
(2000) 06 BOM CK 0033
In the Bombay High Court
Case No : Writ Petition No. 514 of 1998

The Executive President and Others	Vs	APPELLANT
Bhaskar Bhagwant Yadav and Others		RESPONDENT

Date of Decision : 23-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 9

Citation : (2000) 4 ALLMR 798 : (2001) 1 BomCR 159 : (2001) 2 MhLj 226

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

Bench : Single Bench

Advocate : P.S. Dane, for the Appellant; S.R. Nargolkar, A.G.P. for Respondent
Nos. 2 and 3 and A.N. Kulkarni, for the Respondent

Final Decision : Allowed

Judgement

R.M. Lodha, J.—Though in the title of the writ petition, the petitioners have invoked Articles 226 and 227 of the Constitution of India, the learned Counsel for the petitioners at the outset stated that in the light of the reliefs claimed in the writ petition, the petitioners are confining this writ petition under Article 227 of the Constitution of India.

2. By means of this writ petition, the petitioners seek to challenge the legality and correctness of the order passed by the School Tribunal, Pune Division, Pune on 17-12-1997 whereby the said Tribunal allowed the application for condonation of delay in filing the appeal by the respondent No. 1 herein against the petitioners challenging his supersession.

3. The facts may be briefly stated. The first respondent herein filed an appeal before the School Tribunal, Pune on 21st July, 1993 challenging the appointment of third petitioner herein on the post of Headmaster by the petitioner Nos. 1 and 2. The third petitioner herein was appointed as Headmaster on 1st February, 1990 and the said order was under challenge in the appeal. Since the appeal was

barred by time, the respondent No. 1 herein made an application before the School Tribunal for condonation of delay. It was inter alia averred that cause of action arose on 1-2-1990 viz. date of his supersession by appointment of third petitioner herein as Headmaster. From that date, he has been trying to get his grievance redressed from the management and educational authorities. Though he relentlessly pursued the matter but since he did not get justice from the concerned authorities, he was compelled to file the appeal. The application for condonation of delay was contested by the third petitioner herein as well as the petitioner Nos. 1 and 2 herein by filing separate replies. It was inter alia submitted in the reply that for the first time, the first respondent herein wrote a letter on 12-4-1993 raising his grievance about the appointment of the third petitioner as Headmaster and before that date, the appointment of the third petitioner as Headmaster was not challenged nor any representation was made. The petitioners, therefore, set up the plea that there was no sufficient cause for condonation of delay.

4. The School Tribunal allowed the application for condonation of delay vide its order dated 17-12-1997 giving rise to the present writ petition.

5. The learned Counsel appearing for respondent No. 1 raised a preliminary objection about the maintainability of the writ petition in the absence of School Tribunal as party respondent in the writ petition. He submitted that the petitioners are seeking writ of certiorari from this Court and the School Tribunal whose order is under challenge was necessary party in the writ petition and since the School Tribunal has not been impleaded, the writ petition is liable to be dismissed on that count alone. In this connection he relied upon the judgment of the Apex Court in Udit Narain Singh Malpaharia Vs. Additional Member, Board of Revenue, Bihar, of the authority cited supra, the Apex Court held thus :

"To summarise in a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties. But it is in the discretion of the Court to add or implead proper parties for completely setting all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or an application filed at the instance of such proper party."

6. The aforesaid observations made by the Apex Court relating to writ of certiorari sought under Article 226 cannot be applied to the petitions invoking Article 227 of Constitution of India. Article 227 of the Constitution of India confers the power of superintendence upon the High Court over all tribunals, courts and authorities functioning within the territorial jurisdiction of the High Court. The power exercisable by the High Court under Article 227 of the Constitution is materially and substantially different from the power exercisable by the High Court under Article 226 which enables the High Court to issue high probative writs. While exercising the power under Article 227, the High Court in essence does not issue writ of certiorari. Rather, the power exercisable by the High Court under Article 227 of the Constitution of India is akin to the revisional

power of the High Court u/s 115 of the Code of Civil Procedure. In this view of the matter, therefore, where the High Court exercises its power of superintendence under Article 227 of the Constitution of India or in other words where in the writ petition Article 227 is invoked, the impediment of the Tribunal whose order is under challenge cannot be said to be necessary party. The learned Counsel for respondent No. 1 could not show that where Article 227 of the Constitution of India is invoked in the writ petition, it was necessary to implead the Court or Tribunal whose order is under challenge before the High Court. I am fortified in my view from the judgment of this Court in Chandanmal Oswal v. Kishore Alias Kashiram 1968 Mh.L.J. 155. of the said report, this Court observed thus :

