

MHSS270000042024 	<u>Appeal No. 03/2024</u> Abdul Shahid Abdul Bashir -Vs- Shri Sanjay Kisanrao Nimkarde and others
---	---

ORDER PASSED BELOW EXH. - 44

(Passed on 07.11.2025)

1] Perused the application (Exh. 44), reply (Exh.49) of the respondent No. 1, reply (written on last page of Exh. 44) of the respondent No. 2 and reply (Exh. 47) of the respondent No. 5. Perused the documents filed on record on behalf of both parties.

2] The admitted factual position which revealed from the pleadings and documents on record are the dispute between the parties with respect to promotion on the post of Head Master of Madhyamik Adiwasi Ashram School, Adgaon(Bk.), Taluka and District-Akola. The said school is run by respondent management namely Priyadarshini Rural Tribal Upliftment Foundation, Navegaon, Akola. The date of initial appointment of the appellant as an Assistant Teacher is 21.06.1999 while that of the respondent No. 1 is 01.07.2000. As per seniority list the appellant is senior than the respondent No.1. One R.G. Shegokar was senior to the appellant and the respondent No.1. He was Head Master of the school. But his services was terminated w.e.f. 20.03.2018. Said terminated Head

Master Shri R.G. Shegokar filed Appeal No. 19/2018 before this School Tribunal and thereby challenged his termination. After his termination the post of Head Master become vacant. The appellant had executed two documents, one is relinquishment of his claim to the post of Head Master and “no objection” for the appointment of the respondent No.1 on the post of Head Master on stamp-paper. The respondent management passed resolution dated 16.08.2018 to appoint the respondent No. 1 as a Head Master. Accordingly, appointment order 17.03.2018 came to be issued by which the respondent No. 1 is appointed as Head Master w.e.f. 20.03.2018. Proposal to grant approval to the appointment of the respondent No. 1 as Head Master was sent to the respondent No. 3 and 4 (competent authorities) but the said authorities initially failed to pass any order on the proposal. In the mean time the School Tribunal decided the appeal filed by the terminated Head Master- R.G. Shegokar. The School Tribunal vide its judgment dated 09.11.2020 set aside the termination of said Head Master R.G. Shegokar but he was reduced in rank to the post of Assistant Teacher w.e.f. 20.03.2018. There was no dispute in the management till the death of President- Jagannath Dhone who died on 27.10.2020. Dispute has started in the management after his death. The one faction of the management is respondent No. 2 wherein one Atharv s/o Jagannath Dhone is claiming as a President of the society while the other faction of the management is respondent No. 5 wherein one Ashalata wd/o Jagannath Dhone @ Dr. Ashalata M.V.P. Raman is claiming as a President of the society. As the proposal to grant approval to the appointment of the respondent No.1 was not decided by the

competent authorities the respondent No. 1 preferred Writ Petition No. 311/2023 before the Hon'ble Bombay High Court, Nagpur Bench. The appellant had also filed Writ Petition No. 2615/2023 to issue direction to the respondent No. 3 and 4 (competent authorities) to grant approval to the proposal dated 29.11.2022 submitted by the respondent No. 2 management and to grant approval to the appointment of the appellant on the post of Head Master. The Hon'ble High Court decided both writ petitions i.e., W.P. No. 311/2023 and W.P. No. 2615/2023 on 14.02.2024. The W.P. No. 2615/2023 filed by the appellant is dismissed on the ground that the appellant possesses remedy before a School Tribunal. In W.P. No. 311/2023 the Hon'ble High Court directed the respondent No. 3 and 4 (competent authorities) to consider the proposal of the respondent No.1 within 4 weeks in accordance with law. Accordingly, the respondent No. 3 vide its order dated 02.04.2024 granted temporary approval to the appointment of the respondent No. 1 which is subject to order passed in the present appeal. The respondent No. 3 granted pay and allowances to the respondent No. 1 as of Assistant Teacher and his pay and allowances as Head Master will be decided by the respondent No.3 after the decision of present appeal.

