

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8448 OF 2016

Sunita Kantaram Phulsunder
Age: 45 years, Occu: Teacher
R/at Flat No. 202, Plot No.17,
Survey No. 67/1B, Vidyanagar,
Pune - 32

.....Petitioner

Versus

1. The State of Maharashtra
2. Commissioner for Handicapped Welfare
3, Church Road, Aayuktalay,
Pune 411 001.
3. The Divisional Social Welfare Officer,
Pune Division, PMT Canteen Building,
1st floor, Behind Janaki Hall,
Swargate, Pune 411 037.
4. The District Social Welfare Officer,
Group-A, Zilla Parishad,
Moledina Road, Camp,
Pune 411001.
5. Kamayani Prashikshan & Sanshodhan Society,
Gokhale Nagar, Pune 411016.
6. Head Mistress
Kamayani Vidyamandir
Nigadi, Pradhikaran, Pune 411044.

..Respondents

.....

Mr. Abhishek T. Ingale a/w Ms. Rasika Satone, for the Petitioner.

Smt. V. R. Raje, A.G.P., for the Respondent - State.

.....

CORAM : M. S. KARNIK &
SANDESH D. PATIL, JJ.
RESERVED ON : 24th SEPTEMBER 2026
PRONOUNCED ON : 1st OCTOBER 2026

JUDGMENT (PER SANDESH D. PATIL, J.) :

1. Heard learned Counsel for the parties.
2. By the present Writ Petition, the Petitioner is seeking directions to the Respondents to fix the pay scale of the Petitioner considering her date of appointment as 1st July 1995 and calculate the arrears taking into consideration yearly increments and pay the same to the Petitioner along with consequential benefits.
3. The Petitioner is a teacher working with the Respondent Nos.5 and 6. The Petitioner claims to have been appointed as a special teacher by the Respondent No.5 in Respondent No.6 school on 1st August, 1994. It is the case of the Petitioner that she worked continuously as a special teacher from 1st August, 1994 to 30th April, 1995. However, she was given break in the service by the Respondent No.5 from 1st May, 1995 to 30th June, 1995. This break was for about

2 months. Thereafter, on 30th June, 1995 reappointment was made with effect from 1st July, 1995 and the same was approved by the Respondent No.4. Thus, the Petitioner was reappointed and worked as special teacher. Once again, there was a break in her service from 1st May, 1996 to 31st May, 1996. The Petitioner, thereafter, was reappointed on 1st June, 1996, and worked as Special Teacher from 1st June 1996 to 30th April 1997. In this manner, there was always a break given by the Respondent No.5 and the Petitioner was reappointed. Ultimately on 6th August, 1999, the Petitioner was reappointed, and since then has been continuing in her services. In January 1996, the pay scale of the Petitioner was revised from 1350-2200 to 4500-7000. The School Committee *vide* a Resolution dated 25th November, 2000 cancelled the increments of the Petitioner. The Petitioner made representation to the Respondent Nos.2 to 4 on 11th May, 2007 *interalia* seeking condonation of breaks, payment of salary, consequential benefits and arrears. The Respondent No.3 *vide* no objection order dated 29th April, 2008 granted no objection to appointment of the Petitioner as permanent teacher and break in services was held to be condoned. Further, applicable pay scale and benefit was ordered to be given to the Petitioner. The Respondent

No.4 also passed an order, thereby condoning the break in the services of the Petitioner on 17th July, 2009. Pursuant to the orders passed by the Respondent Nos.3 and 4, the Petitioner made several representations to the Respondent Nos.2 and 6. The Petitioner on 11th October, 2010 obtained an order of District Social Welfare under the RTI Act, thereby stating that the employee is entitled to the difference in the pay from the date of administrative approval. The School Committee passed a Resolution on 27th August, 2013, recording that the proceedings of 25th November, 2000 were not entered in the minutes book, and further resolved that, the alleged resolution be treated as passed on 25th November, 2000. A legal notice was sent by the Petitioner's Advocate to the Respondents thereby calling upon to comply with the orders, with chart of dues. The said legal notice dated 13th June 2014, was replied on behalf of the Respondent Nos.5 and 6, admitting the breaks, but denying increments / pay scale benefits, and contending that the condonation was only for the purpose of pension. In these premises, the Petitioner had preferred the present writ petition.

4. It is the contention of the Petitioner that once the Respondent

themselves, by the Order dated 17th July 2009, have condoned the break in services of the Petitioner and extended that condonation even to computation of pension, the same must extend to fixation of pay scale, arrears and consequential benefits. The learned Counsel for the Petitioner, Mr. Ingale, contended that the Respondents could not resile from or dilute the effect of its own unchallenged order, which has attained finality. The learned Counsel for the Petitioner, Mr. Ingale, submitted that pension is the long-term liability on the exchequer being a continuing payment computed on the basis of qualifying service and last pay drawn. Pay fixation and arrears, by contrast are the anterior and lesser benefits, arising during service itself. He submitted that there was no rational basis on which the authority could extend the larger and more burdensome benefit while intending to withhold the smaller benefit that is logically antecedent to it. He submitted that pension itself cannot be computed without reference to continuous qualifying services and correct pay fixation being made for that services. He submitted that condoning the break 'for pension' necessarily presupposes that the intervening period is treated as continuous service for all purposes, including pay fixation, since pension is itself a derivative of

continuous service coupled with the applicable pay scale. He relied upon the judgment of the Hon'ble High Court of Gujarat in ***Gopal T. Madnani v. State of Gujarat & Anr. (1984 SCC OnLine Guj 262)*** where the Court rejected the contention that continuity of service granted on condonation of break could be confined only to one limited purpose, holding that payment of salary for the break period was the natural result of condoning the break and granting continuity of services. He submitted that there was a statutory duty on the part of the Respondent to pay the prescribed pay scale to aided school teacher. He relied upon the judgment of the Hon'ble Supreme Court in ***Siyaram Education Society v. Chhaya D/o Baliram Dhawe & Ors. (2026 INSC 871)***.

5. The learned Counsel appearing for the Respondent- State has opposed the writ petition. He submitted that the break was condoned for the purpose of pension only. The learned Counsel appearing for the Management also made submissions on the similar line. The learned AGP appearing for the State Government, however, contended that the Respondent- State will consider the same issue, provided the Management submits its proposal. The learned Counsel

appearing for the Management stated that they would submit the proposal accordingly.

6. After hearing the learned Counsel appearing for the parties, and after considering the documents on record, we are of the opinion that the learned Counsel Mr.Ingale is right in submitting that, once the break in services is condoned for the purpose of pension; then as a corollary the break in services has to be considered as having condoned for fixation of pay scale, arrears and consequential benefits as well. We, therefore, direct the Respondent Nos.4 and 5 to submit a proposal in light of what has been stated in the foregoing paragraphs for the purpose of condonation of the break in services of the Petitioner, for the purpose of fixation of pay scale, arrears and consequential benefits, for the purpose of computation of pension as well.

7. Such proposal be sent to the Respondent Nos.1-3 by the Respondent Nos.5 and 6 within a period of 4 weeks from today. In the event such a proposal is made, the Respondent No.1-3 shall consider the said proposal and pass appropriate orders within a

period of 4 weeks thereafter. In light of the aforesaid directions, the Petition is disposed of.

8. All parties to act upon an authenticated copy of this Order.

(SANDESH D. PATIL, J.)

(M. S. KARNIK, J.)