fixation of periods of limitation are bound to be to some extent arbitrary and may at times result in hardship. But in construing such provisions equitable considerations are out of place and the strict grammatical meaning of words is the only safe guide. (See *Nagendra Nath Dey v. Suresh Chandra Dey*). The decree was enforceable immediately after the date specified in the decree i.e. 23-9-1966 for the decree holder to deposit the consideration money. If the direction given in the decree to the judgment debtor to measure and demarcate land by that date (23-9-1966) was not complied with, the decree holder was free to execute the decree."

Learned advocate for petitioner also placed reliance upon Division Bench judgment of Punjab High Court reported at *Deep Chand Vs. Bhago and Others*, u/s 12(2) of Indian Limitation Act prior to the enforcement of Limitation Act of 1963, time required for obtaining a copy of judgment could not be excluded in computing the period of limitation prescribed for an application for leave to appeal to Hon'ble Apex Court and it was only the time required for obtaining a copy of decree, sentence, order appealed from which could be excluded. The judgment and decree were delivered on 24th July, 1963 and certified copy of decree was never applied for. The argument was therefore there was no question of excluding any time for the purpose of computing the period of limitation for

such application for leave to appeal and limitation therefore expired on expiry of 90 days from 24th July, 1963 as required by Article 179 of Indian Limitation Act, 1908. The Limitation Act, 1963 came into force from 1-1-1964 and vide Article 132 it provided for limitation of 60 days for such application. The reliance was placed upon Section 30 of new Act which prescribed that notwithstanding anything contained therein, any appeal or application for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908 may be preferred or made within a period of 90 days next after commencement of new Act or within the period prescribed for such appeal or application by the Indian Limitation Act, 1908, whichever period expires earlier. The respondents counsel contended before Punjab High Court that if the period prescribed by 1908 Act had already expired before the enforcement of new Act (current Act), the new Act cannot be utilised for reviving a dead claim. Counsel for petitioner argued that Section 30 of new Act can be applied irrespective of the fact that period for presenting application for leave to appeal expired under the 1908 Act and, therefore, Section 12 as in force on 2nd January, 1964 when the petition was presented to Punjab High Court would cover the case. The division bench in paragraph 4 has observed as under :--

"In my opinion, Section 30 can be of no assistance to the petitioner in the case in hand because long before the enforcement of current Act the period prescribed for the present application had expired. It is undoubtedly true that rules of limitation pertain to domain of adjective law and they operate only to bar the remedy and not to extinguish the right. Being prima facie rules of procedure, no one has any vested right in a period for instituting suits and appeals etc. laid by rules of limitation, unless the contrary follows from rules themselves, as the statute prescribing a period of limitation for instituting suits or preferring the appeals etc. simply prescribes that the remedy can be exercised only within a limited period and not subsequently. At the same time when the statute of limitation has run out, the defense based on this statute may become a vested right which cannot thereafter be impaired. In other words, the remedy by means of a proceeding for which the statute of limitation had fixed a period having been extinguished, a vested right to urge such extinguishment vests in the defendant. To put it a little differently, there is no vested right in the running of the statute of limitation unless it has completely run out of and barred the action; as to the existing causes of action which are not barred, the amended law of limitation may perhaps be attracted. Where however, one has been released from a demand by means of the statute etc., by the operation of limitation laws, he acquires a right to defense against its revival by amendment in the law of limitation, and this defense then becomes a vested right which cannot be taken away by a law of procedure, unless the legislative mandate said so expressly or by necessary intendment". The division bench has thereafter held that the amended provision was therefore of no assistance to the applicant in the matter."

Taking objection to the observations of Tribunal in the order impugned that Civil Court ought to have returned the plaint for presentation to it the said advocate

also relied upon judgment of Allahabad High Court reported at Rasool Ahmad Vs. Beni Prasad and Others, which in paragraph 12 states that if the objection to jurisdiction is only one relating to territorial limits or pecuniary limits, the plaint will be ordered to be returned for presentation to the proper Court. If, on the other hand, it is found, having regard to the nature of the suit, it is not cognizable by the class of the Court to which the Court belongs, the plaintiff's suit will have to be dismissed in its entirety. He has also cited division bench ruling reported at Promod Sharma Vs. Smt. Radha, for same purpose.

