
(2014) 09 BOM CK 0125
In the Bombay High Court
Case No : Writ Petition No. 975 of 2013

Ware"s Educational Trust	Vs	APPELLANT
Subhash Bhagwan Khedkar		RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Section 5
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 9(1), 9(1)(b), 9(2)

Citation : (2015) 2 ALLMR 91 : (2014) 6 BomCR 447 : (2015) 2 MhLj 870

Hon'ble Judges : G.S. Kulkarni, J

Bench : Single Bench

Advocate : Sureshkumar Panicker, Advocate for the Appellant; Dushyant Pagare and A.D. Kango, AGP, Advocate for the Respondent

Final Decision : Dismissed

Judgement

G.S. Kulkarni, J.—Rule returnable forthwith. Respondents waive service. By consent of the learned Counsel for the parties and at their request taken up for final hearing.

2. By this petition under Article 227 of the Constitution of India, the Petitioners challenge an order dated 21.12.2012 passed by the learned Presiding Officer, School Tribunal, Mumbai (for short "the Tribunal"). By the impugned order, the Tribunal has allowed the application preferred by Respondent No. 1 for condonation of delay of three years and eight months in filing an appeal u/s 9(1) of the Maharashtra Employees of Private Schools (conditions of service) Regulation Act, 1977, against the oral termination dated 2.4.2007.

3. The Petitioner no.1 is a Trust conducting the Petitioner no.2 High School, a Marathi Medium Secondary School. Respondent no.1 was appointed as an Assistant Teacher in the Petitioner no.2 school. It is the case of Respondent no.1 in the delay condonation application that on 2.4.2007 he was orally informed

through a peon of the Petitioners that he was terminated from the services of the Petitioner no.2 School. That on 3.4.2007 when Respondent no.1 went to attend the duties, he was restrained by Mr. Anil Ware son of Tulshiram Ware, the President of the Petitioner no.1, from doing so on the ground that he was terminated from service. It was the case of Respondent no.1 that Mr. Anil Ware had threatened him of police power as also was beaten up with the help of some persons and threatened of dire consequences. Respondent no.1 somehow escaped and rushed to Dindoshi Police Station to lodge a complaint against Mr. Anil Ware and others, however, the police officers refused to lodge a complaint as they had a departmental connection with Mr. Anil Ware and his Father Mr. Tulshiram Ware who was a retired Assistant Police Inspector from Mumbai Police Department. It was the case of the Respondent no.1 that he has no alternative but to leave the city of Mumbai and return to his native place at Ahmednagar. Respondent no.1 had averred that his father was not keeping well and therefore, he had not informed his father about the termination and the incident that had taken place, but informed that he was on summer vacation. However, on the insistence of the members of the family in October, 2007 he narrated the incident. The Respondent no.1's father who was not keeping well was required to be hospitalised for a period of two and half months between October, 2007 to December, 2007 for the ailment of hypertension and chest pain, due to shock suffered by him. The Respondent no.1 stated that he was financially weak and got his father discharged from the hospital but he was advised by the Doctor to visit the hospital on regular basis for necessary check ups. The medical papers pertaining to his father's treatment were placed on record of the Tribunal. The Respondent no.1 stated that he being the only male member was required to do all work outside the house, to take his father to the hospital and to look after all household affairs and therefore, could not leave Ahmednagar to come to Mumbai and take steps to file appeal against the oral termination. As his father was bed-ridden and helpless and as there was nobody to look after the farming work, he was required to look after the cultivation which was the only source of livelihood for himself and his parents. It was his case that after the crops were out, he decided to approach some Advocate to take legal advice. In the month of October, 2008 he was required to hospitalise his mother for fracture of spine and multiple osteoporosis for one month and thereafter, she was also required to visit hospital regularly for traction treatment for fracture of spine. The medical papers were placed on record before the Tribunal. It was his case that he had spent all his savings and earnings on the treatment of his parents and did not have sufficient money to fulfill family's basic needs and other necessities. For this reason and to avoid litigation somehow in April-May, 2009 he visited Mr. Kapil Patil, Member of the Legislative Council (MLC), requesting him to resolve the issue of his termination. The MLC assured him to take up the issue with the Petitioners and seek his reinstatement in the Petitioner no.2 - school. The Respondent no.1 believed the MLC and therefore, being hopeful did not apply for any other job. However, despite repeated inquiries with the office of the MLC, it emerged that the assurances of the MLC were of no consequence. Therefore in

