

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

WRIT PETITION NO. 3989 OF 2004

Dashrath Gangaram Gorme
Age : 43 years, occu.: service
R/o House No. 4-16-73, in
front Balaji Temple, Rohidaspora,
Aurangabad.

... PETITIONER

VERSUS

1. The Hon'ble High Court of Bombay
Through it's Registrar (Genera),
High Court (Appellate Side),
Bombay - 400 032.
2. The District and Sessions Judge,
Aurangabad.
3. Shri S.B. Gulamkar
Age : major, occ : service
R/o C/o Respondent No.2.
4. Shri V.M. Mande
Age : major, occ : service
R/o C/o Respondent No.2.
5. Shri A.B. Barwal
Age : major, occ : service
R/o C/o Respondent No.2.
6. Shri J.G. Ghorpade
Age : major, occ : service
R/o C/o Respondent No.2.
7. Smt. R.P. Bate
Age : major, occ : service
R/o C/o Respondent No.2.

... RESPONDENTS.

.....
Mr. A.S. Deshpande, Advocate for the petitioner.
Mr. C.K. Shinde, Advocate for respondent Nos.1 and 2.
Mr. A.S. Kale, holding for
Mr. S.B. Talekar, Advocate for respondent Nos.3 to 7.
.....

CORAM: R.D. DHANUKA AND
 SUNIL K. KOTWAL, JJ.

RESERVED ON : 10th August, 2017.

PRONOUNCED ON : 21st August, 2017.

JUDGMENT (PER R.D. DHANUKA, J.)

1. By this petition filed under Article 226 read with Articles 14 and 16 of the Constitution of India, the petitioner has challenged the order dated 03/03/2004, passed by the Bombay High Court on administrative side, allowing the representation made by respondents No.3 to 7 and setting aside the order dated 17/01/2002, passed by the learned District Judge.

2. Some of the relevant facts for the purpose of deciding this petition are as under :

3. On 29/12/1982, the petitioner was appointed as English Section Writer” on the establishment of the District & Sessions Judge, Aurangabad. It is the case of the petitioner that the said appointment of the petitioner was preceded by selection by the Selection Committee under the Chairmanship of the then District Judge. 22 candidates were selected for being appointed as “English Section Writer”. The name of the petitioner appeared at Sr.No.12 in order of merit. The petitioner belongs to “Chambhar” community, which is a “Scheduled Caste”.

4. On 27/09/1983, the petitioner had been to canteen

for a cup of tea along with his colleague Mr. V.V. Mande, respondent No.4, who was also appointed as "English Section Writer". The District Judge visited the Section of the petitioner and noticed the absence of the petitioner and his colleague Mr. V.V. Mande, respondent No.4 herein. By two separate orders, both dated 27/09/1983, passed by the learned District Judge, the services of the petitioner as well as respondent No.4 were terminated.

5. It is the case of the petitioner that, the petitioner as well as respondent No.4 thereafter approached the learned District Judge and tendered apology for having visited the canteen during duty hours and assured that it would not re-occur in future. It is the case of the petitioner that, respondent No.2, however, was pleased to withdraw the order of termination of the respondent No.4 only though the petitioner as well as respondent No.4 had tendered apology to the learned District Judge. It is the case of the petitioner that, in order of merit in the selection list, the petitioner being placed higher than respondent No.4 was liable to be reinstated first in point of time than respondent No.4.

6. On 15/11/1983, the petitioner was appointed to the post of Junior Clerk in leave vacancy of Shri T.E. Kulkarni in Civil Court, Senior Division, Aurangabad in the pay-scale of Rs.260-495 plus usual allowances admissible as per rules. In the

appointment order, it was, however, mentioned that the petitioner was selected candidate from the waiting list and was temporarily appointed as a Junior Clerk in the leave vacancy of Shri T.E. Kulkarni.

7. Some time in the year 1992, the petitioner obtained Degree of Law from Marathwada University. On 20/04/2000, the petitioner made a representation to the learned District & Sessions Judge for fixation of his seniority in the gradation list. In the said representation, it was alleged by the petitioner that, due to delay caused in reinstating the petitioner and due to reinstatement of respondent No.4, even though respondent No.4 was junior to the petitioner, earlier in point of time, he was shown senior to the petitioner in the seniority list. It was stated that during the span in which he was out of employment, about 10 persons who were junior to the petitioner in the select list of 1982 and 1983, had been appointed and were shown as senior to him. Names of those 10 employees were mentioned in the said representation.

