

(2015) 01 KAR CK 0229

In the Karnataka High Court

Case No : Writ Petition No. 79132/2013 (EDN-RES)

Vishwa Chetana Vidya Samsthe Kullur

APPELLANT

Vs

The Appellate Authority and Others

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2015) 01 KAR CK 0229

Hon'ble Judges : A.N. Venugopal Gowda, J.

Bench : Single Bench

Advocate : F.V. Patil, for the Appellant; K. Vidyavati, AGA, Advocates for the Respondent

Judgement

A.N. Venugopal Gowda, J.—An order of respondent-2, dated 28.3.2012, as at annexure-C, was assailed by respondent-3, before respondent-1, by filing an appeal vide annexure-J, under Section 130 of Karnataka Education Act, 1983. The said appeal having been filed beyond the prescribed period of limitation, an application vide Annexure-J1, under section 5 of the Limitation Act was filed, seeking condonation. The parties to the appeal having filed written submissions, the first respondent has passed an order dated 12.6.2013, as at annexure-K. By the said order, annexure-C was set aside. Being aggrieved, this writ petition was filed on 17.6.2013.

2. Heard Sri. F.V. Patil, learned advocate for petitioner, Smt. K. Vidyavathi, learned AGA for respondents 1 and 2 and Sri .S.S. Goodawala, learned advocate for respondent-3 and perused the writ petition record.

3. Though an application vide annexure J.1 was filed, seeking condonation of delay, thereby admitting that Appeal No. 31/12 was not filed within stipulated period before respondent-1, without considering said application and condoning the delay, the impugned order has been passed, which is not only arbitrary but is also illegal. The appellate authority would get jurisdiction to decide the appeal on its merit, in case, the appeal is filed within time. In case, where the appeal is

filed beyond stipulated period, unless the delay in filing is condoned by accepting the cause shown, the appellate authority would not get the jurisdiction to decide the appeal on merit. In the instant case, the application made vide annexure-J1, has neither been considered nor the delay in filing the said appeal has been condoned by first respondent i.e., earlier to passing of the impugned order or atleast, simultaneously while passing of the impugned order.

4. That apart, the impugned order is not a speaking order. The first respondent, in paras 1 to 6 of the order has narrated proceedings and having extracted the pleadings of the parties, without recording any finding on the rival contentions, has abruptly concluded as follows:

5. There is not only non-application of mind and non-consideration of the matter but also perverse approach to the statutory appeal filed seeking relief. Appellate authority is duty bound to consider the rival contentions and upon perusal of the record of the case before the original authority should pass orders in accordance with law.

6. In the instant case, contention of the parties as having been noticed in the form of extraction after para-6 (English portion), has neither been appreciated nor any finding has been recorded. The entire approach of respondent-1 to the appeal is illegal. Hence, the impugned order cannot be sustained.

In the result, writ petition is allowed and the impugned order, as at annexure-K, is quashed. Since the case has not been decided in accordance with law by respondent-1, the matter is remitted to the respondent-1, for consideration and decision afresh, by keeping in view the observations made supra and in accordance with law.

Petitioner and respondent-3 are directed to appear before respondent-1, on 31.01.2015, and receive further orders.

Appeal No. 31/2012 (ED. 228 SOH. 2012) shall be taken up for fresh consideration and decided in accordance with law, with expedition and within two months from the of first appearance of the parties.

All other contentions of both parties are left open.

Consequently, I.A. 1/2014 filed by respondent-3 does not survive for consideration.