January, 2010 Respondent no.1 decided to approach an Advocate so as to adopt legal proceedings. Accordingly, he visited the office of some Advocates, however, he was not in a financial position to afford their legal fees and hence, lost hope of a reinstatement. He was frustrated as he was not having any source of income. Further his wife became unwell on account of critical pregnancy and that there were chances of danger to the infant and hence, this time he was required to look after his wife personally and take intense care of his wife and baby in her womb, and therefore, could not take further steps in regard to his illegal termination. The medical papers of his wife's illness were placed on record. The child born to the Respondent no.1 was diagnosed with "bronchopneumonia" and was required to be hospitalised. The medical papers pertaining to his wife were also placed on record before the Tribunal. It is his case that after coming out of this traumatic situation, he contacted an Advocate in January, 2011 and filed an appeal in the month of January, 2011, alongwith the delay condonation application on 22.2.2011.

4. The Petitioners appeared before the School Tribunal and denied the contents of the delay condonation application. It was the Petitioner's case that Respondent no.1 had failed to show sufficient cause in seeking condonation of delay to file the appeal. The Petitioners also disputed the contents of the doctor's certificates issued to the father of Respondent no.1 to say that he was not hospitalised and that the medical papers do not show hospitalisation but only show treatment for the period from October, 2007 to December, 2007. The Petitioners also denied the certificates of medical treatment in respect of the treatment of Respondent no.1's mother and his wife. The Petitioners' case is that the entire story as pleaded in the delay condonation application is false and concocted and that no sufficient cause was shown by Respondent no.1 after alleged date of termination i.e. 2.4.2007 till 22.2.2011.

5. The learned Presiding Officer of the School Tribunal after taking into consideration the facts as placed on record of the delay condonation application, observed that the ailments of the father, mother and wife and child were substantiated by the medical papers on record and on account of these compelling circumstances, Respondent no.1 was prevented from approaching the Tribunal. It is observed that not only on account of these reasons but also on account of financial difficulties, the Respondent no.1 tried to resolve the issue by approaching the MLC and only when the assurances of the MLC became fruitless, he contacted an Advocate so as to approach the Tribunal. The learned Presiding Officer has accepted the reasons as set out by the Respondent no.1 to hold the same as sufficient cause to condone the delay and by the impugned order has condoned the delay in preferring the appeal.

6. On behalf of the Petitioners, it is submitted that the learned Presiding Officer is in error in allowing the delay condonation application. It is submitted that the delay has not been specifically explained and that it can be very well seen that for certain period there is no explanation. It is submitted that apart from the

explanation which is given in respect of the various ailments of Respondent no.1's father, mother, wife and son, as also the time consumed by Respondent no.1 in approaching the MLC, Respondent no.1 ought to have explained the delay with appropriate accuracy and explanation ought to have been given for the entire period, and on failure of Respondent no.1. Learned Counsel for the Petitioners submitted that for certain period there was no explanation forthcoming from Respondent no.1 and hence, the Tribunal ought not to have condoned the delay. In support of his submissions, the learned Counsel for the Petitioners have relied upon the following decisions:- (i) Bipin H. Doshi Vs. Jawaharlal Prajapati and others, ; (ii) P.K. Ramachandran Vs. State of Kerala and Another, ; (iii) Prabhavati Bhaurao Bhivgade Vs. New Grand Education Society and Others, ; (iv) 1999(4) All MR 57, (Mahavira Trading Company & Ors. Vs. Smt. Nayan N.Teli & Ors.); (v) Mathuradas Mohota College of Science Vs. R.T. Borkar and Others, ; (vi) Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, ; (vii) Lanka Venkateswarlu (D) by L.Rs. Vs. State of A.P. and Others, .

7. On behalf of Respondent no.1, it is contended that the learned Presiding Officer of the School Tribunal has rightly appreciated the facts placed on record and on being satisfied that Respondent no.1 had shown sufficient cause as supported by documents, the learned Presiding Officer on appropriate examination of the facts has condoned the delay. It is submitted that the contentions as raised on behalf of the Petitioners in opposing the delay condonation application and the allegations as made by the Petitioners were not substantiated. It is submitted that the reasons as placed on record on behalf of Respondent no.1 were bonafide. It is submitted that the explanation urged by the Respondent no.1 did not show any malafides or any deliberate attempt on his part to delay the legal proceedings to approach the tribunal. It is submitted that the grounds which are given are reasonable, bonafide and that no contrary material is produced on record to show that the trauma and the sufferings as caused to the Respondent no.1 because of ill health was false. In support of his submissions, the learned Counsel for Respondent no.1 has relied on the decisions of this Court in the case of (i) Ashok Maheshkar Vs. Gangadhar Phadnavis and Others, ; (ii) Smt. Vasanati Narayan Naik and Others Vs. Shri Guru Shirodkar Alias Guru Martins and Others,