8. It was stated that, due to the alleged delay caused in issuing appointment order to the petitioner after termination of his service, those employees have become senior to the petitioner though they were in fact juniors. The petitioner requested the learned District Judge to condone the break and to

treat him as in service from the date of his joining i.e. 29/12/1982 and to grant all other consequential benefits and also to revise the seniority list accordingly.

9. It is the case of the petitioner that, pursuant to the select list dated 11/08/1983, about 4 to 5 candidates came to be appointed and were shown senior to the petitioner. In para No.5 of the petition, it is stated that, almost 15 to 16 candidates were placed above the petitioner as a result of his re-appointment on 16/12/1983.

10. In view of the representation made by the petitioner on 20/04/2000, the learned District Judge sought comments of the staff members who were likely to suffer, in the event the representation of the petitioner was allowed. The learned District Judge passed an order on 5/7th September 2000 condoning the break in service of 48 days from 28/09/1983 to 14/11/1983 by treating the said break as extraordinary leave without pay. In the said order, it was mentioned that the petitioner was re-appointed on 15/11/1983. It was further directed that, consequent upon condonation of break in service, the pay of the petitioner shall be re-fixed and the petitioner be paid the amount of difference in cash by recording the said order in his service book.

11. The learned District Judge thereafter forwarded the

proposal to the Government through the High Court in the month of November 2000. It is the case of the petitioner that, the High Court thereafter accepted the representation submitted by the petitioner, dated 20/04/2000 by an order dated 20/08/2000 and granted deemed date of promotion to the petitioner to the post of Senior Clerk having regard to the fact that the break in service of the petitioner had been condoned by an order dated 5/7th September 2000. It is the case of the petitioner that, respondent No.2 thereafter promoted the petitioner to the post of Assistant Superintendent. The petitioner was also appointed as a Special Judicial Magistrate by the High Court, which was intimated to the petitioner by the learned District Judge vide order dated 20/08/2001.

12. On 02/09/2002, respondent Nos.3 to 7 filed an administrative appeal against the order of the learned District Judge, granting deemed date to the petitioner in the cadre of Senior Clerk, and requested to quash and set aside the order dated 20/08/2002, granting deemed date of promotion to the petitioner in the cadre of Senior Clerk. The said appeal filed by respondents No.3 to 7 was allowed by the High Court on the administrative side. The petitioner thereafter challenged the said order passed by the High Court on the administrative side before this Court by filing writ Petition No.5152 of 2003. By an order dated 08/12/2003, this Court directed the High Court on

administrative side to afford the petitioner as also respondent Nos.3 to 7 an opportunity of hearing and to pass a fresh order. The petitioner submitted a reply to the said administrative appeal.

13. By an order dated 03/03/2004, the Bombay High Court on the administrative side, passed an order on the said representation which was made by respondents No.3 to 7 against the order dated 20/08/2002 passed by the learned District Judge and held that, in view of the fact that the services of the petitioner were terminated, interruption caused due to such termination could not be condoned under Rule 48(4) of the Maharashtra Civil Services (Pension) Rules. It was held that, the appointment of the petitioner on 15/11/1983 was a fresh appointment since his services were already terminated w.e.f. 27/09/1983.

14. It was also held that, it was an undisputed position that, after the said re-appointment of the petitioner on 15/11/1983, seniority list was published by the learned District & Sessions Judge on number of occasions, wherein the petitioner was shown below respondent Nos.3 to 7. However, for a period of 17 years, the petitioner did not raise any objection about his seniority and suddenly filed an application for condonation of the so called break in the service and for the consequential reliefs. It

was held that, the order passed by the learned District Judge suffered from illegality and accordingly, the said order dated 17/01/2000, passed by the learned District Judge came to be set aside. The representation made by respondent Nos.3 to 7 came to be allowed. Being aggrieved by the said order dated 03/03/2004, passed by the Bombay High Court on administrative side, the petitioner filed this petition, *inter alia* praying for quashing and setting aside the said order.

