



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10916 OF 2018

Dr. Geeta Balkrushna Nehete,
age 61 yrs, Occ. Retire,
R/o. Shree 180, Gandhi Nagar,
Zilla Peth, Jalgaon,
Tq & Dist. Jalgaon.

Petitioner

Versus

1. The State Of Maharashtra
Through It's Secretary,
Education Department,
Mantralaya, Mumbai - 32.
2. The Joint Director of Education,
Jalgaon Division, Jalgaon,
Taluka & District Jalgaon.
3. The President,
Arunodaya Dnyan Prasarak,
Mandal, Jalgaon.
Taluka and District Jalgaon.
4. The Principal,
Arunodaya Dnyan Prasarak
Mandal's Arts, Commerce and
Home Science College, Jalgaon,
Tq. & Dist. Jalgaon.
5. The Registrar,
S.N.D.T. Women's University,
1, Nathibai Thackersey Road,
Mumbai – 400 020.

Respondents

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Advocate for the Petitioner : Mr. V.P. Latange h/f Mr. P.S.
Gaikwad

AGP for Respondent 1,2 : Mr. S.K. Shirse
Advocate for Respondent nos.3,4 : Mr. G.V. Wani

Advocate for Respondent nos.5 : Mrs. Vaishali Patil-Jadhav

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**CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.**

Reserved on : 30th January , 2024

Pronounced on : 27th March, 2024.

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JUDGMENT :- (Per S.G. Chapalgaonkar, J.)

1. Rule. Rule made returnable forthwith. With consent of the parties, heard finally at admission stage.

2. The petitioner approaches this Court under Article 226 of the Constitution of India, impugning the order dated 3.2.2016 passed by the Joint Director of Education, Jalgaon Division, rejecting the proposal for condonation of break in service.

3. Petitioner contend that she was appointed as Lecturer with Respondent No.4-College through Local Selection Committee and her services were continued as under :-

Approved Full time local selection	11.06.2005 to 10.06.2006 (12 months)	Temporary through local selection
Full time local selection	03.10.2006 to 10.06.2007 (8 months)	
Approved full time local selection.	11.06.2007 to 04.11.2007 (4 months 24 days) 05.11.2007 to 10.06.2008 (7 months 6 days)	

Regular approved	24.01.2009	Regular Selection
GAP	11.06.2006 to 02.10.2006 (114 days) & 11.06.2008 to 23.01.2009 (227 days)	

4. Since, 24.1.2009, petitioner had been selected through Regular Selection Committee and she was continued in the service. Abruptly, on 31.1.2011 her services were terminated, however, as per order of the University Tribunal, culminated in compromise recorded in Writ Petition no.8434 of 2011, Management re-instated her and also condoned break in service as under :-

अ क्र	सेवेचा कालावधी			नियुक्तीचा प्रकार	सेवाखंड कालावधी		एकूण सेवाखंड कालावधी चे दिवस
१	२			३	४		५
१	पासुन	पर्यंत	एकूण	व्यवस्थाप न समितीच्या अधिकारा तील (विद्यापी ठ परिनियम ४१५ (३) नुसार नियुक्ती)	पासुन	पर्यंत	११४ दिवस
	दि.११.०६. ०५	दि.१०.०६. ०६	१ वर्ष		दि.११.०६. ०६	दि.०२.१०. ०६	
२	दि.०३.१०. ०६	दि.१०.०६. ०७	०८म. ०८.दि.		—	—	—
३	दि. ११.०६. ०७	दि.०४.११. ०७	४ म. २४ दि.		—	—	—
४	दि.०५.११.०७	दि.१०.०६. ०८	७ म. ०६ दि		दि.११.०६. ०८	२३.०१.०९	२२७ दिवस
५	२४.०१.०९	आजपर्यंत		विद्यापीठ निवड समितीद्वारे (विद्यापीठ परिनियम ४१५ (१) नुसार नियुक्ती)			

5. The proposal seeking approval to condonation of interruption in service was moved to Respondent No. 2 but he declined to grant the same on the ground that initial appointments of the petitioner were made under the University Statute 415 (3) within the powers of the Management and not through duly constituted Selection Committee of the University. Hence, interruption in service is not pardonable.

6. Mr. V.P. Latange h/f Mr. P.S. Gaikwad, learned advocate appearing for the petitioner submits that petitioner was appointed as Full Time Lecturer since 11.6.2005. Her services were duly approved by the University. Interruption in service is for the reasons beyond the control of the petitioner. The Management has condoned break in the service and the proposal was forwarded to respondent no.2, which has been erroneously rejected.

7. Mr. Shirse learned AGP appearing for respondent nos.1 and 2 relying upon the contents of the affidavit-in-reply filed on behalf of respondent nos.1 and 2 submit that temporary appointment of the petitioner through Local Selection Committee as per University Statute 123 cannot be condoned in view of Clause No.2 (b) of the Government Resolution dated 12.8.1999, which clearly stipulates that break in service of the teaching and non-teaching staff can be condoned only when their appointments are as per norms laid down by the Government/University. Since, services of the petitioner were availed on temporary basis through Local

Selection Committee, Respondent No.2 has rightly declined to grant proposal seeking condonation of break.