3] In the backdrop of above mentioned admitted fact the rival contention of the appellant is that the respondent management obtained his forcible consent /no-objection letter. Hence the appellant is claiming to set aside the promotion granted to the respondent No. 1 and to grant promotion to him as Head Master. The respondent No.2 management has supported the claim of the

appellant. Per contra, it is the stand of the respondent No. 1 that the respondent management had offered the post of Head Master to the appellant but he refused the same due to his personal reason. Therefore, the respondent management had offered the post of Head Master to the respondent No. 1 who accepted the said offer. According to the respondent No. 1, the appellant voluntarily relinquished his claim on the post of Head Master and accordingly executed the documents to that effects. The respondent No. 1 further submitted that the claim of the appellant is time barred and no proper explanation is given for causing the delay. The respondent No. 5 management has supported the stand of the respondent No. 1.

4] By filing the present application (Exh. 44) the appellant submitted that he has not approached before School Tribunal against his supersession because the appeal of terminated Head Master R.G. Shegokar was pending before School Tribunal and he was waited for the decision on appeal filed by R.G. Shegokar, the respondent No. 3 and 4 had also failed to took decision on the proposal of the respondent No. 1 as Head Master and the respondent No. 1 did not get salary for the post of Head Master though he was shown to be promoted by the management. The appellant further submitted that he has not filed the appeal immediately because he waited for the decisions of the Hon'ble High Court in W.P. No. 311/2023 and W.P. No.2615/2023. The appellant claimed that cause of action remained continue till decisions passed in W.P. No. 311/2023 and W.P. No.2615/2023 which came to be decided on 14.02.2024. According to the appellant, cause of action to file the present appeal occurred

after decisions of above said the writ petitions and the appellant filed the present appeal within two days after the decisions of above said writ petitions. According to the appellant, the present appeal is within limitation. But considering the date of promotion of the respondent No. 1 the delay of 5 years, 10 months is occurred which is mechanical in nature. The appellant further submitted that there is no legal provisions about time limit to challenge the order of supersession. But to avoid any technical error the appellant has filed this application (Exh.44) and prayed to condone the delay caused in filing the present appeal. The respondent No.2 management has no objection to condone the delay.

5] The respondent No.1 opposed the present application of condonation of delay on the ground that the same is filed after the completion of final argument before this Tribunal. The respondent No. 1 submitted that the appellant is failed to file the condonation of delay application at the time of filing of the present appeal. The respondent No. 1 further submitted that there is a delay of more than 5 years, no any explanation for causing delay is mentioned in the present application. In the absence of reasonable explanation for the huge delay, the present application is liable to be rejected. The respondent No. 5 management opposed the application on the ground that the time limit to file the present appeal was 30 days from the date of order of supersession of the appellant and there is huge delay of 5 years and 10 months which is not duly explained by the appellant. Hence, the respondent No. 5 also submitted to reject the application.

6] On the basis of arguments advanced by learned counsels on behalf of rival parties and on going through their contentions the following points arose for my determination and I have given my findings with reasons as under :-

Sr.	Points for determination	Findings
1.	Is there any limitation prescribed in the MEPS Act to challenge a supersession ?	 In the negative.
2.	What is the reasonable period to challenge the order of supersession ?	the reasonable period to challenge a supersession is 3 to 4 years.
3.	Whether it is mandatory to prefer the application for condonation of delay before the registration of appeal? Whether such application of condonation of delay can be filed in the proceeding of the pending appeal? Can the appellant file the present application after conclusion of final argument?	 It is not mandatory to prefer application for condonation of delay before the registration of appeal memo. Such application of condonation of delay can be filed during the pendency of the appeal and such application can be filed even after conclusion of final arguments.
4.	Whether the delay is caused in filing the present appeal ?	 In the affirmative. The delay of 9 months and 14 days is caused.
5.	If the delay is caused then, whether reasonable explained is tendered by the appellant to cause the delay ?	 In the affirmative.
6.	Whether the appellant is entitled to get the delay condoned ?	 In the affirmative
7.	What order ?	 As per final order.