8. Having considering the rival submissions of the parties what is required to be seen is whether the Respondent no.1 had approached the School Tribunal with sufficient cause so as to seek the relief of condonation of delay in approaching the Tribunal to prefer an appeal against the termination of his service on 2.4.2007. Section 9(2) of the Maharashtra Employees of Private Schools (conditions of service) Regulation Act, 1977 prescribes that an employee shall file an appeal within a period of 30 days from the date of the receipt by him an order of dismissal, removal, or otherwise termination of service or reduction in service. In a recent judgment of the Supreme Court in the case of S. Ganesharaju (D) Thr. L.Rs. and Another Vs. Narasamma (D) Thr. L.Rs. and Others, the Supreme

Court in dealing with an issue of condoning delay as falling u/s 5 of the Limitation Act has held that section 5 of the Limitation Act is required to be given a liberal construction so as to advance substantial justice. Unless there are malafides in not approaching the Court during the period of limitation as a normal rule delay ought to be condoned. The Supreme Court has observed as follows:-

12. "The expression "sufficient cause" as appearing in Section 5 of the Limitation Act, 1963 has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show malafides in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned. The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by.

13. The rules of limitation are not meant to destroy or foreclose the right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

14. We are aware of the fact that refusal to condone delay would result in foreclosing the suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. Since sufficient cause has not been defined thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. In the instant case, we find that the appellants have shown sufficient cause seeking condonation of delay and the same has been explained satisfactorily."

9. In another decision of the Supreme Court in the case of Basawaraj and Others Vs. The Spl. Land Acquisition Officer, while explaining what would be meant by the word "sufficient cause" the Supreme Court has made the following observations in considering the case of delay of more than five years.

9. "Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground

to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any sufficient cause from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See: Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, ; Mata Din Vs. A. Narayanan, ; Parimal Vs. Veena @ Bharti, ; and Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai, In Arjun Singh Vs. Mohindra Kumar and Others, this Court explained the difference between a good cause and a sufficient cause and observed that every sufficient cause is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of sufficient cause."

10. The principles of law laid down by the Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, as appearing in paragraph 3 of its judgment are required to be considered in considering an application for condonation of delay. The Supreme Court has observed as under:-

"3. The legislature has conferred the power to condone delay by enacting section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

- (1) Ordinarily a litigant does not stand to benefit by lodging an appeal late;
- (2) Refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that cause would be decided on merits after hearing the parties.
- (3) "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hours delay, every seconds delay ? The doctrine must be applied in a rational common sense in pragmatic manner.
- (4) When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non deliberate delay.
- (5) There was no presumption that delay is occasioned deliberately, or on

account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay in fact he runs a serious risk.

(6) It must be grasp that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

11. In the light of the aforesaid well settled position in law, it is clear that the expression "sufficient cause" as appearing in Section 5 of the Limitation Act is required to be a given liberal construction so as to advance substantial justice. Unless a party contesting the condonation of delay application is able to show malafides on the part of the party approaching the Court in seeking condonation of delay, it is held that as a normal rule, the delay should be condoned. The Court is under an obligation to exercise discretion judiciously and hence, the test of bonafides of the applicant is required to be applied.