8. We have considered the submissions advanced on behalf of the respective parties. We have perused the record tendered into service. It is not in dispute before us that appointment of the petitioner from 11.6.2005 to 10.6.2008 was made through Local Selection Committee, however, from 24.1.2009 she has been continued on same post pursuant to her regular selection through duly constituted selection committee of the University. Therefore, the question arises for consideration is whether temporary/officiating service of the petitioner prior to her regular appointment can be considered as regular service and whether the break in officiating service of ten months can be condoned.

9. The Government Resolution dated 12.8.1999 issued by the State of Maharashtra in its department of Higher and Technical Education, extends the benefit of the pension scheme to the employees of non-government, private colleges, affiliated to the University, who are receiving grant-in-aid. Clause No.6 of the said Government Resolution states as under :-

०६. शासनाची निवृत्ती योजना लागू असलेल्या शासकीय सेवेतील कोणत्याही पदावरील केलेली सेवा झाल्यास किंवा विद्यापीठे व महाविद्यालये यातील शिक्षक/शिक्षकेत्तर कर्मचारी शासन सेवेत कोणत्याही पदावर रुजू झाल्यास त्यांची पुर्वीची सेवा मात्र महाराष्ट्र नागरी सेवा (निवृत्ती वेतन) नियम ४८ (१) मधील अटीची पूर्तता होत असेल तरच सेवेतील सेवाखंड क्षमापीत होवून पुर्वीच्या सेवेचा लाभ देण्यात येईल.

10. It is evident that the condonation of the interruption in service is permissible in terms of Rule 48 (1) of

the MCS (Pension) Rules. The Rule 48 of MCS (Pension) Rules, 1981 reads as under :-

“48. Condonation of interruption in service :-

- (1) The appointing authority may, by order, condone interruptions in the service of a Government servant;

Provided that-

- (a) the interruptions have been caused by reasons beyond the control of the Government servant;
- (b) the total service pensionary benefit in respect of which will be lost, is not less than five years duration, excluding one or two interruption, if any; and
- (c) the interruption including two or more interruptions if any, does not exceed one year.
- (2) the period of interruption condoned under sub-rule (1) shall not count as qualifying service.
- (3) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of civil service rendered by a Government servant under Government, shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.
- (4) Nothing in sub-rule (3) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike. The period of interruption referred to in sub-rule (3) shall not count as qualifying service.”

11. Rule 33 of the Pension Rules provide that services rendered under the Government, followed without interruption by confirmation, counts in full as service qualifying for pension. If the Government servant holds permanent post

substantively on the date of his retirement, his temporary or officiating service rendered under the Government shall count in full as service qualifying for pension except service on the post mentioned in Rule 57.

12. The survey of the aforesaid provisions clearly demonstrate that provision to condone interruption in the service is made for purpose for adding days to employees service and not to enhance the pension.

13. Turning back to the impugned order, it can be observed that respondent no.2 declined proposal seeking condonation of interruption in service of the petitioner only on the ground that petitioner's officiating appointment was not through duly constituted Selection Committee. The observations of respondent no.2 cannot be countenanced, firstly, for the reason that appointment of the petitioner was through the local Selection Committee, as was permissible at the relevant time since the NET/SET qualified candidates were not available in requisite number for regular selection. Secondly, the University has approved Petitioner's appointment as Full Time Lecturer on temporary basis in each of the academic year, till her appointment on regular basis. The language incorporated in the Government Resolution dated 12.8.1999 merely speaks that the appointment must be as per approved norms. The officiating appointments made through Local Selection Committee for the academic year are valid and legal. Local Selection Committee is the Competent authority for making officiating appointments, therefore, University

approved petitioner's services for officiating period during 2005 till 2008. There is no provision for selection of candidates for officiating/ temporary services through duly constituted selection committee. In that view of the matter, the impugned communication deserves to be quashed and set aside and the matter needs to be relegated back to the Respondent No.2 for fresh consideration. Hence, we proceed to pass the following order.

O R D E R

- i. Writ Petition is partly allowed.
- ii. The Impugned order dated 3.2.2016 passed by Respondent No.2 – the Joint Director of Education, Jalgaon Division, Jalgaon is hereby quashed and set aside.
- iii. The Respondent No.2 shall reconsider the proposal for condonation of interruption in service of the petitioner afresh as if her appointment is through Competent Committee, in accordance with the provisions of Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982 and policy of the Government as on the date of submission of the proposal.
- iv. Respondent No.2 shall grant an opportunity of hearing to the petitioner and communicate the decision so arrived within the period of Three (3) Months from the date of this order.

- v. Writ Petition is accordingly disposed off. Rule
is made absolute in above terms. No costs.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

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