

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7001 OF 2019

(Arising out of SLP(C)No.10955 of 2019)

BALKRISHNA WAMAN ZAMBARE

Appellant(s)

VERSUS

SIDDHESHWAR SHIKSHAN SANSTHA, DONGARSONI & ORS.

Respondent(s)

J U D G M E N T

R. BANUMATHI, J.:

Leave granted.

(2) This appeal arises out of judgment and order of the High Court of Judicature at Bombay in Writ Petition NO.14384 of 2018 dated 04.03.2019 in and by which the High Court has set aside the order of the School Tribunal and declining to condone the delay in filing the petition before the School Tribunal.

(3) Brief facts are that the appellant was appointed in the respondent no.1 school as a laboratory attendant on a vacant permanent post vide appointment letter dated 06.10.1998. The appellant's appointment as a laboratory attendant was approved by the Education Officer by Order dated 06.03.1999. According to the appellant, subsequently on 26.09.2011 the appellant was also promoted to the post of junior clerk by respondent no.1 school. Appellant's promotion as a junior clerk was also approved by the Education Officer by an Order dated 15.10.2012.

(4) According to the appellant, there was dispute between two groups of trustees of respondent No.1-Institution. As the appellant was promoted by the previous body of trustees, the

subsequently appointed new body which came to power on 22.11.2013, did not allow him to work and sign the school attendance register w.e.f. 30.11.2013 which amounts to oral termination. The appellant made various representations to various authorities expressing his grievance and vide letter dated 12.02.2014, the Education Officer directed Respondent No.1-Institution to allow the appellant to join his duties; but despite this order, the respondent-Institution did not allow him to join.

(5) As per the order of the High Court in Writ Petition No.5758 of 2013 dated 14.01.2015, the Education Officer vide order dated 23.02.2015 granted approval for the promotion of the appellant to the post of junior clerk. Since the Education Officer has granted approval for the promotion of the appellant as junior clerk, the appellant has withdrawn the Writ Petition No.5758 of 2013.

(6) The respondent-Institution filed Writ Petition No.4470 of 2015 challenging the order dated 23.02.2015 passed by the Education Officer granting approval for the promotion of the appellant. Thereafter, the appellant requested the respondent-Institution by various representations to permit him to work as Laboratory Attendant but despite the same, the appellant was not allowed to work. By the order dated 02.05.2016, the High Court has set aside the approval granted by the Education Officer on 23.02.2015. Thereafter, the appellant had filed Appeal No.75 of 2016 challenging the oral termination dated 30.11.2013 of the post of Laboratory Attendant before the

Presiding Officer, School Tribunal, Kolhapur along with Civil Misc. Application No.20 of 2016 praying for condonation of delay in filing the same. During the pendency of the said appeal, the respondent-Institution vide order dated 13.12.2016 has terminated the service of the appellant from the post of Laboratory Attendant. Being aggrieved by the termination order dated 13.12.2016, on 05.01.2017 the appellant has preferred Appeal No.01 of 2017 before the School Tribunal, Kolhapur.

(7) As pointed out earlier, the appellant filed Civil Misc. Application No.20 of 2016 for condonation of delay of two years, ten months and fourteen days in challenging the order of oral termination dated 30.11.2013. The School Tribunal vide order dated 06.11.2017 condoned the delay by holding that the delay has been satisfactorily explained by the appellant. The Tribunal further held that the appellant was in repeated correspondence with the respondent-Institution between 31.11.2013 and 04.11.2016 regarding his case and all correspondence have been filed on record and thus during the period of delay, the appellant was never negligent at all and hence, the delay in filing the appeal is to be condoned. The Tribunal has thus allowed the application for condonation of delay subject to the payment of costs of Rs.1,000/- to the respondent-Institution.

(8) Being aggrieved by condoning the delay, the first respondent-Management preferred the writ petition before the High Court. The High Court by the impugned order dated 04.03.2019 has set aside the order of the Tribunal and allowed

the writ petition. Consequently, the appeal filed by the appellant before the School Tribunal came to be dismissed. Being aggrieved the appellant is before this Court.

(9) We have heard Mr. Sachin Patil, learned counsel appearing for the appellant. Mr. Abhay Anil Anturkar, learned counsel appearing for the respondent-Management and Mr. Nishant R. Katneshwarkar, learned counsel appearing for the respondent-State and also perused the impugned judgment and the materials on record.

(10) By the Order dated 13.12.2016 the service of the appellant was terminated with retrospective effect from 30.11.2013. Case of the appellant is that there were two groups in the Management of the respondent school and because of the differences between the two groups, his service came to be terminated. The appellant relies upon the order of the District Education Officer dated 06.03.1999 in and by which the District Education Officer has approved the appointment of the appellant as a lab attendant. The appellant also relies upon the order of the District Education Officer dated 15.10.2012 in and by which the District Education Officer has approved the promotion of the appellant as a junior clerk. As rightly pointed out by the Tribunal, the appellant was in repeated correspondence with respondent-Institution between 31.11.2013 and 04.11.2016 and he has filed the correspondence on record.

(11) Considering the submissions of Mr. Sachin Patil, learned counsel appearing for the appellant, and also facts and circumstances of the case, in our view the delay in filing the

appeal before the School Tribunal has to be condoned to enable the appellant to challenge the order of termination dated 01.12.2016 and also the oral order of termination dated 30.11.2013. Such an opportunity is to be granted to the appellant as his appointment as lab attendant and also his promotion as junior clerk were duly approved by the District Education Officer. In view of the approval granted by the District Education Officer both for lab attendant and as junior clerk, the appellant must be given an opportunity to challenge the order of termination by the respondent-Institution or otherwise the appellant will be subjected to great hardship.

(12) In the result, the impugned order of the High Court is set aside and this appeal is allowed.

(13) Consequently, Appeal NO(s).75/2016 and 1/2017 pending before the School Tribunal shall stand restored to the file of the School Tribunal which shall afford sufficient opportunity to both the parties and proceed with the appeals and dispose of the same in accordance with law expeditiously preferably within a period of six months from the date of receipt of copy of this Order. All contentions raised by the parties are left open to be raised before the School Tribunal.

.....J.  
(R. BANUMATHI)

.....J.  
(A.S. BOPANNA)

NEW DELHI,  
SEPTEMBER 4, 2019.