

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7579 OF 2013

YOGESH VITTHALRAO SHELAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Anandsing Bayas
AGP for Respondent Nos. 1 to 4 : Mr. K. J. Ghute Patil
Advocate for Respondent No. 5 : Mr. D. K. Rajput

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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 8th JULY, 2015

PER COURT :-

1. Mr. Bayas, the learned counsel submits that the petitioner was appointed on 11.07.2005 after following due selection process. The proposal was also forwarded to the authority seeking approval to the appointment of the petitioner. Respondent No. 3 granted approval to the appointment of the petitioner initially for a period of one academic year. Thereafter, again a fresh appointment order was issued in favour of the petitioner for two academic years. A proposal was also forwarded and the same is approved by respondent No. 3, wherein it is stated that the initial date of appointment of the petitioner is recorded as 11.07.2005. 11.06.2006 is treated as break in service and the next date of appointment is mentioned as 12.06.2006. The learned counsel states that 11.06.2006 is Sunday and the same is

also condoned by the management. Moreover, even as per Rule 14 of the Maharashtra Civil Services (Pay) Rules, 1981, so also the Rules 12 and 13 of the Maharashtra Employees of Private Schools (Conditions of Service Regulation) Rules, 1981, the service of the petitioner will be deemed to be continuous one. The learned counsel relies on a judgment of the Division Bench of this Court in a case of ***Mrs. Sumangala W/o. Manoharrao Sakharkar v/s. The State of Maharashtra, reported in 2010(1)Mh.L.J. 63.*** The learned counsel submits that respondents be directed to consider the date of appointment of the petitioner as 11.07.2005.

2. We have heard Mr. Ghute Patil, the learned AGP.

3. We have considered the submissions canvassed by the learned counsel for respective parties. The factual matrix is not disputed. Initially, the petitioner was appointed on 11.07.2005 as full time Crop-Science teacher. The said appointment was up to 10.06.2006. The petitioner was again given appointment on 12.06.2006. 11.06.2006 is Sunday. The management has condoned the said break in service.

4. Even otherwise, as per Rule 14 of the Maharashtra Civil Service (Pay) Rules, 1981, more particularly Note 1, if the new

appointment is in the same station, for the purpose of computing “physical break of more than 24 hours”, Sunday and / or Gazetted Public Holidays shall be excluded. The learned Single Judge of this Court has also considered Rule 13 of the M.E.P.S. Rules. It is not disputed that the petitioner is continuously in service and the break which was given was on Sunday. An employee in performing duty, on account of institution being closed for vacation, is not an incident of break. Only because 11.06.2006 was Sunday, the appointment was given from 12.06.2006. The officiation of the petitioner will have to be considered as continuous one from the initial date of appointment i.e. 11.07.2005. Even the approval order issued by the Deputy director states the same.

5. In light of the above, the respondents shall consider the date of appointment of the petitioner as 11.07.2005 and his officiation continuous for the purpose of service and all benefits including retiral benefits.

6. Writ Petition accordingly disposed of. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

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