

(2007) 12 BOM CK 0020
In the Bombay High Court
Case No : Writ Petition No. 3441 of 2007

Sandeep Netke

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-12-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 2 MhLj 494

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : P.R. Patil, for the Appellant; K.M. Suryawanshi, A.G.P. for Respondent Nos. 1 to 4 and S.B. Yawalkar, for the Respondent

Judgement

R.M. Savant, J.—Rule, with the consent of the parties made returnable forthwith and heard.

2. This Petition filed under Articles 226 and 227 of the Constitution of India, takes exception to the order dated 17-11-2006 passed by the learned Presiding Officer, School Tribunal, Nashik, by which order the application filed by the petitioner for condonation of delay in filing of Appeal against the order of termination, came to be rejected.

3. The petitioner belongs to the Scheduled Caste. The petitioner was appointed on 28-7-1997 as an Instructor in the Board of Vocational Training by the respondent No. 7 Junior College. The appointment of the petitioner was approved by the Deputy Director of Education and Vocational Training on 17-12-1998. After the petitioner's services were approved, the respondent Management by letter dated 30-3-1998, terminated the services of the petitioner on the ground that his work was not found to be satisfactory. The respondent No. 6 and 7 accordingly had issued notice of termination to the petitioner.

4. The petitioner thereafter made a representation to the Deputy Director of Education and Vocational Training, Nashik against his termination. The said

Director by his letter dated 22-7-1998 directed the Management to reinstate the petitioner. As the said directions were not complied with, second direction was issued by the said Deputy Director on 10-3-2000. Thereafter one more direction was issued on 24-8-2000 by the same Director directing the reinstatement of the petitioner. Looking to the attitude of the Management, the said Director, thereafter vide letter dated 26-12-2001 indicated to the Management that in case the directions are not complied with, the grants payable to the Management would be stopped. Intransigent attitude of the Management having continued, the Deputy Director by letter dated 17-1-2002, directed the Management to stop giving admissions to the students on account of non-compliance of the various directions issued by that Office.

5. In spite of the said directions, the petitioner was not reinstated. The petitioner was therefore, constrained to file Writ Petition No. 5234 of 2002 in this Court for compliance of the directions issued by the Deputy Director of Education and Vocational Training, as mentioned hereinabove. The said Writ Petition came to be rejected by this Court on 31-3-2003 in view of the alternate remedy available to the petitioner by way of filing an Appeal before the School Tribunal. In view of the said alternate remedy available to the petitioner, the petitioner filed an Appeal before the School Tribunal. However, since the termination order was dated 30-3-1998 and since the petitioner was approaching the School Tribunal in the year 2003, the petitioner filed an application for condonation of delay. The petitioner in the said application, justified the delay in view of the facts as mentioned hereinabove. The said application was considered by the learned Presiding Officer of the School Tribunal and by the impugned order, the School Tribunal refused to condone the delay and rejected the said application.

6. I have heard the learned Counsel for the petitioner Mr. P.R. Patil and learned Counsel for the respondent No. 6 and 7 Mr. Yawalkar. It is submitted by Shri Patil, learned Counsel for the petitioner that delay was occasioned in view of the fact that the representations of the petitioner were considered by the Deputy Director of Education and Vocational Training, who had issued the necessary directions to the respondent Management to reinstate the petitioner. Shri Patil pointed out that in spite of the said directions, the respondent-Management did not comply with the same and ultimately the Deputy Director had to even go to the extent of issuing a threat to the respondent-Management of stoppage of grant and not filling up the admissions of the students. In spite of the same, the said directions remained to be complied by the Management and therefore the petitioner had no option than to file a Writ Petition in this Court, as the petitioner was not very sure whether remedy by way of Appeal was available, as it was the contention of the Management that the School Tribunal has no jurisdiction in respect of the post to which the petitioner was appointed. Shri Patil further submitted that the said conspectus of the facts has not been taken into consideration by the School Tribunal. The petitioner according to the learned counsel, was bonafidely prosecuting the remedies with the Deputy Director of Education and Vocational Training, as he was under impression that the said

remedy was the proper remedy.

7. Shri Patil further submitted that without taking into consideration the said facts and merely on the ground that the petitioner had issued notice dated 30-8-2000 indicating to the Management that he would approach the Court of Law and having not done so, that the said application for condonation of delay came to be rejected by the School Tribunal.

8. On the other hand, it is contended by Shri Yawalkar, learned Counsel appearing for respondent No. 6 and 7 that no sufficient cause has been shown by the petitioner for condonation of the delay. Shri Yawalkar submits that merely making representations would not stop the limitation from running. The Learned Counsel further submitted that the conduct of the petitioner was such that in spite of he not being reinstated, the petitioner continued to make representations and ultimately filed the Appeal in the year 2003.

9. Learned Counsel Shri Yawalkar relied upon the Judgment of the Apex Court reported in M/s. Samant and Another Vs. Bombay Stock Exchange and Others, and the Judgment reported in 2007 AIR SCW 1487, in the matter of Shiv Dass v. Union of India in support of his contention that merely making representations would not justify the delay. Learned Counsel also relied upon the Judgment of the learned Single Judge of this Court reported in 2007 (3) Mh. L.J. 486 in the matter of Kalpana d/o Deorao Lenze v. Gurudeo Krushanashram Dharmik Trust, in support of his contention that period of limitation prescribed for Appeal is demonstrative of the punctual ness required in resorting to a challenge in the matters.

10. I have considered the rival contentions of the respective parties. Perusal of the impugned order ex facie discloses that the School Tribunal, on the basis that the petitioner had given notice on 30-8-2000 and thereafter had not filed an Appeal in time, has rejected the application for condonation of delay. The facts as narrated above i.e. the orders passed by the Deputy Director of Education and Vocational Training from time to time, have not even been adverted to and considered by the School Tribunal. In my view, there was a justifiable reason for the petitioner to file the Appeal beyond the period stipulated for the same.

11. 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 said 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 orders 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 not 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.

12. The petitioner in fact had filed Writ Petition in this Court for seeking directions against the Management and the Authorities for compliance of the directions issued by the Deputy Director of Education and Vocational Training. After the said Writ Petition came to be rejected on 31-3-2003, that the petitioner within a period of two months, filed the Appeal, after obtaining necessary certified copies etc.

13. It is well settled by a catena of decisions of the Apex Court that a litigant should be allowed to prosecute his remedy on its merits and not thrown but on technicalities, as the same furthers the cause of substantial justice. In the instant case, the delay has been occasioned for the reasons mentioned herein above. It is also well settled that a highly technical and pedantic approach should be eschewed in the matter of condonation of delay. In that view of the matter, the impugned order dated 17-11-2006 passed by the learned Presiding Officer of the School Tribunal would have to be set aside and is accordingly set aside. The delay in filing the Appeal is hereby condoned. However, the interest of justice would also be served if the petitioner is directed to pay costs of Rs. 2000/- to the respondent Nos. 6 and 7. The said costs to be paid within a period of four weeks from date. Rule is accordingly made absolute in the aforesaid terms, with the parties to bear their respective costs of the Petition.