
(2016) 06 BOM CK 0201
In the Bombay High Court
Case No : Writ Petition No. 2166 of 2015

Sudhakar

APPELLANT

Vs

Lokmanya Tilak Smarak Mandal

RESPONDENT

Date of Decision : 22-06-2016

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 9

Citation : (2017) 3 ALLMR 290 : (2017) 2 MhLJ 583

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

Bench : Single Bench

Advocate : Shri P. N. Shende, Advocate, for the Petitioner; Shri D. L. Dharmadhikari, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

A. S. Chandurkar, J. (Oral)—Rule. Heard finally with consent of learned counsel for the parties.

2. The petitioner is aggrieved by the order passed by the learned Presiding Officer, School Tribunal, Chandrapur on an application for condonation of delay that was filed by the petitioner along with the appeal filed by the petitioner under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the said Act). It is the case of the petitioner that he was appointed on the post of Assistant Teacher at the school run by the respondent no.1. His date of appointment was 28.09.1998. It is his further case that the respondent no.2 was appointed as an untrained teacher on 01.07.1997 and he acquired training qualification subsequently. According to the petitioner the respondent no. 1 promoted the respondent no.2 on the post of Head Master on 01.07.2004 by disregarding the claim of the petitioner. He, therefore, filed the aforesaid appeal under Section 9 of the said Act on 28.05.2014 seeking to challenge the order of promotion dated 01.07.2004. Along with the said appeal he moved a separate application for condonation of delay. In

that application it was stated that the respondent no.2 had been working as in-charge Head Master and only after receiving information under the Right to Information Act, 2005 that he got knowledge about his supersession. This application was opposed by the respondent nos. 1 and 2. By the impugned order said application for condonation of delay has been rejected holding that the delay of almost nine years was not properly explained.

3. Shri P. N. Shende, the learned counsel for the petitioner submitted that as the petitioner was challenging his supersession, there was no period of limitation prescribed under the provisions of Section 9(2) of the said Act for filing an appeal. He submitted that even if such application for condonation of delay was filed, the same was only by way of abundant precaution. He submitted that the School Tribunal ought to have entertained the appeal on merits and ought to have decided the same. In any event he submitted that the period of delay had been satisfactorily explained by the petitioner which explanation ought to have been accepted by the School Tribunal. He, therefore, submitted that the impugned order was liable to be set aside and the appeal deserves to be decided on merits.

4. Shri D. L. Dharmadhikari, the learned counsel for the respondent nos. 1 and 2 supported the impugned order. According to him the petitioner having filed an application for condonation of delay and said explanation not having been found to be satisfactory, it was not open now for the petitioner to submit that the School Tribunal ought not to have considered the application for condonation of delay. He submitted that even if the period of limitation was not prescribed under Section 9(2) of the said Act, the appeal ought to have been filed within a reasonable period. The appeal had been filed after considerable delay and the same was rightly dismissed. He placed reliance upon the judgment of the learned Single Judge in Secretary, Shiorai Education Society v. Presiding Officer, School Tribunal & Ors. 2000(2) Mh. L.J. 752 Maharashtra Law Journal 752 and the judgment of the Division Bench in Mohammad Hasan Khan v. Mohammad Majidulla & Ors. 2003(supp.) Bom. C.R. 235. He therefore submitted that the impugned order did not call for any interference.

5. I have carefully considered the respective submissions and I have given due consideration to the material on record. It is not in dispute that the petitioner being aggrieved by the order of promotion dated 01.07.2004 issued in favour of the respondent no.2 has filed an appeal on 28.05.2014 along with an application for condonation of delay. The period of delay mentioned therein is of nine years and nine months. Under the provisions of Section 9(2) of the said Act there is no limitation prescribed for filing an appeal before the School Tribunal in the matter of supersession by the Management. This position stands settled in view of the decision of the learned Single Judge in Secretary, Shiorai Education Society (supra). In paragraph 12 of the said judgment it has been observed as under:

"Though there is no limitation prescribed under the statute for filing appeal to the Tribunal in case of supersession by the management while making appointment

to any post by promotion, general doctrine of delay and laches would apply in this regard. It is the general rule that whenever limitation is not prescribed for filing appeal or revision, the aggrieved person is required to prefer the same within reasonable time."

The aforesaid view has been upheld by the Division Bench in Mohammad Hasan Khan (supra).

6. From the aforesaid legal position it is clear that though there is no limitation prescribed for filing an appeal under Section 9 of the said Act when the grievance is with regard to supersession, the general doctrine of delay and laches would be applicable while considering the aspect as to whether the challenge needs to be entertained on merits. Before considering the said aspect in the facts of the present case, it would be useful to refer to the observations of the Hon'ble Supreme Court in Union of India and others v. A Durairaj (Dead) by LRS. (2010) 14 Supreme Court Cases 389. On the aspect of delay and laches in making a grievance regarding non-promotion or non-selection, it was observed in para 13 as under:

"13. It is well settled that anyone who feels aggrieved by non-promotion or non-selection should approach the court/tribunal as early as possible. If a person having a justifiable grievance allows the matter to become stale and approaches the court/tribunal belatedly, grant of any relief on the basis of such belated application would lead to serious administrative complications to the employer and difficulties to the other employees as it will upset the settled position regarding seniority and promotions which has been granted to others over the years. Further, where a claim is raised beyond a decade or two from the date of cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches."

7. In the light of aforesaid if the facts of the present case are examined, the documents on record indicate that the respondent no.2 came to be promoted on the post of Head Master on 01.07.2004. This order of promotion was based on the seniority list pertaining to the school in question that was prepared on 01.07.2003. This seniority list indicating the names of respondent no. 2 at Sr. No. 1 and the petitioner at Sr. No. 3 has been duly signed by the petitioner without protest. This would indicate that on 01.07.2003 the petitioner was aware about his placement in the senior list. It is also pertinent to note that the petitioner has been shown to be discharging duties as Assistant Teacher at the same school where the respondent no.2 was holding the post of Head Master. In the application for condonation of delay the petitioner has stated that he got the necessary information under the Right to Information Act, 2005 in the year 2013 and it is thereafter that he filed the present proceedings. According to the petitioner he was under the impression that the respondent no.2 was holding the

post of in-charge Head Master. In the background of the aforesaid facts and the documents on record it cannot be said that the petitioner acted diligently in the matter of raising a challenge to the promotion of respondent no.2. The aforesaid also indicates that the challenge to the order of promotion dated 01.07.2004 that was sought to be raised by filing an appeal on 28.05.2014 would result in a stale or dead claim being sought to be raised. It is, therefore, clear that the petitioner has not raised his grievance with regard to his supersession within a reasonable time.

8. Though it is true that it was not necessary for the petitioner to have filed a separate application for condonation delay along with the appeal in which there was a grievance with regard to his supersession, the fact as to whether the appeal was preferred within a reasonable time was required to be gone into. Though the impugned order has been passed on the application for condonation of delay, the grounds furnished therein have been considered by this Court on the backdrop of the requirement of filing the appeal within a reasonable time. The appeal having been found not to have been filed within reasonable time, it cannot be said that in the facts of the present case any prejudice has been caused to the petitioner by considering his explanation furnished in the application for condonation of delay as the explanation for not filing the appeal within reasonable time. The reasons assigned for the cause of delay and the aspect whether the appeal was filed within reasonable time would depend on the very same reasons.

9. In view of aforesaid, I do not find that there is any case made out to interfere in writ jurisdiction. The appeal filed by the petitioner did not deserve to be entertained on merits as it was filed beyond reasonable time. Rule accordingly stands discharged with no order as to costs.