Londhe Prakash Bhagwan vs Dattatraya Eknath Mane And Ors on 10 September, 2013

Equivalent citations: AIRONLINE 2013 SC 362, 2013 (10) SCC 627, (2013) 11 SCALE 383, (2013) 139 FACLR 301, (2013) 4 ESC 569, (2013) 4 SCT 530, (2013) 6 ALLMR 425, 2013 (7) ADJ 12 NOC, (2014) 1 BOM CR 312, (2014) 1 PAT LJR 49, (2014) 1 SERVLR 611, (2014) 2 MAH LJ 520

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Bench: Pinaki Chandra Ghose, K.S. Radhakrishnan

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7921 OF 2013
(Arising out of Special Leave Petition [C] No.2991/2011)

Londhe Prakash Bhagwan … Appellant

Vs.

Dattatraya Eknath Mane & Ors. … Respondents

J U D G M E N T

PINAKI CHANDRA GHOSE, J.

1. Leave granted.

2. This appeal is directed against the order dated July 1, 2010 passed by the High Court of Judicature at Bombay whereby the High Court remanded the matter to the School Tribunal directing it to register the appeal and hear the same in accordance with law. The High Court felt that if an appeal is preferred against an order of supersession before the School Tribunal under Section 9(1)(b) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act (hereinafter referred to as 'the MEPS Act'), the provisions of limitation do not apply to such appeals and accordingly remanded the matter before the School Tribunal.

3. The appellant being aggrieved by the said order has preferred this appeal.

4. The facts of the case are as follows :

4.1. On August 16, 1996 the appellant was appointed as the Headmaster of Shri Chatrapati Shivaji Vidhyalaya run by Jijamata Shikshan Prasarak Mandal. Then respondent No.1 was acting as the in-charge Headmaster of the said School. The appointment of the appellant was approved in a meeting held on August 14, 1996 and the respondent No.1 presided over the said meeting. On August 21,1996 such appointment of the appellant was duly approved by the Education Officer, after following due procedure. It appears from the facts that on July 11, 2007, respondent No.1, after a delay of 9 years and 11 months, filed an application for condonation of delay before the School Tribunal (being Misc. Appeal No. 78/2006) challenging the appointment of the appellant. By an order dated 14th March, 2007, the said application was dismissed by the School Tribunal. It is recorded in the said order that respondent No.1 claiming himself to be the senior most teacher in the School, having been appointed as an Assistant Teacher in the year 1991 and the Management has denied his claim to the said post of Headmaster.

4.2. The School Tribunal, after hearing the parties, found that respondent No.1 herein on August 9, 1995 voluntarily resigned from the post of the In-charge Headmaster of the said School. Such resignation was duly accepted by the Management. It also noticed that the Management thereafter applied before the Deputy Director of Education and sought permission to appoint a Headmaster after publication of an advertisement in accordance with the MEPS Rules. Such permission was granted to the Management. After following the due procedure, the post of Headmaster was filled up by the Management on August 14, 1996.

4.3. The School Tribunal duly considered the matter on merits and noticed that respondent No.1 himself presided over the meeting of the Managing Committee and approved the appointment of the present appellant as Headmaster of the said School. Admittedly, the appellant was working since then and the said fact was known to the respondent No.1. Admittedly, he did not apply before the appropriate authority for appropriate remedy, save and except he filed representations addressed to R/M. In these circumstances, the School Tribunal refused to condone the delay and dismissed the application.

5. Being aggrieved, a writ petition was filed by respondent No.1 before the High Court and the High Court remanded the matter to the School Tribunal, holding that the provisions of limitation do not apply to appeals filed under Section 9(1)(b) of the said Act. It is to be noted that respondent No. 1 filed writ petition before the High Court and on August 2, 2007, the High Court was pleased to dismiss the same, observing that the Presiding Officer was right in rejecting the application for condonation of delay of about 10 years in preferring the application. Subsequently, it further appears

that in 2009, respondent No.1 filed a review petition before the High Court when the High Court was pleased to recall the order dated August 2, 2007 and restored the same on the file and thereafter on July 1, 2010, it allowed the writ petition.

6. In these circumstances, the only question that arises is, whether an application can be filed by an aggrieved party even long after 10 years. It is necessary for us to quote Section 9 of the said Act for our consideration, which is set out hereunder :

"9. Right of appeal to Tribunal to employees of a private school.

1) Notwithstanding anything contained in any law or contract for the time being in force, [any employee in a private school,-

a) Who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management; or

b) Who is superseded by the Management while making an appointment to any post by promotion, and who is aggrieved, shall have a right to appeal and may appeal against any such order or supersession to the Tribunal constituted under section 8:] Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July, 1976.

2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal otherwise termination of service or reduction in rank, as the case may be.

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

4) Every appeal shall be accompanied by a fee of [Five hundred] rupees, which shall not be refunded and shall be credited to the Consolidated Fund of the State."

7. We have noticed from the language of the said Section that the right of appeal is given to an employee of a private school who is aggrieved by an order of the Management in respect of dismissal, removal, termination, reduction in rank or supersession. In all these cases, the aggrieved person shall have a right to approach the Tribunal. Now, the sole question which falls for our consideration is : when an aggrieved person can apply before the Court, if no limitation is prescribed

in the statute for filing an appeal before the appropriate forum. We have duly considered the said question. Even if we assume that no limitation is prescribed in any statute to file an application before the court in that case, can an aggrieved person come before the court at his sweet will at any point of time ? The answer must be in the negative. If no time-limit has been prescribed in a statute to apply before the appropriate forum, in that case, he has to come before the court within a reasonable time. This Court on a number of occasions, while dealing with the matter of similar nature held that where even no limitation has been prescribed, the petition must be filed within a reasonable time. In our considered opinion, the period of 9 years and 11 months, is nothing but an inordinate delay to pursue the remedy of a person and without submitting any cogent reason therefor. The court has no power to condone the same in such case. (See: Cicily Kallarackal v. Vehicle Factory [2012 (8) SCC 524], State of Orissa v. Mamata Mohanty [2011 (3) SCC 436] and K.R. Mudgal v. R.P. Singh [1986 (4) SCC 531]. In these cases, it has been held that the application should be rejected on the ground of inordinate delay. Furthermore, it is to be noted that appointment of the appellant was within the knowledge of respondent No.1 from day one but he did not take any steps for such a long time.

8. In these circumstances, we find it is difficult for us to uphold the decision of the High Court. We are sure that the said question of inordinate delay missed out from the mind of the court at the time of sending back the matter before the Tribunal. Accordingly, we set aside the order passed by the High Court, allow the appeal and affirm the order of the Tribunal.

..……J.
(K.S. Radhakrishnan)

New Delhi;
September 10, 2013.

……..J.
(Pinaki Chandra Ghose)
