

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO.2924 of 2011.**

Shri Rafiuddin Shahabuddin Inamdar
 Age 61 years, Occupation:Retired
 Residing at :Flat No. 5 & 6, Second Fl
 Raja Mahal Society, Sahaney Sujan Park,
 Lullanagar, Pune 411 040
 since deceased through L.Rs.

1(a) Smt. Rizwana Rafiuddin Inamdar
 Age Adult, Occupation: NIL
 Residing at :Flat No. 54,
 Raja Mahal Society, Sahaney Sujan Park,
 Lullanagar, Kondhwa, Pune. **Petitioners.**

1(b) Shri Shakir Raifuddin Inamdar
 age adult, Occupation Service,
 Residing at as above.

1(c) Sajeeda Raifuddin Inamdar
 aged adult, Occupation Nil,
 residing at as above.

Versus.

1) The State of Maharashtra
 Through: The Secretary,
 Department of Education (High School
 Mantralaya, Mumbai.

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- 2) Dy. Director of Education,
Maharashtra State, Central Building,
Pune 411 001.
- 3) Education Officer (High School)
Pune Zilla Parishad
Pune 411 001.
- 4) Head Master,
Moledina High School,
Shankar Shet Road,
Pune 411 037.

..Respondents.

Mr. V.K. More, Advocate for the Petitioner.
Mr. B.V. Samant, AGP for the State.

**CORAM : S.C. DHARMADHIKARI &
SMT.BHARATI H.DANGRE, JJ.**

RESERVED ON : 7th December, 2017.

Pronounced on : 15th December, 2017.

JUDGMENT (Per : Smt. Bharati H.Dangre,J).

1 The petitioner, a retired Assistant Teacher has invoked the jurisdiction of this Court under Article 226 of the Constitution of India seeking issuance of writ in the nature of mandamus for quashing and setting aside the impugned order dated 25th

January, 2011 passed by Deputy Director of Education, Pune Division, Pune/Respondent No.2. The petitioner has further sought direction to respondent No.1 to condone break in service of the petitioner and to process the pension and gratuity papers in respect of the case of the petitioner and solicit release of the same. During pendency of the petition, the petitioner employee expired and his legal heirs have been brought on record with the leave of this Court. The writ petition was therefore amended and it is prayed that the family of the original petitioner be held eligible for family pension and the same should be disbursed in their favour.

2 The petitioner Raifuddin Inamdar before us was initially appointed in Janata Vidyalaya, Ruichhattishi, District Ahmednagar and he served in the said school with effect from 16th November, 1978 to 3rd August, 1981. He resigned from the said service and he was appointed as Assistant Teacher in Anglo Urdu Boys High School, New Modikhana, Pune, where he served from 10th August, 1981 to 11th June, 1986. During his service in the said school there were three

breaks in service on account of termination and break of one day as a technical break. Thereafter, the petitioner was again appointed to the post of Assistant Teacher In Moledina High School Pune with effect from 12th June, 1986. He tendered his resignation on 20th December, 1999 on account of his ill health by surrendering three months pay in lieu of the period of notice. He was again appointed in Moledina High School from 1st September, 2001 after break of one year, nine months and four days. The service of the petitioner in the said school was approved by the Education Officer (Secondary) Pune vide order dated 1st April, 2002. The petitioner served in the said school till he attained the age of superannuation i.e. 30th June, 2008.

The petitioner addressed a representation to the State Government for condoning the break in his service of one year, nine months and four days and according to the petitioner it was only the State Government who was competent to condone the break in service. The Deputy Director of Education, Pune, however, took up the case of the petitioner before the State Government for condonation of breaks in service of the petitioner by addressing

communication to the Secretary, Education and Sports Department on 20th October, 2008 forwarding the said proposal to the State Government in terms of Circular dated 10th May, 1989. No action was taken on the proposal forwarded to the State Government, which constrained the petitioner to approach this Court by filing a writ petition which was numbered as W.P. No.5573 of 2010. The said writ petition came to be disposed of by this Court on 12th October, 2010 on the statement made by the learned A.G.P. that the application filed by the petitioner seeking condonation of break in his service will be decided by the State Government in accordance with law, as expeditiously as possible within a period of six weeks. However, the grievance of the petitioner is that in spite of the said commitment, no decision was taken by the State Government on the said representation but Respondent No.2/the Deputy Director of Education, Pune Division, Pune addressed a communication to the petitioner on 25th January, 2011 thereby informing the petitioner that the break in service of the petitioner being of one year and nine months and four days which is more than one year, in the light of

condition No. 1 and 4 of Government Resolution dated 12th November, 1976 and in view of the fact that break in service was after 30th September, 1974, the petitioner is not entitled for its condonation. It is this communication which is impugned in the present writ petition.

3) The learned counsel for the petitioner Shri V.K. More invited our attention to the Government Resolution of 10th May, 1989 and he also placed reliance on a judgment of Division Bench of this Court (Nagpur Bench) in Writ Petition No. 1015/1999 (Vasant Hiraji Kadu Vs. State of Maharashtra & Ors) dated 15th October, 2008. According to the learned Counsel for the petitioner, the Government Circular dated 10th May, 1989 sets out the modalities for condoning the break in service subject to certain terms and conditions and according to the learned Counsel this Circular makes a reference to the Government Resolution of 4th November, 1968 and 30th August, 1972 which stipulated certain conditions subject to which the break in service of the teaching and non-teaching staff of the Non-Government Secondary School can be condoned. He invited our

attention to clause No.3 of the said Circular by which it is stipulated that those cases which are not covered by clause (2) of the Government Circular, the said proposal should be forwarded to the State Government. According to the Advocate Shri More, the petitioner is entitled for condonation of break in service in the light of the policy of the State Government and the petitioner has been deprived of the benefit of family pension since the break in service of the employee has not been condoned and the State Government till date has not taken any decision.