12. The reliance placed on behalf of the Petitioners on various decision may not assist the Petitioners inasmuch as in each of these decisions the Court in the peculiar facts of the case before it has adopted the reasoning as given in the respective decisions. The principal reliance on behalf of the Petitioners is on the decision of the Supreme Court in the case of Londhe Prakash Bhagwan Vs. Dattatraya Eknath Mane and Others, This case was arising from an order of supersession. In the facts of the said case, the Respondent no.1 had approached the school tribunal after a period of 9 years and 11 months to challenge the appointment of the appellant as a Headmaster of the school. An application for condonation of delay was filed before the school tribunal which was dismissed by the school tribunal. The school tribunal had recorded a finding that Respondent no.1 had in fact voluntarily resigned from the post of In-charge Headmaster in 9.8.1995. The resignation was duly accepted by the management and thereafter, after following due procedure the post of headmaster was filled up on 14.8.1996. It was observed by the Tribunal that Respondent no.1 who had alleged supersession was himself a party to a meeting of the managing committee which approved the appointment of the appellant whose appointed was challenged by Respondent no.1. Further more the appellant was working since then and this fact was known to Respondent no.1. Admittedly, Respondent no.1 had not applied before the appropriate authority for appropriate remedy save and except he filed a representation and hence, taking into consideration these facts the School Tribunal has refused to condone the delay and dismissed the appeal. The High Court in entertaining the challenge against that order had initially rejected the writ petition and had held that the order of the school tribunal in rejecting the delay condonation application was correct. However, the Respondent no.1 (petitioner therein) had filed a review petition and in the review petition the High Court had allowed the writ petition while holding that the provisions of the Limitation Act do not apply to the appeal filed u/s 9(1)(b) of the MEPS Act. It is in this context it was held that the delay of 9 years and 11 months was nothing but an inordinate delay to pursue a remedy by a person who had not submitted

any cogent reason and in such cases the Court should not condone the delay. The facts of this decision in no manner can be made applicable for the instant case. In the present case there is no material to show that Respondent no.1 had accepted the termination. The reliance of the Petitioners on this decision of the Supreme Court is of no avail.

13. In adverting to the settled principle of law as laid down by the Supreme Court in the decisions of " S.Ganeshraju (Dead) through Lrs and another vs. Narasamma (Dead) through Lrs and ors." (supra), "Londhe Prakash Bhagwan Vs. Dattatraya Eknath Mane & Ors."(supra) and "Collector, Land Acquisition, Anantnag and Anr. Vs. Mst.Katiji and Ors." (supra), and on examining the facts of the present case, it is clear that there are no malafides on the part of Respondent no.1 in approaching the School Tribunal. Further the explanation of Respondent no.1 requiring to attend to the medical needs of his aged parents, the ill health of his wife and son also cannot be said to be lacking bonafides. It also cannot be forgotten that the Petitioners have not brought any contrary material on record to show that all these reasons as also the documents as presented by the Respondent no.1 to show the ill health and the medical treatments, were false. The fact that Respondent no.1 was required to look after the agriculture which was the only source of livelihood as his father was unable to undertake cultivation on account of his ill health cannot be said to be a false ground in the absence of any contrary material. The Respondent no.1 also tried to avoid litigation and approached Mr. Kapil Patil, who was a MLC to explore the possibility of the issue being resolved. However, the same did not fetch any result and at last overcoming his financial difficulties he approached the Advocate and presented the appeal alongwith the delay condonation application. All these reasons cannot by any stretch of imagination can be said to be malafide or a gross negligence on the part of the Respondent no.1 in approaching the School Tribunal so as to prevent the Respondent no.1 from asserting his legal rights against the termination of his service.

14. A perusal of the impugned judgment clearly shows that the Tribunal has appropriately taken into consideration the facts as placed on record by the parties in recording a finding of fact that the delay condonation application as preferred by the Respondent no.1 deserves to be allowed.

15. It is a settled principle of law that the jurisdiction of this Court under Articles 226 and 227 of the Constitution to issue a writ of certiorari in considering a challenge to the decision by a Tribunal is limited. This jurisdiction is not in the nature of an appellate power so as to enable this Court to substitute its own view on the appreciation of evidence. In this context it is necessary to refer to the observations of the Constitution Bench of the Supreme Court in the case of Syed Yakoob Vs. K.S. Radhakrishnan and Others, . Speaking for the Court Gajendragadkar, J. observed as under:-

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and

the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals, these are the cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued wherein exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, ; *Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others*, and *Kaushalya Devi and Others Vs. Bachittar Singh and Others*,

(emphasis supplied)

16. In the light of the aforesaid observations, I do not find that there is any perversity or illegality in the findings as recorded by the Tribunal so as to call for interference of this Court in its jurisdiction under Article 226 and 227 of the Constitution of India. Writ petition is devoid of merits and is accordingly rejected. Parties to bear their own costs.

At this stage, learned counsel for the petitioners prays for continuation of the ad interim reliefs granted by an order dated 12.2.2013 for a period of eight weeks. Learned counsel for the respondent no.1 has opposed this prayer. As the ad interim relief was operating for quite some time, the same is continued for a

period of six weeks.