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(2010) 02 BOM CK 0118

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 2635 of 2009

Sudhakar Chandorikar	APPELLANT
Vs	
Sonamata Shikshan Sanstha, The Head Master, Sonamata Vidyalaya (Secondary) and The Education Officer (Secondary), Zilla Parishad	RESPONDENT

Date of Decision: Feb. 23, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 - Section 9
- Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 - Rule 40

Citation: (2010) 6 BomCR 494 : (2010) 126 FLR 595

Hon'ble Judges: Shrihari P. Davare, J

Bench: Single Bench

Advocate: S.B. Gastgar, for the Appellant; S.A. Kulkarni, for the Respondent

Final Decision: Dismissed

Judgement

Shrihari P. Davare, J.
Rule. Rule is made returnable forthwith. By consent of learned Counsel for the parties, the matter is taken up for final hearing at the stage of admission.

2. By the present Petition filed by the petitioner herein under Articles 226 and 227 of the Constitution of India, the petitioner prayed for appropriate writ to set aside the order dated 14.11.2008 passed by the learned Presiding Officer, School Tribunal, Aurangabad in Appeal No. 4/2007 on delay condonation petition, requesting to condone the delay of 53

days caused to prefer appeal No. 4/2007 and to direct the School Tribunal to hear and decide the appeal in accordance with provisions of law.

3. According to the petitioner, he possesses the qualification of B.Sc. B.P.Ed. and he was appointed on the post of Physical Instructor/Teacher with the respondent Nos. 1 and 2 School on 12.06.1995. His appointment was approved by the Education Officer, Zilla Parishad, Aurangabad vide letter dated 14/18.12.1999 Exhibit P-1 (Page No. 24). However, it is the contention of the petitioner that his services were terminated orally w.e.f. 06.11.2006, hence he filed the complaint before the Competent Authority in that respect on 21.12.2006 Exhibit P-3 (Page 26). However, since the competent authority did not take any positive action, the petitioner approached to the learned School Tribunal, Aurangabad by filing appeal u/s 9 of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 on 29th January, 2007 i.e. after delay of 53 days. Accordingly it is the contention of the petitioner that since there was delay of 53 days in filing the said appeal, he preferred application for condonation of delay of 53 days along with the said appeal.

4. The respondent No. 2 appeared in the matter and filed his say and opposed the application.

5. Considering the rival contentions, the learned Presiding Officer, School Tribunal, Aurangabad dismissed the said application for condonation of delay preferred by the petitioner herein, vide order passed on 14.11.2008.

6. Being aggrieved and dissatisfied by the said order, the petitioner has filed the present Petition requesting to quash and set aside the order dated 14.11.2008 and also praying for condonation of delay of 53 days caused in filing appeal No. 4/2007 and to direct the School Tribunal to hear and decide the appeal in accordance with law.

7. The learned Counsel for respondent Nos. 1 and 2 opposed the present Petition vehemently and submitted that the petitioner herein was not terminated orally as alleged on 06.11.2006 but infact he has submitted his resignation voluntarily on his own accord on 09.09.2002 (page No. 48) and thereafter he was not in service with respondent Nos. 1 and 2. Therefore, the learned Counsel for respondent Nos. 1 and 2 submitted that there is not only delay of 53 days, but there is delay of more than four years in filing appeal No. 4/2007. It is further submitted that the said delay was rightly not condoned by the learned Presiding Officer, School Tribunal, Aurangabad and accordingly, the learned Counsel for respondent Nos. 1 and 2 supported the impugned order dated 14.11.2008 passed by the learned Presiding Officer, School Tribunal, Aurangabad and submitted that the reasons adopted by the learned Presiding Officer, School Tribunal, Aurangabad while dismissing the said application for condonation of delay can not be faulted with.