9. Advocate Khajanchi appearing for respondent employee has relied upon the Judgments of this Court between Janata Janardan Shikshan v. Dr. Vasant Satpute reported at 1986 Mh.L.J. 260 , Rasta Peth Education Society Vs. Pethkar Udhao Bhimashankar, to state that when respondent filed the civil suit, as per these Judgments Civil Court as also the College Tribunal under Nagpur Universities Act were both possessing jurisdiction over such grievances. He states that the position was altered only in December, 1999 when this Court delivered Judgment in case between Satyawadi Pimple and another Vs. Sow. Aruna Narwade and another, holding that in respect of matters set out in Section 9 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act which is similar to Section 42 of Nagpur University's Act, filing of civil suit is impliedly barred. He contended that therefore after this ruling it became clear that suit filed by respondent was before wrong forum. He argues that in such situation, the respondent cannot be rendered remediless only in view of enactment of new law from 22nd July, 1994. He has placed reliance upon Judgment of Hon''ble Apex Court reported at Ram Ujarey Vs. Union of India, , In this case it appears that the employee/appellant before Hon''ble Apex Court challenged his reversion in regular suit which came to be decreed and railway administration filed appeal before District Court. During pendency of appeal Central Administrative Tribunal Act, 1985 came into force and the appeal was transferred to Central Administrative Tribunal, Allahabad. The said Tribunal allowed the appeal and set aside the Judgment and decree of Civil Court holding that suit was not filed before proper Court and consequently directed the plaint to be returned for presentation to proper bench of Tribunal for fresh decision. The appellant then filed claim petition before the Tribunal at Chandigarh which dismissed it on 28-11-1995. Paragraph 22 and 23 of this Judgment are relevant and the same read as under :--

"22. The period of limitation within which claim petition can be filed before the Tribunal is indicated in Section 21 of the Act. The contingencies contemplated by Section 21 are not applicable to the present case. The suit, admittedly, was filed within time. It is another matter that it was filed in the Court which had no jurisdiction and, therefore, the Tribunal, while allowing the appeal filed against the decree passed by the trial Court, directed the plaint to be returned to the appellant for presentation before the appropriate bench of the Tribunal. Some delay had occurred in the re-filing of the plaint before the Tribunal and as pointed out by the Tribunal itself, the delay was only of one and half month, although at

one place, the Tribunal observed that there was a delay of about eight months. The period of eight months has been calculated by the Tribunal from the date on which the order was passed at Allahabad for return of the plaint. The limitation would not run from the date of the order, but would run from the date on which the plaint was returned and made available to the appellant, if the appellant was not at fault. Two dates have been mentioned on which the plaint was returned; in the application for condonation of delay, the date mentioned is 20-8-1988, but in the affidavit filed in support of that application the date of receipt of the plaint is mentioned as 20-10-1988. Since the O.A. was filed before the Tribunal on 12-12-1988 there was delay of either 3 1/2 month or 1 1/2 month, but not a delay of eight months as observed by the Tribunal. The Tribunal had itself observed in an earlier part of its judgment that there was delay of one and half month only.

23. Be that as it may, the fact remains that the irrigative process was started by the appellant in 1980 when he filed the suit, though in the wrong Court, within limitation. Now, at this late stage, it will be too much for poor employee of the status of appellant to be driven out of the Court on the ground of limitation, namely, that his O.A. was beyond time by one and half month or three and half months. Whatever be the delay in filing the O. A. before the Tribunal, the same is hereby condoned and the order of the Tribunal to that effect shall be treated to have been set aside."

Advocate Khajanchi has also relied upon the judgment of Apex Court reported at Dhannalal Vs. Kalawatibai and Others, . The Hon"ble Apex Court was considering the provisions of M.P. Accommodation Control Act, 1961. Section 12 thereof which imposed restriction on eviction of tenants required filing of a civil suit if premises are required bona fide by landlord for occupation for himself or for any member of his family. Section 23-A of said Act which occurs in Chapter IIIA made a special provision for eviction of tenant on this ground before the Rent Controlling Authority, if the landlord was either the widow or divorced wife. In this case, the landlord/landlady was widow and requirement pleaded was requirement of widow for continuing or starting the business of her major sons. The Hon"ble Apex Court found that if the arguments of appellant tenant before it were accepted it created a diabolical situation. If proceedings are initiated against tenant by all co-owners before Civil Court objection could have been raised by tenant that the widow or landlady being one of the claimants for eviction, she must go to the Rent Controlling Authority under chapter IIIA. If the co-owners collectively join in such proceedings before Rent Controlling Authority, the tenant may object that the requirement being that of major sons who were themselves applicant landlords, the claim should have been filed before Civil Court as was the plea before Apex Court. Faced with this dilemma, the Hon"ble Apex Court has observed as under :--