15. Mr. Deshpande, learned Counsel for the petitioner invited our attention to various annexures to the Writ Petition. It is submitted that when the petitioner had gone to the Canteen, respondent No.4 was also with him. The learned District Judge, who visited the said Canteen, found the petitioner as well as respondent No.4 therein during the duty hours. He submits that the services of the petitioner as well as respondent No.4 were terminated by the learned District Judge. The petitioner as well as respondent No.4 had tendered apology to the learned District Judge. He submits that the learned District Judge, however, withdrew the order of termination of respondent No.4 only and reinstated him and did not withdraw the order of termination of the petitioner though the petitioner had also tendered apology.

16. It is submitted that since the petitioner was appointed to the post of Junior Clerk by an Office Order dated 18/11/1983 by

the learned District Judge, which was within 48 days of the order of termination, the petitioner did not challenge the earlier order of termination. He submits that there was, thus, discrimination between petitioner and respondent No.4 while accepting the apology of respondent No.4 and withdrawing the order of termination of the services of respondent No.4 and at the same time refusing to withdraw the order of termination of the services of the petitioner.

17. It is submitted by the learned Counsel for the petitioner that when the other employees were granted seniority though were junior to the petitioner, the petitioner had applied for condoning the break of 48 days and to treat the petitioner as in-service since the date of his joining i.e. from 29/12/1982, to grant all other consequential benefits and to revise the seniority list. The learned Counsel submits that when the petitioner was appointed by respondent No.2 by an Office Order dated 15/11/1983, it was clearly mentioned in the said Office Order that the petitioner was selected from the waiting list. He submits that it was, thus, clear that the break of 48 days granted to the petitioner was condoned by the District Judge. He submitted that respondent Nos.3 to 7 did not challenge the order passed by the learned District Judge condoning break of 48 days granted in favour of the petitioner.

18. It is submitted by the learned Counsel that the impugned order passed by the High Court on the administrative side holding that the appointment of the petitioner shall be treated as fresh appointment w.e.f. 15/11/1983 is contrary to the Office Order dated 15/11/1983 thereby appointing the petitioner from the waiting list. It is submitted by the learned Counsel that in the impugned order, it was mentioned that there was no record to show that the petitioner had tendered apology. He submits that at the same time respondent No.4 also had not produced any record to show that he had also tendered apology to respondent No.2.

19. The learned Counsel invited our attention to the representation (Administrative Appeal) dated 02/09/2002 filed by respondent Nos. 3 to 7 and, in particular paragraph No.4 thereof, in support of the submissions that in the said representation it was categorically averred by respondent Nos.3 to 7 that the petitioner had offered an unconditional apology and had submitted an undertaking that he would not indulge in any misconduct in future and had requested to reinstate him. The learned District Judge had accordingly taken a sympathetic view and appointed the petitioner as a Junior Clerk in leave vacancy of Shri T.E. Kulkarni in Civil Court (S.D.), Aurangabad. He submits that respondent Nos.3 to 7, who would have been aggrieved by the application filed by the petitioner for condoning break of 48

days, having admitted that the petitioner had also tendered an unconditional apology and had given an undertaking that he would not indulge in any misconduct in future and had requested to reinstate him, the High Court on administrative side could not have taken a different view holding that there was nothing on record to show that the petitioner had given an unconditional apology to the learned District Judge.

20. The learned Counsel for the petitioner submits that in the impugned order of the High Court on administrative side, Rule 48 of the Maharashtra Civil Services (Pension) Rules has been referred which was not invoked by the petitioner while making an application for condonation of break in service of 48 days. He submits that reliance thus placed by the High Court on the administrative side in the impugned order on Rule 48 could not have been placed. He submits that as on today the petitioner is not in service and thus the petitioner would be entitled to the consequential benefits arising out of the seniority of the petitioner above respondent Nos.3 to 7 in view of the order of condonation of break in service of 48 days which was rightly granted by the learned District Judge considering the facts in right perspective.

21. Mr. C.K. Shinde, learned Counsel for the High Court (administrative side) and District and Sessions Judge, on the

other hand, submits that by the said Office Order dated 29/12/1982, the petitioner was appointed as "English Section Writer" temporarily from the waiting list at Sr. No. 12 and was posted in District Court, Aurangabad. He submits that respondent No.4 was also appointed on temporary basis as "English Section Writer" from waiting list at Sr. No. 18 and was posted in the Court of Civil Judge (S.D.). He submits that the petitioner had not tendered any apology to the learned District Judge and on the contrary misbehaved with him. The learned District Judge had considered the unconditional apology given by respondent No.4 and had withdrawn an order of termination and had reinstated him. The petitioner, however, did not tender any apology for the misconduct committed by him.

