

(2009) 05 BOM CK 0062

In the Bombay High Court

Case No : Writ Petition No. 2593 of 2000

Kisanrao Khobragade Education Society and Principal,
Yeshwantrao Chavan College

APPELLANT

Vs

Bhojraj Motghare, University and College Tribunal, Nagpur
University and Nagpur University

RESPONDENT

Date of Decision : 02-05-2009

Acts Referred:

Maharashtra Universities Act, 1994 — Section 59

Citation : (2009) 93 BomCR 561 : (2009) 4 MhLj 457

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : S.A. Radke, for the Appellant; A.S. Kilor, for the Respondent

Judgement

F.M. Reis, J.—Heard the learned Counsel for the petitioners and respondent No. 1. The petition has been filed to challenge order dated 4/5/2000 passed by respondent No. 2 whereby Misc. Civil Application No. 16 of 2000 filed by respondent No. 1 for condonation of delay was allowed. It is the case of the petitioners that on or about 3/3/2000 respondent No. 1 filed appeal u/s 59 of the Maharashtra Universities Act, 1994 challenging his termination w.e.f. July, 1998 and prayed for relief of reinstatement with all back wages. As the appeal was not filed within the period of 30 days, respondent No. 1 moved an application for condonation of delay for preferring the said appeal. In the said application the grounds which were sought to be invoked by respondent No. 1 as a justification to file appeal beyond the period of limitation was that, he was pursuing another remedy in as much as he had filed representation before respondent No. 3 to get his grievances decided. According to respondent No. 1, he was bonafidely pursuing his remedy before respondent No. 3. Respondent No. 1 further stated in the application that despite of direction on the part of respondent No. 3 to get him reinstated, the petitioners failed to comply with such direction which forced him to file the said appeal before respondent No. 2.

2. Despite all objections on the part of the petitioners to the said application for condonation of delay, respondent No. 2 vide impugned order dated 4/5/2000 condoned the delay to prefer the appeal filed by the respondent No. 1. Being aggrieved by the said order dated 4/5/2000, the present petition has been filed by the petitioner.

3. During the course of hearing, the learned Counsel for the petitioners sought to impugn the said order passed by respondent No. 2 contending that there was no justification shown by respondent No. 1 which could condone the delay to prefer the appeal. Respondent No. 1 had not shown any cause to condone the delay and consequently there was no justification according to the petitioners in respondent No. 2 passing the impugned order. On the other hand, the learned Counsel appearing for respondent No. 1 urged before me that there was ample justification on the part of respondent No. 1 in preferring the appeal beyond the period of limitation as he was pursuing the remedy bonafidely before respondent No. 3 and had reasonable expectation that he would get required results before respondent No. 3. Having not been able to get the relief as sought for, in view of the attitude by the petitioners in failing to accept the directions by respondent No. 3 to reinstate respondent No. 1, the appeal had to be preferred by respondent No. 1 before respondent No. 2. The learned Counsel relied upon the judgment of this Court reported in Sandeep Netke Vs. State of Maharashtra and Others, . The learned Counsel further submits that there is no dispute that respondent No. 1 was bonafidely pursuing remedy before respondent No. 3. However, considering the attitude on the part of the petitioner in failure to accept direction of respondent No. 3, the appeal had to be filed by respondent No. 1.

4. In the judgment of this Court, cited supra, at para 11, this Court has held as under:

It is significant to note that the petitioner had made representation to the Deputy Director of Education and Vocational training, who had issued directions from time to time and had even threatened the Management of stoppage of salary grants and had also directed the Management not to admit the students unless the directions were complied with. In the aid circumstances, the petitioner can be said to be entitled to a legitimate expectation that he would ultimately get relief from the said Authority. It is not as if the petitioner was making only representations after representations. The representations were met with the order being passed by the Deputy Director of Education and Vocational training. In the said circumstances, the delay between the year 2000 and 31/3/2003, when the Writ Petition filed by the petitioner was rejected, can be justified. In my view, the petitioner has shown sufficient cause for condoning the said delay as it is well settled that it is to the extent of the delay but the cause shown. In the instant case, it cannot be said that the petitioner was negligent or that he was malafidely pursuing some other remedy....

The facts in the present case and the facts before this Court in the said judgment appears to be identical. There is no reason shown by the petitioner which could

disclose that respondent No. 1 was malafidely pursuing some other remedy or then there was any negligence on his part in pursuing such remedy. On the contrary, the facts disclosed, as rightly held by respondent No. 2 that respondent No. 1 was pursuing the remedy before the Authority in a bonafide and diligent manner.

5. In such circumstances, it cannot be said that there was any infirmity in respondent No. 2 condoning the delay in filing appeal by respondent No. 1. However, the said application for condonation of delay ought to have been disposed of by awarding some costs to the petitioner, which was not done by respondent No. 2 whilst passing the impugned order. Consequently, there is no illegality so as to interfere in the impugned order dated 04/5/2000 in M. C. A. No. 16 of 2000. But, however, respondent No. 1 is directed to pay costs of Rs. 1,000/- (rupees one thousand only), within two weeks, to the petitioner for getting the delay condoned.

6. In the circumstances, the writ petition is disposed of accordingly. Rule discharged.