"20. Both the learned senior counsels for the parties stated that there is no specific statutory provision nor a binding precedent available providing resolution to the problem posed. Procedural law cannot betray the substantive law by

submitting to subordination of complexity. Courts equipped with power to interpret law are often posed with queries which may be ultimate. The judicial steps of the Judge then do stir to solve novel problems by neat innovations. When the statute does not provide the path and precedents abstain to lead, then they are the sound logic, rational reasoning, common-sense and urge for public good which play as guide of those who decide. Wrong must not be left unredeemed and right not left unenforced. Forum ought to be revealed when it does not clearly exist or when it is doubted where it exists. When the law - procedural or substantive - does not debar any two seekers of justice from joining hands and moving together, they must have a common path. The multiplicity of proceedings should be avoided and same cause of action available to two at a time must not be forced to split and tried into different fora as far as practicable and permissible.

21. Reference to, or deriving aid from, certain legal maxims will be useful. *Ubi jus ibi remedium* -- there is no wrong without a remedy. Where there is a right there is a forum for its enforcement. According to Broome's legal maxims (10th edition, pp. 118-19), the maxim has been considered so valuable that it led to the invention of the form of action called an action on the case. Where no precedent of a writ can be produced, the Clerks in Chancery shall agree in forming a new one. The principle adopted by Courts of law accordingly is, that the novelty of the particular complaint alleged in an action on the case is no objection, provided that an injury cognizable by law be shown to have been inflicted on the plaintiff, in which case, although there be no precedent, the common law will judge according to the law of nature and the public good. If a man has a right, he must, "have a means to vindicate and maintain it, and a remedy if he is injured in the exercise and enjoyment of it, and, indeed, it is vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal".

The learned counsel has also relied upon observations in paragraph 23 of this judgment to state that when respondent filed his suit, Civil Court had concurrent jurisdiction and therefore he had choice and right to approach either the Tribunal or the Civil Court.

10. It is clear from above referred cases that the proviso may remove some portion from main enactment and here it appears that the scope of Sub-section (1) of Section 59 which provides appeal against orders of management to the Tribunal has been attempted to be curtailed by its proviso. Thus, if appeal itself is not provided for if the impugned action of management is before 30 days (i.e. period of limitation) prior to the date of commencement of 1994 Act, why in proviso to Sub-section (2) there is again reference in negative language to said period. Sub-section (2) was itself, without any proviso to it, sufficient to take care of entire situation. In this background can it be said that proviso to this sub-section is clarificatory. If both the proviso are read together, intention to lay down that no appeal shall lie to the Tribunal challenging causes of action which

have accrued prior to 30 days of the commencement date is prima facie revealed.

However, at this juncture, effect of Sub-section (3) which is beginning with non obstante clause on Sub-section (2) needs to be considered. The expression "said period of 30 days" used in sub-section 3 is with reference to the period of limitation prescribed by Sub-section (2) and in view of non obstante clause with which Sub-section (3) opens, it is clear that it has got overriding effect over entire Sub-section (2). The period of 30 days is prescribed in substantive part of Sub-section (2) and also in its proviso. However, if employee is prohibited by sufficient reasons from approaching the Tribunal within said period of 30 days, his right of appeal is not lost once for all. Sub-section (3) permits Tribunal to condone even delay in circumstances where the employee could not approach within 30 days as contemplated by proviso to Sub-section (2). In other words if the period of 30 days as contemplated by said proviso has already expired, still the Tribunal has been empowered to condone the delay for just and sufficient reasons. No distinction can be made between his grievance and the grievance of an employee which arose during period of 30 days prior to 22nd July, 1994. There is nothing in Sub-section (3) to hold that the power to condone delay conferred upon Tribunal by it is in relation to substantive part of Sub-section (2) only and it does not extend to the cases in which proviso to Sub-section (2) is attracted. Sub-section (3) is in the shape of non obstante clause and it deserves to be given full effect as per legislative intent. Language of said proviso to Sub-section (2) is very clear and it speaks of expiry of period of 30 days from the date of receipt of such order. This power to condone delay will be required to be exercised if said period of 30 days has already expired on the commencement date. This proviso cannot be read to mean that no appeal can be filed before Tribunal if period of 30 days from the date of receipt of impugned order has already expired before the date of commencement of Universities Act, 1994. Sub-section (3) contemplates condonation of delay even when period of 30 days from the date of receipt of such order has already expired. Hence, in appropriate cases even in relation to causes of action which have accrued prior to 30 days of the date of commencement of Universities Act also, the Tribunal can in exercise of its power to condone delay entertain the appeal. Admittedly, after the commencement date no other Tribunal competent to take cognizance of such causes of action is functioning and perusal of Section 59 read with Section 115 (16) of Universities Act demonstrate that the present Tribunal is in fact successor of earlier College Tribunal functioning under Nagpur Universities Act. Any other interpretation would result in creating the vacuum as no forum would be available for ventilation of such grievances and the scheme of the Universities Act does not permit it. The question therefore is of reconciling this position with the joint and combined effect of proviso to Sub-section (1) and proviso to Sub-section (2) above.

