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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 444 OF 2010

Shaikh Safiullah Abdul Jabbar ... Petitioner

v/s

Halvapool Muslim Welfare
Association & ors. ... Respondents

Ms.Ushaji Peri i/by Gayatri Singh/Mihir Desai for the
petitioner.

Mr.A.G.Kothari for respondent Nos.1 and 2.

Mr.P.I.Khemani, A.G.P. for respondent Nos.3 and 5.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 30TH SEPTEMBER, 2010

P.C.:

1. Rule. Rule made returnable forthwith by consent of all parties.

2. The petition has been filed against the order of the School Tribunal dated 29.10.2009. By this order, the School Tribunal has refused to condone the delay in filing the appeal. Undisputedly, the petitioner had filed an appeal

before the School Tribunal being Appeal No.MUM/16 of 2007 in March, 2007, contending that he had been “otherwise terminated from service”. While the appeal was pending, departmental proceedings which had been commenced against the petitioner were concluded. However, the petitioner was not permitted to participate in the proceedings as he had refused to do so, earlier. The services of the petitioner were then terminated by way of dismissal on 13.12.2008. According to the petitioner he received a copy of the letter only on 5.1.2009. At that point of time, his earlier appeal was pending before the School Tribunal. It was decided on 29.1.2009. The School Tribunal held that the employer-employee relationship between the petitioner and the institution continued to exist when the appeal was filed and, therefore, the appeal was not maintainable.

3. After the dismissal of that appeal, the petitioner preferred the present appeal along with the application for condoning the delay. The petitioner contended that there was a delay of 16 days in preferring the appeal. It was pleaded that the delay had occurred because he was advised by his advocate to await the decision of the School Tribunal in Appeal No.16 of 2007. It was only after that appeal was decided on 29.1.2009 that the petitioner sought to prefer the

present appeal.

4. The School Tribunal has dismissed the application for condoning the delay and consequently the appeal. The Tribunal has found that there was no satisfactory explanation furnished by the petitioner for delay in preferring the appeal. It has found that the delay was of 39 days' and not 16 days' as contended by the petitioner. The Tribunal was of the view that since the services of the workman were terminated on 13.12.2008, the appeal ought to have been filed by 12.1.2009. Not having being filed, the Tribunal concluded that the delay was of 39 days.

5. In my opinion, the Tribunal was not right in dismissing the application. The fact that the petitioner had preferred an earlier appeal contending that his services were otherwise terminated is not disputed by the management. The decision in the appeal was available to the petitioner only on 29.1.2009 when the Tribunal held that the appeal had been filed for reinstatement and consequential benefits of his service, although the relationship between the petitioner and the respondent existed. It is, therefore, quite natural that the petitioner has filed the present appeal only thereafter. The appeal has been filed on 21.2.2009. Assuming the

petitioner is right in contending that he was served with a copy of the order on 5.1.2009, there is still a delay in filing the appeal. However, that delay has been satisfactorily explained by the petitioner by showing sufficient cause.

6. Mr.Kothari for the respondent has relied on the judgment of the Division Bench of this Court in **Mathuradas Mohta College of Science, Nagpur v/s R.T.Borkar & ors., reported in 1997 (2) Mah.L.J. 168**, wherein this Court has held that sufficient cause must be shown by the appellant for not preferring the appeal within the prescribed time limit, even though the rule of procedure must be liberally construed. Similarly, in the case of **Mahavira Trading Company & ors. v/s. Smt.Nayan N. Teli & ors., reported in 1994 (4) All.M.R. 57**, a learned Single Judge of this Court has held that where the appeal is not filed within the prescribed time limit, it is necessary for the appellant to give good reason for not filing the appeal within the prescribed time limit as also the delay in filing the appeal. The appellant must show the circumstances which prevented him from filing the appeal within the prescribed time limit.

7. In the case of **N. Balkrishnan v/s M. Krishnamurthy, reported in (1998) 7 SCC 123**, the Supreme Court has

observed that the length of delay in filing a proceeding is of no matter. The acceptability of the reason or explanation for the delay is the only criteria. The Apex Court observed thus -

“11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending, uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest *reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.”

8. In my view, considering the aforesaid judgments and the submissions of the learned counsel for both parties, the petitioner has made out a sufficient cause for approaching the Court beyond the period of limitation. The technicalities of law are not meant to destroy the rights of parties, especially when it cannot be said that the petitioner has resorted to dilatory tactics.

9. In these circumstances, the impugned order of the School Tribunal is quashed. The delay in filing the appeal before the School Tribunal is condoned. The petition is allowed.

10. Rule made absolute. No order as to costs.

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