22. It is submitted by the learned Counsel that on the contrary the petitioner accepted the order of termination of his service dated 27/09/1983 and did not challenge the said order at any point of time till date. He submits that the petitioner was appointed on temporary basis vide Office Order dated 15/11/1983 as a Junior Clerk in leave vacancy of Shri T.E. Kulakarni in Civil Court (S.D.), Aurangabad. He submits that the petitioner accepted the said fresh appointment to the said post without any protest. The petitioner was thereafter made permanent in the said post. The petitioner was also granted various promotions during the period between the date of his appointment and the

date of his application made to the learned District Judge on 20/04/2000 for condonation of break in service of 48 days.

23. It is submitted that the petitioner neither impugned the said termination order dated 27/09/1983 nor made any representation for about 17 years. The petitioner accepted the order of termination and acted upon the said order and thus could not have applied for condonation of break in service of 48 days or any other period. It is submitted that the learned District Judge could not have condoned the break in service of 48 days in view of the fact that the services of the petitioner were already terminated by order dated 27/09/1983. In support of this submission, the learned Counsel for respondent Nos.1 and 2 placed reliance on Rule 48 of of the Maharashtra Civil Services (Pension) Rules and more particularly Rule 48 (3) and (4).

24. In so far as the submission of the learned Counsel for the petitioner that the petitioner had not invoked Rule 48 (3) of the Maharashtra Civil Services (Pension) Rules in his application for seeking condonation of break in service of 48 days to the learned District Judge is concerned, it is submitted by the learned Counsel for respondent Nos. 1 and 2 that there was no other provision for condonation of break in service. He also invited our attention to the letter dated 26/04/2001 addressed by the Desk Officer, Law & Judiciary Department to the learned District Judge

in response to the letter addressed by the learned District Judge seeking directions from the Law & Judiciary Department, referring to Rule 48 of the Maharashtra Civil Services (Pension) Rules. He submits that since the order passed by the learned District Judge condoning the break in service of 48 days was in the teeth of Rule 48 (3) and (4) of the Maharashtra Civil Services (Pension) Rules, the High Court on the administrative side, rightly set aside the order dated 17/01/2002 passed by the learned District Judge and holding that the petitioner was re-appointed after his termination and in view of Rule 48 (4) of the Maharashtra Civil Services (Pension) Rules and thus the interruption caused by resignation, dismissal or removal could not be condoned.

25. In so far as the submission of learned Counsel of the petitioner that there was also no record to show that respondent No.4 had tendered apology is concerned, it is submitted by learned Counsel for respondent Nos.1 and 2 that the petitioner has not alleged any malice or bias against the learned District Judge in not recording the unconditional apology alleged to have been tendered by the petitioner or for withdrawing the order of termination of respondent No.4 and not that of the petitioner. He submits that the impugned order passed by the High Court on administrative side being not perverse, cannot be interfered by this Court in this petition filed under Article 226 of the Constitution of India.

26. Learned Counsel Mr. A.S. Kale for respondent Nos.3 to 7 submits that after this Court remanded the matter back to the High Court on administrative side to consider the representation made by respondent Nos. 3 to 7, his clients had made an application for seeking amendment to include the challenge to the order of the learned District Judge allowing condonation of break in service of 48 days in favour of the petitioner. He submits that the said amendment was allowed by the High Court on the administrative side and was not challenged by the petitioner.

27. It is submitted by learned Counsel for respondent Nos.3 to 7 that the petitioner did not challenge the order of termination of his services vide order dated 27/09/1983 even till today alleging any discrimination between the petitioner and respondent No.4 or on the ground that though he had also tendered apology, his services were wrongfully terminated.

28. It is submitted by the learned Counsel for the respondent Nos.3 to 7 that the petitioner had not only accepted his fresh appointment, but had also accepted the order making him permanent and granting various promotions unconditionally.

29. Mr. Deshpande, learned Counsel for the petitioner, in his re-joinder, submitted that the petitioner had not appeared before the Selection Committee when the petitioner was

appointed on 15/11/1983 to the post of Junior Clerk, which would clearly indicate that Rule 45 of the Maharashtra Civil Services (Pension) Rules was not invoked by respondent Nos.1 and 2. He submits that there is no provision in the Maharashtra Civil Services (Pension) Rules for making an application for condonation of break in service within a specified time. He submits that when the seniority of the petitioner was affected, the petitioner applied for condonation of break in service in the year 2000.