: REASONS :

As to point No. 1 :-

7] During the argument, learned counsel Shri Kothale for the appellant and learned counsel Shri M.A. Deshpande for the respondent No. 2 submitted that there is no any limitation prescribed in the MEPS Act to challenge the order of supersession. Per contra, learned counsel Shri P. H. Deshmukh for the respondent No. 1 and learned counsel Shri Umale for the respondent No. 5 submitted that the appeal to get relief against supersession is required to file within a period of 30 days as per Section 9(2) of the MEPS Act.

8] Section 9 of the MEPS Act is read as under :-

9. Right of appeal to Tribunal to employees of private schools.- (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 of 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.

9] On going through the provision of Section 9(2) of the MEPS Act it is transpired that the period of limitation of 30 days is applicable to file appeal against order of dismissal, removal, otherwise termination of service or reduction in rank. Order of supersession is not mention in sub-section(2) of Section 9. The Section 9 of the MEPS Act is silent to prescribe the period of limitation to challenge the order of supersession. The Hon'ble Bombay High Court in the case of **Secretary, Shiorai Education Society -Vs- Presiding Officer, School Tribunal and others**, reported in 2000(2) Mh.L.J. 752 observed as under : -

Though there is no limitation prescribed under the statue for filing appeal to the Tribunal in case of supersession by the management while making appointment to any post by promotion, general doctrine

of delay and laches would apply in this regard. It is the general rule that when the limitation is not prescribed for filing appeal and revision, the aggrieved person is required to prefer the same within reasonable time.

10] Thus, in the case of Secretary, Shiorai Education Society (cited supra) the Hon'ble High Court held that there is no limitation under the statute for filing appeal to the School Tribunal in case of supersession by the management while making appointment to any post by promotion. Considering this legal position set forth by the Hon'ble High Court I hold that there is no any time limit prescribed in the MEPS Act to challenge a supersession. The contentions of learned counsel Shri P. R. Deshmukh for the respondent No. 1 and learned counsel Shri R. P. Umale for the respondent No.5 that the time limit to file an appeal before the a School Tribunal to challenge supersession is 30 days is appears to be wrong. Accordingly, I have answered the point No. 1 in the negative.

As to point No. 2 :-

11] There is no period of limitation to file appeal before School Tribunal to challenge a supersession of any employee. As observed by the Hon'ble High Court in the case of Secretary, Shiorai Education Society (cited supra) it is the general rule that when the limitation is not prescribed for filing appeal and revision, the aggrieved person is required to prefer the same within reasonable time. Now the question arose here is what shall be the reasonable

period to prefer the appeal under Section 9(1)(b) of the MEPS Act before School Tribunal to challenge the order of supersession.

12] In B.S. Bajwa and another -Vs – State of Punjab and another, 1998(2) SCC 523 the seniority list was challenged after about 12 years and the Hon'ble Apex Court concluded that any interference in the seniority list, after such long period, would affect the prospects of several employees in service. In Malcom Lawrence Cecil D'Souza -vs- Union of India and other, AIR 1975 SC 1269 the seniority list prepared in the year 1956 was challenged in 1971, after 15 years, and the Hon'ble Apex Court concluded that though security of service cannot be used as a shield against administrative action for lapses on the part of public servant, it is difficult to guarantee such a security in all its varied aspects. It should at least be possible to ensure the matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years, without objecting that a party has slept over its rights. Any interference would cause administrative complications and difficulties and in order to ensure smoothness and efficiency of service that such matters should be given a quietus after a long period. In Ramchandra Shankar Deodhar-vs- State of Maharashtra, 1974(1) SCC 317 the Hon'ble Apex Court held that any claim for seniority at a belated stage should be rejected in as much as it seeks to disturb the vested rights of other persons regarding seniority rank and the promotion which have accrued to them during the intervening period.