If proviso to Sub-section (1) is perused, it is clear that appeal is not provided if the matter is already finally decided by the Court or Tribunal of competent jurisdiction. It is not provided even if on commencement date matter is pending

before such Court or Tribunal. There is nothing wrong in not permitting the matters which are already settled finally to be opened again only because new Act is brought into field. In relation to pending matters, Section 115 which deals with repeals and savings in its Sub-section (2) Clause XVI provides that the existing Tribunal functioning under Nagpur University Act, 1974 was to continue to function as such till the State Government constituted University and College Tribunal under 1994 Act. After such Constitution of University and College Tribunal (Tribunal), all disputes or matters or appeals pending before such College Tribunal stood transferred to such University and College Tribunal. It is thus clear that a smooth transition from old Act to new Act is envisaged. Earlier in State of Maharashtra there were 8 separate Acts for each University like Bombay University Act, 1974 for the University of Bombay, the Poona University Act, 1974 for the University of Poona, the Shivaji University Act, 1974 for Shivaji University, the Marathwada University Act, 1974 for Dr. Babasaheb Ambedkar Marathwada University, the Nagpur University Act, 1974 for Nagpur University, the Shreemati Nathibai Damodar Thackersey Women's University Act, 1974 for Shreemati Nathibai Damodar Thackersey Women's University, the Amravati University Act, 1983 for Amravati University and North Maharashtra University Act, 1989 for the North Maharashtra University. The Maharashtra Universities Act, 1994 is an Act to unify, consolidate and amend the law relating to non-agricultural and non technological Universities in State of Maharashtra. It will thus be seen that it is only a changeover from old Act to new Act and from old machinery for adjudication to new machinery therefor. No drastic change as such has been brought about which will have the effect of leaving some employees without any remedy against the arbitrary and illegal actions of the management. The Hon'ble Apex Court has in the ruling Dhannalal Vs. Kalawatibai and Others, already held that ultimate situations warranting neat innovations may arise and in such circumstances it would be for the Court faced with such situation to resolve it in consonance with logic, rational reasoning, common-sense and urge for public good. In the facts of present case, it is apparent that the Tribunal has got jurisdiction to adjudicate and deal with cases which have arisen even under Nagpur University Act which are transferred to it because of repeal of later Act. There may be cases in which employees would be aggrieved by adverse orders of management passed long before the commencement date namely 22nd July, 1994 and they could not approach the College Tribunal functioning under Nagpur University Act because of their genuine difficulties/disabilities. Had the new Act not come into force in year 1994, they could have approached College Tribunal functioning under Nagpur University Act with application for condonation of delay. It is beyond comprehension as to why such persons should be left without remedy though they have suffered legal injury. The older proceedings i.e. instituted earlier can continue despite change of law because they are transferred to the present Tribunal and the new proceedings can be instituted before the Tribunal under new law. Then why only a section of such people should be left out and justice should be denied to them, particularly only on account of change in law without any notice to them. Whether proviso to Sub-