"5. From the above discussion, it is clear that in a matter where the proceedings have been initiated only under Article 227, the authorities or tribunals whose orders are sought to be revised or modified under the powers of superintendence of the High Court under Article 227, the tribunals or authorities, who discharge quasi-judicial functions, are not necessary parties. However where the orders of the Tribunal are not normally amenable to the jurisdiction of superintendence of the High Court and which are required to be quashed by some kind of high prerogative writs, or against whom certain high prerogative writs under Article 226 are to be issued, the tribunals would be necessary parties. In this view, the present petition, which is merely a petition under Article 227 against the orders of the Rent Controller and the Appellate Authority under the Rent Control Order, the authorities are not necessary parties. They are performing quasi-judicial functions and are amenable to the jurisdiction of superintendence of the High Court under Article 227. The learned Counsel's submission is accepted and it is directed that looking to the nature of the petition, it may be registered without requiring the petitioner to implead the tribunals whose orders are sought to be challenged."

7. The objection raised by the learned Counsel for respondent No. 1 therefore, that writ petition is liable to be dismissed in the absence of School Tribunal as necessary party is overruled.

8. Coming to the merits of the order dated 17-12-1997, it may be straightway observed that the Tribunal has sought to make out new case in favour of the respondent No. 1 while condoning the delay in filing appeal which was not even the case set up in the application for condonation of delay. The Tribunal held that it cannot be said that the first respondent came to know that he was superceded when the third petitioner was appointed as Headmaster on 1-2-1990. This basis of the Tribunal is unsustainable. The specific case set up by the first respondent in the application for condonation of delay is that the cause of action arose to him on 1-2-1990 that is the date on which he was superceded by the third petitioner herein to the post of Headmaster and from that date, he was trying to get his grievance redressed from the management and the education authorities. It would thus be seen that the first respondent, according to his own case, set up

in the application came to know of his supersession on 1-2-1990 when the third petitioner was appointed on the post of Headmaster. The first respondent herein was, thus, required to challenge his supersession by appointment of third petitioner as Headmaster within 30 days of 1-2-1990. This explanation that he did not do so within time because he was pursuing the matter with the concerned authorities cannot be believed. The first respondent has not specifically stated as to on what date he first moved the management and Educational Authorities for redressal of his grievance when he was superceded on 1-2-1990. The facts about his representation to the management and educational authorities are totally vague. On the other hand, the petitioners herein have come out with the specific case that the respondent No. 1 herein for the first time made representation taking objection to the appointment of third petitioner vide his letter dated 12-4-1993. In that event, the delay in filing appeal from 1st March, 1990 to 12th April, 1993 remains totally unexplained. The limitation for filing appeal to the Tribunal by the aggrieved employee of private school in respect of the matters covered u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "Act of 1977") is 30 days from the date of receipt of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be and where such order of dismissal, removal, otherwise termination of service or reduction has been made before the appointed date, the period for filing appeal is 60 days. Sub-section (3) of section 9 empowers the Tribunal to entertain in appeal made to it after the expiry of the limitation provided sufficient cause is shown by the aggrieved appellant for not preferring appeal within that period. In the present case, the cause that was shown by the first respondent in preferring appeal belatedly was that he was pursuing his remedy before the management and educational authorities from the date of his supersession viz. 1-2-1990. This is factually incorrect since the first respondent for the first time took objection to the appointment of the third petitioner on the post of Headmaster vide his letter dated 12th April, 1993. The period, therefore, from 1-3-1990 to 12-4-1993 remains unexplained. It is true that while considering the question of sufficiency of the cause for condonation of delay, the courts or tribunals must be liberal and have justice oriented approach but at the same time, it cannot be overlooked that upon expiry of limitation, the valuable right accrues in favour of the opposite party and that cannot be taken away on flimsy ground. The cause has to be sufficient which may enable the Tribunal to condone the delay. The appeal was filed almost after three years by the first respondent without any sufficient cause and therefore, the delay did not merit condonation. The School Tribunal seriously erred in applying the judgment of the Apex Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, which has no application in the facts and circumstances of the present case. In the case before the Apex Court, the State Government and its functionary could not file appeal in time since decision for filing appeal was required to be taken at various levels and that resulted in delay. Moreover, delay in that case was delay of four days whereas in the present case, the delay in filing the appeal by the first respondent herein is about three years

which remained unexplained. The School Tribunal, thus, seriously erred in condoning the delay vide its order dated 17-12-1997.

9. Consequently, the writ petition is allowed. The order dated 17-12-1997 passed by the School Tribunal, Pune Region, Pune is quashed and set aside. The condonation application (Exhibit 3) made by the first respondent in Appeal No. 119 of 1993 stands rejected and consequently, the Appeal No. 119 of 1993 also stands rejected. Rule is made absolute in the aforesaid terms. No cost.