13] A challenge to a seniority list and to the action of supersession are interconnected with each other. The ratios laid down in above case laws lead me to infer that period of limitation to challenge the order of supersession should not be huge and should be reasonable so that it would not affect the prospect of several employee in service and it would not caused any administrative complications. In the case of Ambadas Dattatraya Goad -vs- Smt. Shashikala Arun Chaudhari and others, 2020 MEC 110 : 2019 (6) Bom C.R. 178 the appellant/petitioner challenged the seniority list in the third year. The Hon'ble Bombay High Court, Aurangabad Bench held that challenging a seniority list after 3 to 4 years can not be term as being an inordinate delay. It also cannot construed that such a delay would be fatal to the cause put forth by the appellant/petitioner. The Hon'ble High Court held that the challenge posed by the appellant/petitioner, after three years to the seniority list, cannot be said to be a belated challenge.

14] The issue of seniority list and supersession are interconnected with each other. From the ratio laid down in the case of Ambadas Dattatraya Goad (cited supra) it can be inferred that challenging a supersession after 3-4 years cannot be termed as being an inordinate delay and cannot be said to be a belated challenge. Therefore, the question that what shall be the reasonable period to challenge the order of supersession can be answered as the reasonable period to challenge a supersession and to file appeal under Section 9 (2)(b) is 3 to 4 years. However, in the light of judgments B.S. Bajwa (cited supra) and Malcom Lawrence Cecil

D'Souza (cited supra) during such period of 3 to 4 years prospects of other several employees in service should not be affected and there should not be any administrative complications. Accordingly, I have answered the point No. 2 that the reasonable period to challenge a supersession is 3 to 4 years.

As to point No. 3 :-

15] In the present matter, on 18.07.2025 learned counsel Shri V. A. Kothale for the appellant argued his side and the matter was posted on 30.07.2025 for argument of the respondents' side. On 30.07.2025 learned counsel Shri M.A. Deshpand for the respondent No. 2 filed his written notes of argument at Exh. 40. On 05.08.2025 learned counsel Shri P. R. Deshmukh for the respondent No. 1 filed his written notes of argument at Exh. 43 and learned counsel Shri R.P. Umale filed his written notes of argument at Exh. 42. Thus, the stage of arguments of rival parties was concluded on 05.08.2025. On 05.08.2025 the learned counsels for the respondent No. 1 and 5 also did their partial oral arguments and on their oral request I had posted this matter for their further oral arguments on 12.08.2025. However, on 12.08.2025 the appellant filed the present application (Exh. 44) to condone the delay. Thus, it is transpired that the present application is moved when the appellant concluded his oral argument and the respondents filed their written notes of argument on record. In the backdrop of such circumstances the learned counsel Shri P. R. Deshmukh for the respondent No.1 and learned counsel Shri R. P. Umale for the respondent No. 5 vehemently argued that the present application is not maintainable as the same is filed after the

conclusion of final arguments of both sides. Again, it is argued that during the pendency of the appeal the application for condonation of delay cannot be filed and it is mandatory to file the same before the registration of the appeal. In the light such argument advanced before me I have framed this point for determination.

16] In Mahadev Sarode -vs- Jotiba Dhyan Upasak Shikshan Sanstha and others, (2004) 3 Mh.L.J. 1078 the Hon'ble Bombay High Court Nagpur Bench held that it is necessary for School Tribunal to point out to an appellant that in his view the appeal was beyond limitation and give an opportunity to make application for condonation of delay. With reference to sub-section (2) and sub-section(3) of Section 9 of the MEPS Act, the Hon'ble High Court held at para 10 and 11 as under : -

10. It can thus be seen that the aforesaid provision do not prescribe for rejection of memorandum of appeal in the case where the appeal is not accompanied by the application for condoning the delay. On the contrary, it can be seen from the sub-section (3) of Section 9 that the power is given to the Tribunal and that the Tribunal may entertain an appeal made to it after the expiry of period of 30 or 60 days, as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period. It can thus be seen that a formal application for condonation of delay is also not necessary. The learned School Tribunal, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period may condoned the delay and entertain the appeal. I therefore, see no reason as to why the

law laid down by the Apex Court in the case of State of M.P. and another -vs – Pradeep Kumar and another, (2000) 7 SCC 372 would not be applicable to the facts of the present case. The Division Bench of this Court in the case of Anusayabai Ramchandra Lade and others -Vs- Union of India and another (cited supra) also holds that the law of limitation, which is procedural in nature, would not prevent a party from agitating its grievance, if it is found that for sufficient reason the applicant /appellant was prevented from preferring the appeal within the period.

