

(2015) 11 KAR CK 0167
In the Karnataka High Court
Case No : Writ Petition No. 207254/2014 (S-DIS)

Sharnappa

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 19-11-2015

Acts Referred:

Karnataka Education Act, 1983 — Section 94
Limitation Act, 1963 — Section 5

Citation : (2015) 11 KAR CK 0167

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : I.R. Biradar, Advocate, for the Appellant; Archana P. Tiwari, AGA, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 22.09.2014 passed in EAT No. 6/2011 impugned at Annexure-M to the petition. The petitioner is seeking direction to the fourth respondent to continue the petitioner in service and to pay salary as per the order of the second respondent dated 10.11.2010.

2. The petitioner was appointed as Assistant Teacher (Science-CBZ) by the fourth respondent - management. In respect of the said employment there are certain disputes between the petitioner and the fourth respondent - management. At an earlier point, the order dated 10.11.2010 was passed by the second respondent. The petitioner was before this Court in W.P. No. 80051/2011 seeking that mandamus be issued to the fourth respondent to consider the representation dated 18.11.2010 which had been produced as Annexure-K therein. By the said representation the petitioner was seeking implementation of the order dated 10.11.2010. When the petition was taken up for consideration by this Court on 08.08.2011, in view of the developments that had taken place during the hearing of the petition the learned counsel for the petitioner herein had sought liberty to

withdraw the petition and approach the appropriate forum. This Court on accepting the submission had disposed of the writ petition as withdrawn with liberty.

3. The petitioner thereafter has filed the appeal before the Education Appellate Tribunal ("EAT" for short) which was registered in EAT No. 6/2011. Since there was delay in filing the appeal, the application seeking condonation of delay was filed. The EAT while considering the said application, making detailed consideration has rejected the application seeking condonation of delay and has consequently dismissed the appeal. The petitioner therefore claiming to be aggrieved by the said order is before this Court in this petition.

4. Heard the learned counsel for the parties and perused the petition papers. The sequence as noticed above is itself the contention on behalf of the petitioner to point out that the petitioner had approached the EAT after disposal of the writ petition as withdrawn and as such the EAT was not justified in taking a technical view of the matter and dismiss the appeal on the question of delay, due to which the Tribunal has denied consideration of the matter on merits which would defeat the valuable right of the petitioner. In that view it is contended that the order of the EAT is liable to be set aside and the EAT be directed to consider the matter on merits.

5. The learned counsel for the fourth respondent would however seek to sustain the order passed by the EAT. It is contended that the reasons assigned by the EAT is justified. In order to substantiate such contention, learned counsel would point out that the relief that had been prayed in the writ petition is not the same as what is sought in the appeal presently filed. He therefore contends that the benefit of explaining the period spent before this Court in the said writ petition would not be available to the petitioner to seek condonation in the appeal. In that regard he points out that the prayer made in the writ petition was seeking implementation of the order dated 10.11.2010 whereby benefit had been granted to the petitioner by the second respondent herein. If that be the position, there was no cause for the petitioner to invoke the provisions contained in Section 94 of the Karnataka Education Act and file an appeal before the Tribunal. Therefore when such appeal itself would not have been maintainable before the Tribunal, the Tribunal was justified in coming to the conclusion that the condonation of the delay as sought would not arise in the present appeal and therefore the appeal is liable to be dismissed on the ground of delay. He therefore contends that the instant petition is not maintainable and is liable to be dismissed.

6. In the light of the contentions put forth, the perusal of the order dated 22.09.2014 passed in EAT No. 6/2011 though only limited to disposing of an application under Section 5 of the Limitation Act seeking condonation of delay, is exhaustive and has taken into consideration the reasons that had been put forth. In fact a perusal of the order would reflect the consideration in the same manner as has been urged by the learned counsel for the fourth respondent. However, what requires consideration herein is only as to whether even in that

circumstance the Tribunal was justified in shutting out the petitioner from the consideration on merits.

7. To examine this aspect of the matter, I have taken note of the contention put forth by the learned counsel for the fourth respondent. In that regard a perusal of the order dated 10.11.2010 would no doubt indicate grant of benefit to the petitioner. Even if that be the position, at an earlier instance when the petitioner was before this Court seeking that the representation made by the petitioner seeking implementation of the said order be considered and in that light when this Court at that point was of the view that the petitioner could be granted the liberty of approaching the appropriate forum under the Act and presently when the petitioner had approached the EAT under Section 94 of the Act, only due to the fact that the order dated 10.11.2010 exists in favour of the petitioner, it cannot be a ground to reject the appeal at the stage of condonation of delay itself.

8. What was required to be noticed at that stage was as to whether there was justification in the petitioner to approach the said forum belatedly. The question as to whether the relief as prayed in the appeal is to be granted or not in the circumstance that an order dated 10.11.2010 had existed is only a question which would have arisen for consideration if the appeal was taken up on merits and a consideration was to be made by the Tribunal as to whether the relief as prayed therein is to be granted or as to whether the relief is to be moulded in any other manner in that facts and circumstances of the case.

9. If the petitioner herein while filing the appeal has continued to contend that his termination operates and if he does not take the benefit of the order dated 10.11.2010 and further if in such circumstance the consideration is to be made in the appeal with regard to the validity or otherwise of the termination, this aspect will also require consideration on merits in the appeal.

10. Therefore if these aspects of the matter are kept in view and the liberty as granted by this Court to approach the appropriate forum is taken into consideration, the forum to be chosen is by the petitioner herein though ultimately it is for the Court concerned to come to a conclusion as to whether the relief could be granted or not. Therefore, at the stage of considering the sufficient cause for condonation of delay the EAT could not have rejected the appeal without granting the benefit of condonation of delay more particularly in a circumstance when the petitioner had not slept over the matter but was continuously agitating his rights though before a different forum. The writ petition was disposed of and immediately thereafter the petitioner had filed an appeal. With regard to the connotation of "sufficient cause" and scope of considering the condonation of delay in that background, the Hon"ble Supreme Court has held that even handed justice is to be meted out to the parties and not dismissal on technical grounds with regard to delay. In this regard it would be appropriate to refer to the decision in the case of Collector, Land Acquisition vs. Mst. Katiji (ILR 1987 KAR 2844).

11. In that view, if at this juncture the petitioner who was agitating his rights is denied the benefit of putting forth the contentions on merits, the very valuable right of the petitioner would be taken away. Therefore, keeping in view all these aspects of the matter the order dated 22.09.2014 is set aside. Consequently, I.A. filed seeking condonation of delay is allowed. The EAT is directed to restore the appeal in EAT No. 6/2011 on file and consider the same on its merits. All contentions including as to whether the relief prayed in the appeal is ultimately sustainable or not are left open to be considered in the appeal based on the contentions to be put forth therein.

12. The parties shall appear before the EAT without issue of fresh notice on 19.12.2015 as the first date for appearance. The EAT shall thereupon regulate the proceedings and consider the same in accordance with law on merits. The appeal shall be disposed of expeditiously.

The petition is accordingly disposed of.