30. It is not in dispute that the petitioner was appointed as "English Section Writer" vide order dated 29/12/1982 issued by the learned District and Sessions Judge, Aurangabad on temporary basis from the waiting list at Sr. No.12. By the same order, respondent No.4 was also appointed on temporary basis as "English Section Writer" from waiting list at Sr. No.18. The petitioner and respondent No. 4 were found in the Canteen of the District Court at Aurangabad on 27/09/1983 when the learned District and Sessions Judge took a round in District Court during duty hours. By an order dated 27/09/1983 the learned District and Sessions Judge terminated the services of the petitioner as well as respondent No.4.

31. A perusal of the record indicates that the learned District Judge thereafter withdrew the order of termination in so

far as respondent No.4 is concerned, vide order dated 28/09/1983 recording that respondent No.4 had tendered apology. It is not in dispute that no such order was passed in case of the petitioner. On the contrary, the petitioner was appointed on 15/11/1983 by an Office Order issued by the learned Joint Judge and Additional Sessions Judge, Aurangabad appointing the petitioner temporarily as a Junior Clerk in leave vacancy of Shri T.E. Kulkarni in Civil Court (S.D.), Aurangabad.

32. It is not in dispute that the petitioner accepted the said temporary appointment made by the learned Joint Judge and Additional Sessions Judge, Aurangabad and took charge of the said post. The said Shri T.E. Kulkarni, Junior Clerk, Civil Court (S.D.), Aurangabad was granted commuted leave on medical ground w.e.f. 10/11/1983 to 19/12/1983, for 40 days under the provisions of the Maharashtra Civil Services (Leave) Rules of 1981. The petitioner was admittedly thereafter made permanent in the said post. The petitioner admittedly did not challenge the said order of termination of services of the petitioner vide order dated 27/09/1983 and accepted the fresh appointment.

33. Several seniority lists were prepared from time to time by respondent No.2 showing the names of respondent Nos.3 to 7 as senior to the petitioner. The petitioner did not challenge the said seniority list for 17 years and accepted the same. The

petitioner also accepted the promotions granted to the petitioner from time to time during the period of 17 years and thereafter made an application to the learned District Judge on 20/04/2000 *inter alia* requesting to condone the break in service of 48 days. Learned Counsel for the petitioner does not dispute that the petitioner did not challenge the termination at any point of time and was not only made permanent after the petitioner accepted order dated 15/11/1983 appointing him temporarily as Junior Clerk in leave vacancy of Shri T.E. Kulkarni, but was also granted promotions based on such seniority list prepared on the basis of his fresh appointment dated 15/11/1983.

34. In so far as the submission of learned Counsel for the petitioner that the appointment of the petitioner made on 15/11/1983 as a Junior Clerk was made from the waiting list is concerned, a perusal of the averments made in paragraph No.4 of the Writ Petition indicates that the petitioner has admitted that vide order dated 15/11/1983 he was appointed again, however, against leave vacancy of Shri T.E. Kulkarni. It is the case of the petitioner in the Writ Petition that since he was in dire need of service and belonging to Scheduled Caste family below the poverty line, he thought it appropriate not to agitate and was not able to conceive the fact of appointment against leave vacancy at the relevant point of time. There is, thus, no merit in the submission of learned Counsel for the petitioner that his client

was appointed from the waiting list or without following the procedure of appointment through Selection Committee or that it was a case of reinstatement of the petitioner when he was appointed on 15.11.1983.

35. A perusal of the petition further indicates that pursuant to the selected list dated 11/08/1983, 22 candidates were appointed by respondent No. 2 and were shown senior to the petitioner. Petitioner, however, never challenged the seniority list till 20/04/2000, for a period of 17 years. In our view, merely because in the order dated 15/11/1983 it was mentioned that the petitioner, was selected from the waiting list and was temporarily appointed, it would not indicate that the termination of the services of the petitioner vide order dated 27/09/1983 was withdrawn.