11. I am also in agreement with the law laid down by the M.P. High Court in the case of Suresh Kumar and others – vs – Firm Kurban Hussain Taiyab Ali and others, AIR 1996 MP 151 that if the Tribunal comes to a conclusion that the appeal was not filed within limitation then it should give an opportunity to the party to make an application for condonation of delay. In the present case from the order itself, it can be seen that though the Tribunal had an earlier occasion entertained the appeal on merits, in its final order has come to a finding that the appeal or the petition was filed beyond the prescribed period of limitation. In my view, before dismissing the appeal of the petitioner on the ground of delay, the learned Tribunal ought to have given an opportunity to the appellant to make an application for condonation of delay.

17] The Hon'ble High Court in the above said case relied on the judgment of Full Bench of Gujarat High Court in the case of Municipal Corporation of Ahmadabad – Vs- Voltas Limited and others, AIR 1995 Guj 29 wherein it is held that until the delay is

condoned the Court cannot take cognizance of the merit or otherwise of, the substantive matter.

18] In Virendrakumar Ravindrapant Tatte -vs – Suvidha Bahuudeshiya Shikshan Sanstha, and others, Writ Petition No. 4117/2023, decided on 18.11.2024. This Tribunal decided Appeal No. 21/2020 vide its judgment dated 30.08.2022. The Hon'ble High Court relied on the judgment of Madhao Somaji Sorode (cited supra) remanded back the said appeal to decide the issue of condonation of delay. From this case laws it is seen that it is mandatory for the school Tribunal to decide the issue of delay before deciding the appeal on other substantive issues.

19] In the light of ratio laid down in case of Madhao Sarode (cited supra) and Virendrakumar Tatte (cited supra) I have reached to the conclusion that (i) it is not mandatory to prefer the application for condonation of delay before the registration of appeal, (ii) during the pendency of the appeal the appellant has right to file an application for condonation of delay and (ii) the appellant has right to file such application even though the both sides have concluded their final argument. Therefore, I have answered the point No. 3 accordingly.

As to point No. 4 :-

20] In the present matter order of promotion of the respondent No. 1 by which the supersession of the appellant caused is came to be issued on 17.02.2008. By the said promotion order the

respondent No. 1 got promotion on the post of Head Master w.e.f. 20.03.2018. It is not disputed that the respondent No.1 has started his work as Head Master from 20.03.2018 in the school. The appellant is also working in the same school. The appellant has very knowledge of his supersession from 20.03.2018. The present appeal against the supersession is filed in this Tribunal on 16.02.2024. Thus, from the date of supersession to date of filing of the present appeal the period of 5 years, 10 months and 27 days are lapsed.

21] At this juncture I would like to take judicial note of period of Corona Pandemic and to rely on suo motu cognizance by the Hon'ble Supreme Court of India to extend the period of limitation in all proceeding before all Courts and Tribunals from 15.03.2020 till 28.02.2022. The Hon'ble Supreme Court in Suo Motu W. P (C) No. 3/2020 directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or specific laws in respect of all judicial or quasi judicial proceedings. Therefore, in the present case while counting the period of limitation it is necessary to exclude the period from 15.03.2020 to 28.02.2022.