section (1) can be interpreted to defeat their legal rights. In *Dhannalal Vs. Kalawatibai and Others*, the Hon'ble Apex Court has also observed that wrong must not be left unredeemed and right not left unenforced. If the action of management in violation of Nagpur University Act could have been challenged by an employee validly before 1994, it is apparent that he should also be permitted to challenge it after 1994 i.e. after the commencement date. Section 59 of Universities Act, 1994 nowhere wipes out such a right of an employee expressly. On the contrary, Sub-section (1) states that no appeal shall lie against such orders of management passed at any time before the date of commencement if period for filing an appeal is expired. The period for filing appeal is prescribed by Sub-section (2). Sub-section (3) has overriding effect on said Sub-section (2) and it therefore follows that Sub-section (3) also has overriding effect on period for filing appeal stipulated in proviso to Sub-section (1) of Section 59. Thus, combined reading of all these provisions show that the Tribunal can in appropriate cases entertain an appeal made to it after expiry of period of 30 days from the date of order of management even though said period of 30 days has expired before 22nd July, 1994. Any other interpretation of Section 59 would result in creating the vacuum and lacuna which is not contemplated and hence such an interpretation will have to be avoided. There was no such lacuna or defect in earlier Nagpur University Act, 1974 and as has been held by this Court now Tribunal alone is having exclusive jurisdiction as remedy to Civil Court is barred. Thus, an interpretation which will result in creating a lacuna or defect in otherwise full proof scheme will have to be avoided while interpreting Section 59 of 1994 Universities Act.

11. In the facts of present petition, respondent challenged his termination dated 20 March, 1989 by filing civil suit on 19th April, 1989 and said suit has been dismissed on 7-2-2003 because of lack of jurisdiction in view of the judgment delivered in December, 1999 by this Court in case of *Satyawadi Pimple and another Vs. Sow. Aruna Narwade and another*, . Till then, the view of this Court was that such suit is maintainable. The petitioners have challenged maintainability of appeal as his termination is prior to the date of commencement of Universities Act and the period of limitation of 30 days had expired in 1989 itself. The Tribunal has condoned delay in filing appeal before it and has entertained the appeal. Here it is to be noticed that even on 22-7-1994 the civil suit filed by the respondent was very much pending and on said date Civil Court as also the Tribunal possessed power to grant relief to him. The observations of Hon'ble Apex Court in *Ram Ujarey Vs. Union of India*, reproduced above also support the case of present respondent. The issue involved in present petition is not in relation to fixation of period of limitation but of correctly interpreting the said provisions to find out whether intention of legislature is to deny remedy only to a group of employees of colleges. The ruling of Apex Court reported at *Antony Sami Vs. Arulanandam Pillai (D)* by Lrs. and Another, stated above therefore has no application here. Similarly, the judgment of the Division Bench of Punjab High Court in AIR 1965 (supra) deals with an

attempt to seek application of amended provision of Limitation Act, 1963 after expiry of limitation under old law is not relevant for consideration as the controversy involved in this petition is entirely different. Similarly, judgment of Allahabad High Court in AIR 1965 (supra) and of Punjab and Haryana High Court in A.I.R 1976 (supra) which deal with the question of situations in which plaint can be returned for proper presentation are not relevant because even after return of plaint by the Second Joint Civil Judge Junior Division, Chandrapur to present respondent, same question about tenability of appeal would have arisen. Under the circumstances, I find that the Tribunal has correctly condoned the delay and entertained the appeal by its order dated 11 August, 2004 which is impugned in this petition.

12. The Hon''ble apex Court has in judgment reported at Shyam Sundar Sarma Vs. Pannalal Jaiswal and Others, has held that if regular Civil appeal against ex parte decree is dismissed as time barred, application under Order 9, Rule 13 for setting aside ex parte decree is not maintainable. Reliance has been placed upon its earlier judgment reported at Rani Choudhury Vs. Lt.-Col. Suraj Jit Choudhury, . Relying upon this judgment at Rani Choudhury Vs. Lt.-Col. Suraj Jit Choudhury, , Division Bench of this Court in Chandu J. Ambekar v. Digamber Kisanrao Kulkarni has held that an appeal presented out of time is an appeal and order dismissing it as time barred is one passed in the appeal. In view of this position, if proviso to Sub-section (1) does not permit filing of appeal, there is no question of moving application for condonation of delay in filing it. If proviso to Sub-section (1) is given its full meaning, the sweep of non obstante clause in Sub-section (3) is diluted because it cannot in that event govern proviso to Sub-section (2). If said non obstante clause is given full effect, sweep of last part of proviso to Sub-section (1) is curtailed. However, from discussion above it is apparent that in that contingency a lacuna to the disadvantage of the employees for whose benefit Section 59 has been enacted, is created. In the circumstances of case, such an intention cannot be attributed to the legislature and hence, interpretation which advances the purpose of Section 59 will have to be accepted.

13. The petitioner has not challenged the justness or sufficiency of reasons accepted by said Tribunal while condoning the delay. Hence, said issue is not required to be gone into in present petition.

14. No case is made out for interfering with the order of Tribunal. The writ petition therefore fails and is dismissed accordingly however without any order as to costs.