36. In so far as the submission of learned Counsel for the petitioner that respondent No.1 could not have referred to Rule 48 of the Maharashtra Civil Services (Pension) Rules since the same was not invoked by the petitioner in his application for condonation of break in service is concerned, Mr. Deshpande, learned Counsel for the petitioner could not dispute that only provision for condonation of break in service was under Rule 48 of the Maharashtra Civil Services (Pension) Rules. A perusal of the letter addressed by the Desk Officer from the Law & Judiciary

Department to the learned District Judge dated 16/04/2001 also clearly indicates that Rule 48 of the Maharashtra Civil Services (Pension) Rules was invoked. It is not the case of the petitioner that the said application for condonation of break in service made by the petitioner was outside the provisions applicable to the petitioner. In our view, there is thus no substance in the submission of the learned Counsel for the petitioner that the High Court on the administrative side could not have invoked Rule 48 (4) of the Maharashtra Civil Services (Pension) Rules.

37. Rule 45 of the Maharashtra Civil Services (Pension) Rules clearly provides that dismissal or removal of a Government servant from service entails forfeiture of his past services. It is thus clear that the period between the date of termination and fresh appointment could not be considered as past service. The relationship of an employer and an employee cease to exist during that period and thus question of any condonation of break in service did not arise. A perusal of Rule 48 of the Maharashtra Civil Services (Pension) Rules clearly indicates that that an interruption caused by the resignation, dismissal or removal from service cannot be automatically condoned under Rule 48 (3) nor would fall under Rule 48 (1). In our view, since the services of the petitioner were terminated by a specific order dated 27/09/1983 and the petitioner was given fresh appointment on 15/11/1983, the question of condonation of any break in service did not arise.

The petitioner had accepted the order of termination of his services and had accepted the fresh appointment.

38. A perusal of Rule 48 (4) of the Maharashtra Civil Services (Pension) Rules clearly indicates that Rule 48 (3) shall not apply to the interruption caused by resignation, dismissal, removal from the service. Since the services of the petitioner were terminated, the petitioner could not invoke Rule 48 (3) of the Maharashtra Civil Services (Pension) Rules by alleging break in service between 27/09/1983 and 15/11/1983.

39. In our view, since the provision for condonation of break in service in this case could not have been invoked by the petitioner at all, the learned District Judge could not have condoned the alleged break in service on any ground whatsoever. In our view, the High Court on the administrative side rightly considered the provisions under Rule 48 of the Maharashtra Civil Services (Pension) Rules and rightly rendered a finding that the appointment of the petitioner on 15/11/1983 being a fresh appointment after the services of the petitioner were terminated w.e.f. 27/09/1983 under Rule 48 (4) of the Maharashtra Civil Services (Pension) Rules, interruption caused by the dismissal could not be condoned. Respondent No.1, in the impugned order, has also rightly considered an admitted fact that for a period of 17 years the petitioner did not raise any objection about his

seniority and had suddenly filed a grossly belated application for condonation of so called break in service and for consequential reliefs. In our view, though no specific period is provided in the Rules for making an application for condonation of break in service, it has to be made within a reasonable period.

40. In so far as the submission of learned Counsel for the petitioner that in the representation made by respondent Nos.3 to 7 it was admitted by them that the petitioner also had tendered unconditional apology and had given an undertaking not to repeat such acts in future, respondent No.1 could not have rendered a finding that no apology was tendered by the petitioner or that if there was no record to show that petitioner had tendered an unconditional apology, there was also no record to show that respondent No.4 had tendered an apology is concerned, in our view, there is no merit in this submission of the learned Counsel for the petitioner. The petitioner did not challenge the order of termination of services of the petitioner and also the order of respondent No.2 withdrawing the order of termination of services of respondent No. 4 recording that he had tendered an unconditional apology, for more than 17 years. The petitioner, on the other hand, accepted the order of termination of his services and also his fresh appointment after gap of 48 days unconditionally, including the order of appointing him on permanent basis and thereafter granting various promotions to

him from time to time based on the date of his fresh appointment dated 15/11/1983.

41. We do not find any infirmity in the impugned order passed by the High Court on the administrative side. The High Court on the administrative side also rightly considered the admitted fact that for a period of 17 years the petitioner had not applied for condonation of break in service. The learned Counsel for the petitioner could not justify or explain gross delay of 17 years in making application for condonation of break in service. In our view, the petitioner is thus totally devoid of merit. We, therefore, pass the following order.

ORDER

1. Writ Petition No. 3989 of 2004 is dismissed.
2. Rule is discharged.
3. Interim relief granted by this Court to stand vacated.
4. There shall be no order as to cost.

(SUNIL K. KOTWAL)
JUDGE

(R.D. DHANUKA)
JUDGE

VDD/