

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6318 OF 2004

Dr. Kashinathrao s/o. Dadaji Dhokrat,
Aged : 74 years, Occ. Nil,
r/o. 1-4-36, Gurudatta Nagar,
Begampura, Aurangabad ..Petitioner

Vs.

1. The State of Maharashtra,
through the Secretary to the
Government of Maharashtra,
Department of Higher Education,
Mantralaya, Ford, Mumbai
2. The Director of Higher Education,
Maharashtra State,
Pune
3. The Assistant Director of Higher
Education, Aurangabad Region,
Aurangabad
4. Dr. Babasaheb Ambedkar Marathwada
University, Aurangabad,
through its Registrar ..Respondents

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Mr.S.S.Choudhari, Advocate for petitioner
Mr.A.S.Shinde, AGP for respondent nos.1 to 3
Mr.P.B.Shirsath, Advocate for respondent no.4

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**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

DATE : JUNE 21, 2017

JUDGMENT (PER SANGITRAO S. PATIL, J.) :

Heard.

2. The petitioner has sought directions against respondent nos.1 to 3 for condoning the break in service for a period of 3 years, 9 months and 18 days so as to enable him to claim pensionary benefits treating his continuous service with effect from 27.01.1951 to 30.11.1961 i.e. (for a period of 10 years, 10 months and 4 days). It is the case of the petitioner that he was constrained to resign from that post due to his domestic problems. Thereafter, he completed his post-graduation in 1963. He then applied, in response to an advertisement, to the then Marathwada University, Aurangabad, for the post of Secretary of Board of Sports. He came to be selected and appointed to that post on 20.09.1965. He retired on attaining the age of superannuation on 31.10.1990. He got pensionary benefits of his

service with effect from 21.09.1965 to 31.10.1990 (i.e. for 24 years, 11 months). The previous service of the petitioner from 27.01.1951 to 30.11.1961 was not taken into consideration.

3. He, therefore, made representations to respondent no.3 Assistant Director of Higher Education on 25.09.1998 with a request to condone his break in service for 3 years 9 months 18 days. He claimed that one B.S.Khadkekar was given the benefits of condonation of break in service of 5 years, 1 month and 28 days and he also should be given the said same benefit. Respondent no.3 rejected that application as per the order dated 13.10.1999. He then made a representation to the higher authorities of respondent no.3 for condonation of break in service, but it was of no use. Therefore, he filed the present Writ Petition.

4. The learned Counsel for the petitioner

submits that as per the Government Resolution dated 12.08.1999, break in service of the petitioner is liable to be condoned. He submits that though the similarly situated persons were given benefit of the said Government Resolution, the petitioner has been discriminated and has been refused that relief. He, therefore, submits that the respondents may be directed to condone the break in service of the petitioner.

5. The learned AGP appearing for the respondents submits that while considering the question of condonation of break in service, each individual case needs to be scrutinised in view of the conditions laid down in the Government Resolution dated 12.08.1999. He submits that the petitioner had resigned from his earlier service of teacher without any justifiable reason. There is break of more than 3 years and 9 months in his service. As such, the case of the petitioner does not fall under the conditions laid down in the

said Government Resolution. Moreover, according to him, the claim of the petitioner for condonation of break in service has been rightly rejected.

6. As per Clause 4 of the Government Resolution dated 12.08.1999, the break in service should not be continuously for more than one year and the total period of breaks (more than one) shall not be more than two years. Moreover, such break should have been caused for the reasons beyond the control of the employee. The conditions laid down in Rule 41 of the Maharashtra Civil Services (Pension) Rules, 1982, are required to be fulfilled for getting pension for the period of break in service.

7. In the present case, the petitioner resigned from his earlier service as a teacher because of his domestic problems. The reason for the resignation cannot be said to be beyond the control of the petitioner. There is absolutely no

justification given by the petitioner for his resigning from the earlier service. Thus, the case of petitioner does not fulfill the conditions laid down in the Government Resolution dated 12.08.1999. Consequently, he cannot claim parity with the other employees whose breaks in service have been condoned considering the merits of their individual cases. In view of the conditions mentioned in the said Government Resolution, the claim of the petitioner for condonation of break in service has been rightly rejected by the respondents. On merits, we do not find any reason to interfere with the decision of the respondents in rejecting the claim of the petitioner for condonation of delay.

8. There is one more hurdle in the way of the petitioner in getting any relief from this Court i.e. delay and laches. The petitioner claimed condonation of break in service with effect from 01.12.1961 to 20.11.1965 for the first

time in the year 1998, that too, after he retired from the service on attaining the age of superannuation on 31.10.1990. No reason has been assigned for this inordinate delay in seeking the relief of condonation of break in service. It is well settled that the Courts extend assistance to the vigilants and not to the dormants. In that view of the matter also, the Writ Petition is liable to be dismissed.

9. In view of the above facts and circumstances of the case, we dismiss the Writ Petition and discharge Rule accordingly. No costs.

[SANGITRAO S. PATIL, J.]

[T.V. NALAWADE, J.]