8. In the said context, the learned Counsel for the petitioner canvased that the advertisement was given by respondent Nos. 1 and 2 on 20th December, 2002 in daily

Sakal for filling in the posts of English teacher having qualification of B.A. B.Ed., the copy of the said advertisement is produced at page No. 49 and submitted that the said advertisement does not pertain to the appointment to the post of Physical Instructor/Teacher allegedly fallen vacant after alleged resignation of the petitioner herein on 09.09.2002. Therefore, he submitted that it can not be construed that the petitioner allegedly gave the resignation on 09.09.2002 and it also can not be construed that his post was fallen vacant. It cannot be therefore construed that the said post is filled in by giving advertisement in "daily Sakal" dated 20.12.2002.

9. The learned Counsel for the petitioner also relied upon the Government Resolution, dated 3rd July, 2002 produced at page No. 56, issued by the Government of Maharashtra, which gives necessary directions to the Schools taking grant-in-aid. The learned Counsel for the petitioner further canvased that the alleged resignation of the petitioner dated 09.09.2002 is not in accordance with law more particularly as per Rule 40 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and the said resignation was not forwarded to the Education Officer, Zilla Parishad and even the same was not approved by the Education Officer, Zilla Parishad, Aurangabad and therefore, the said resignation was not acted upon and hence, subsequent period of limitation i.e. alleged delay can not be computed from the date of said resignation i.e. 09.09.2002.

10. To counter the abovesaid arguments, the learned Counsel for respondent Nos. 1 and 2 invited my attention to the aspect that at the request of petitioner herein concerned Muster Roll from September, 2002 to March, 2007 was called before the learned Presiding Officer, School Tribunal while deciding the application for delay condonation preferred by the petitioner and same was perused and the signature of the petitioner was not found on the said Muster Roll from September, 2002 till March, 2007, which clearly indicates that the petitioner herein resigned voluntarily in September, 2002 i.e. on 09.09.2002 and did not attend the services of respondent Nos. 1 and 2 since then, and therefore, his signature was not found on the Muster Roll and since the said proposal was prior to the date of resignation i.e. 09.09.2002, it can not be of any assistance to the case of the petitioner herein.

11. I have perused the contents of the Petition and Annexures filed therewith. The learned Counsel for respondent Nos. 1 and 2 submitted that the reply filed by respondent Nos. 1 and 2 before the learned School Tribunal at Page No. 42 be considered as reply to the present petition also and I have perused the same as well as considered the submissions advanced by both the learned Counsel for the respective parties and I am inclined to accept the submission advanced by the learned Counsel for respondent Nos. 1 and 2, since it is apparently clear that the petitioner herein has resigned voluntarily on his own accord from the services of respondent Nos. 1 and 2 by submitting his resignation on 09.09.2002 (page No. 48) and thereafter his signatures were not found on the Muster Roll i.e. from September, 2002 till March, 2007 as observed by the learned Presiding Officer, School Tribunal, Aurangabad in the impugned order dated 14.11.2008

in para No. 7 thereof, which itself reflects that the petitioner was not in service of respondent Nos. 1 and 2 from 09.09.2002 and therefore, it is necessary to compute the period of delay from 09.09.2002 and not from alleged oral termination dated 06.11.2006 as contended by the petitioner herein, quantifying the alleged period of delay as 53 days, and hence, it is further apparently clear that the delay in filing the appeal on 29.01.2007 is about 4 years and not 53 days as rightly observed by the learned Presiding Officer, School Tribunal, Aurangabad in para No. 15 of the impugned order.

12. Moreover, clinching issue in question is whether the reasoning adopted by the learned Presiding Officer, School Tribunal, Aurangabad while passing the impugned order dated 14.11.2008 is perverse, arbitrary and erroneous. However, considering the reasoning adopted by the learned Presiding Officer, School Tribunal while dismissing the application for delay condonation preferred by the petitioner, in the order dated 14.11.2008, it appears that the said reasoning is based on the necessary concerned documents and sound footing and therefore same can not be faulted with and further same can not be construed as perverse and erroneous and no interference therein is warranted under extra ordinary jurisdiction in the present Writ Petition.

13. In the circumstances, the present petition bears no substance and same is devoid of any merits and deserves to be dismissed. In the result, the petition is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Rule stands discharged accordingly.