22] The period from 15.03.2020 to 28.02.2022 is 1 year, 11 month and 13 days. I am of considered view that from the period lapsed to file the present appeal i.e., 5 years, 10 months and 27 days it is necessary to exclude the period of 1 years, 11 month and 13 days. By excluding this period, the period lapsed to file the present appeal become the period of 4 years, 9 months and 14 days. Thus, in

the present case the period of 4 years, 9 months and 14 days is lapsed to file the present appeal. However, as per my finding on the point No. 2 the reasonable period to challenge a supersession is 3 to 4 years. Therefore, it is necessary to deduct this reasonable period of 4 years while calculating the period of delay caused to file the present appeal. By deducting the reasonable period of 4 years I found that the period of delay of 9 months and 14 days is caused to file the present appeal. Accordingly, I have answered the point No. 4 in the affirmative.

As to point No. 5 to 7 :-

23] As per finding of the point No. 4 the delay of 9 months and 14 days is caused to file the present appeal. The appellant had sought relief against his supersession before the Hon'ble Bombay High Court, Nagpur Bench by preferring Writ Petition No. 2615/2023. The appellant is failed to point out to this Tribunal as to when he had filed said writ petition in the Hon'ble High Court. However, from the official website of the Hon'ble Bombay High Court when I search the case details of the case Writ Petition No. 2615/2023 I found that the same was filed in the Hon'ble Bombay High Court, Nagpur Bench on 15.03.2023. The said writ petition is decided on 14.02.2024. It is seen from the order passed in W.P. No. 2615/2023 that the appellant had pursued the cause before the wrong forum. The respondents No. 1 and 5 are failed to show malafide of the appellant to choose wrong forum. Therefore, Section 14 of the Limitation Act can be invoked to excuse the period spent by

the appellant before the wrong forum. Therefore, in the present case the period from 15.03.2023 to 14.02.2024 i.e., the period of 10 months and 30 days is necessary to be excused. After excusing this period of wrong forum I found that no any other delay remained. Explanation about wrong forum is the sufficient explanation given by the appellant for causing delay to file the present appeal.

24] Learned counsel Shri P.R. Deshmukh for the respondent No. 1 heavily relied on the judgment of the Hon'ble Supreme Court in the case of **P. K. Ramchandran -vs – State of Kerla and another**, (1997) SCC 556. In that case delay of 565 days was caused to file the appeal and the Hon'ble Supreme Court held that no explanation much less a reasonable or satisfactory explanation was occurred by respondent State for the condonation of delay. The Hon'ble Supreme Court held that the High Court was not justified in exercising its discretion to condone the delay. The Hon'ble Supreme Court emphasized that the Court must record its satisfaction that the explanation for the delay was either reasonable or satisfactory. However, in the case in my hand I have found the reasonable excuse as per Section 14 of the Limitation Act to condone the delay. Therefore, I am of humble opinion that the case law of P. K. Ramchandran (cited supra) is not helpful to the respondent No. 1.

25] Learned counsel Shri P. R. Deshmukh for the respondent No. 1 further relied on the judgment of the Hon'ble Supreme Court in the case of Shivamma (Dead) by LRs -Vs – Karnatka Housing Board and others, Civil Appeal No. 11794/2025 decided on

12.09.2025. Learned counsel Shri P. R. Deshmukh pointed out para No. 264 of the said judgment wherein it is held that no litigant should be permitted to be so lethargic and apathetic, much less be permitted by the courts to misuse the process of law. However, in the present case I have found that by excusing the period of wrong forum, no any other delay remained. I do not found that the appellant is lethargic and apathetic to approach this Tribunal. Therefore, I am of humble opinion that the above case law is not applicable to the present case.

26] In the light of above discussion I have reached to the conclusion that the appellant has tendered sufficient explanation for causing the delay to file the present appeal. Hence, the appellant is entitled for condoning the delay. Accordingly, I have answered point No. 5 and 6 in the affirmative and in answer to point No. 7, I proceed to pass the following order.

: ORDER :

- 1) The application is allowed.
- 2) The delay caused to file the present appel is hereby condoned.

Amravati
Date :07.11.2025

(Anand Y. Borkar)
Presiding Officer,
School Tribunal, Amravati