

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2894 OF 2014

Mahadeo Vithobaji Telange Vs. Additional Commissioner Tribal Development Nagpur & Ors.

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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

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Shri T. U. Tathod Adv for petitioner.
Shri Fulzele AGP for respondents 1 & 2.
Shri M. R. Rajgure Adv for respondents 3 & 4.

**CORAM: B. P. DHARMADHIKARI &
A.S.CHANDURKAR JJ.**

DATED: 27th JANUARY, 2015.

Heard Shri Tathod, learned counsel for the petitioner,
Shri Fulzele, learned Assistant Government Pleader for respondent
nos. 1 and 2 and Shri Rajgure, learned counsel of the respondent
nos. 3 and 4. Perused the reply affidavit filed by respondent nos. 1
and 2.

Petitioner joined service initially on 16.08.1995 and on
that strength he is continuing to work even today. Prayer is to
condone breaks in his service. Said breaks are of Summer Vacation
i.e. from 01.05.1996 to 30.06.1996, 01.05.1997 to 30.06.1997,

01.05.1998 to 30.06.1998 and 01.05.1999 to 30.06.1999. Petitioner therefore claims continuity from 16.08.1995 with salary for break period. It is not in dispute that presently he has been shown as in continuous service from 01.07.1999.

The order which denies him condonation of break in service dated 13.05.2014 mentions that in absence of any specific provision allowing such condonation, the breaks cannot be regularized.

Learned Assistant Government Pleader relies upon said order as also reply affidavit. He points out that petitioner accepted appointment orders which were only for particular period and hence he did not and does not have any appointment during the break period. He, therefore, prays for dismissal of the petition.

Shri Rajgure, learned counsel submits that issue can be looked into by respondent nos. 1 and 2 in accordance with law.

The respondents nowhere state that appointment of petitioner from 01.07.1999 was a fresh appointment and it has got no bearing with his initial entry into service from 16.08.1995. They have also not pointed out that earlier recruitment was in particular contingency with a view to fill in temporarily the permanent vacancy. Petitioner also has not placed any material on

record to appreciate this aspect.

If the work load was available the petitioner could have been given permanent appointment on 16.08.1995 itself, in that event there could not have been any break on account of Summer Vacation. The reason why such breaks are given has thus not come on record.

Absence of provisions which permit condonation of such breaks cannot be a decisive factor. If there is no such provision, it follows that the law may not permit such breaks. The reason why breaks were required to be given to petitioner therefore assumes significance.

As we find the material on record insufficient to take any view of the matter and in any case impugned order does not appreciate the law or the facts, we set aside the same. Matter is remitted back before the respondent no.1 for taking fresh decision in the light of observations made supra. If said respondent finds that the petitioner is appointed on 16.08.1995 validly and properly entered the permanent service, it is apparent that breaks given to him cannot be sustained and must be regularized.

With these observations and with direction to parties to appear before respondent no. 1 on 02.03.2015, we dispose of Writ

Petition. Respondent no.1 shall attempt to take fresh decision after ascertaining all facts within next eight weeks. Writ Petition is thus partly allowed and disposed of.

Steno copy of the order be supplied to the learned counsel for the parties.

JUDGE

JUDGE

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