4) Per contra, the learned A.G.P. Shri Samant invited our attention to the relevant portion of Government Circular dated 10th May, 1989 specifically sub-clause (i) of Clause (3). According to Shri Samant the Government Circular provides that the proposals not covered by clause No.2, be forwarded to the State Government and the powers were conferred on the Secretary of the Department to condone the break by relaxing the condition in Clause No. (vi) of Government Circular dated 4th November, 1968 and 30th August, 1972. However, the said powers were to be exercised subject to

compliance of certain conditions and he invited our attention to the foremost condition contained in sub clause (I) which mandated that the break in service of the teaching and non-teaching staff should not be subsequent to 30th September, 1974 and 31st December, 1975. Shri Samant vehemently argued that the break in service of the petitioner was more than one year and he had tendered a resignation from Moledina High School on 20th December, 1999 thereby forfeiting his entire service.

According to Shri Samant, the Government had already refused to condone the service by referring Government Resolution dated 12th November, 1976 and this decision was brought to the notice of the petitioner by communication dated 20th October, 2008.

5) We have carefully considered the arguments of learned counsel of the rival parties and with the assistance of the learned Counsel, we have perused the documents on record. We can get brief idea of the service details of the petitioners including the interruption and the period of break of which he seeks condonation by referring to the following table which we are extracting from one of the

representation of the petitioner.

Sr No.	Name of school	Period of service.	Period of break in service.	Total service in break.	Cause of break in service.
1	2	3	4	5	6
1	Janta Vidyalaya Ruichhatishi taluka District Ahmednagar	16/11/1978 to 3/8/1981	4/8/1981 to 9/8/1981	6 Days	Resignation
2	Anglo Urdu Boys High School, Pune-1	10/8/1981 to 31/5/1982	1/6/1982 to 14/6/1982	14 Days.	Due to termination of temporary service.
3	Anglo Urdu Boys High School, Pune-1	15/6/1982 to 12/6/1983	13/6/1983 to 13/6/1986	1 Day.	Due to termination of temporary service.
4	Anglo Urdu Boys High School, Pune-1	13/6/1984 to 11/6/1986	11/6/1986 to 12/6/1986 (B.N.)	00 days.	Technical break.
5	Moledina High Scoool Pune 37	12/6/1986 to 20/12/1999	21/12/1999 to 31/8/2001.	1 Year 8 months 11 days.	Resignation.
6	Moledina High Scoool Pune 37	1/9/2001 to 30/6/2008.			

6) The case of the petitioner was forwarded by the Deputy Director of Education, Pune to the Secretary, School Education and

Sports on 20th October, 2008 thereby intimating that there were six breaks in the services of the petitioner who was appointed in Janata Vidyalaya, District Ahmednagar and who retired from Moledina High School, Pune. The Deputy Director of Education, Pune made a reference to Government Circular dated 10/5/1989 which has been placed on record as Exh.G. The said Circular makes a reference to Government Resolution dated 4th November, 1968 and 30th August, 1972 and the provisions contained in the said Government Resolution stipulates six conditions to be complied before condonation of break in service namely (i) The total breaks in the service tenure should not be more than six, (ii) out of said six breaks, not more than three breaks should be on account of resignation, (iii) The total period of breaks in service should not exceed more than two years, (iv) Out of six breaks in service, no period of break in service should exceed 12 months, (v) During the period of break employee should not have rendered service elsewhere, (vi) The break in service should be of one or more approved Secondary School.

As per the said Circular dated 10/5/1989 the power to

condone the break in service is conferred on the Director of Education and puts an embargo on the powers to be exercised by any Educational Institution. However, the said Circular also provides that in case there is no compliance of any of the conditions mentioned above, such cases should be forwarded to the State Government and the powers to confer such break in service are vested in the Secretary of the Department. The power to be exercised by the Secretary was conferred vide earlier Government Resolutions dated 4th November, 1968 and 30th August, 1972 subject to the conditions which are spelt out in Paragraph 7. One of the conditions being that the break in service of the teaching and non teaching staff should not be after 30th September, 1974 and 31st December, 1975.

7) The petitioner repeatedly made representation for condonation of break in service and since one of the break in service of the petitioner was more than one year eight months and eleven days, the Deputy Director, Pune Division Pune forwarded the proposal of the petitioner requesting to condone the break in service

of the petitioner to the State Government. The inaction on the part of the respondent/State Government constrained the petitioner to approach this Court by filing the writ petition No. 5573 of 2010 which came to be disposed of by this Court on 12th October, 2010, on statement being made by the learned AGP that the representations of the petitioner dated 1st March, 2008 and 19th March, 2009 seeking condonation of break in service will be decided by the State Government within a period of six weeks from 12th October, 2010. In view of the said statement, the petitioner withdrew the writ petition filed by him. The petitioner was intimated by the Deputy Director of Education, Pune Division Pune to remain present for hearing in the office on 28th December, 2010 for compliance with the directions of this Court. The petitioner, thereafter, made repeated request to the authorities to take a decision on his grievance and ultimately it was on 25th January, 2011, the Deputy Director of Pune Division Pune issued the impugned communication intimating the petitioner that the break in service of the petitioner was after 30th September, 1974 and since there was no compliance of condition No.1 and 4 of the

Government Resolution dated 12th November, 1976 and the period of break in service being more than one year, it was not entitled to be condoned.

8) In our view, the said impugned order is not sustainable on more than one count. Firstly, it is to be noted that this Court in Writ Petition filed by the petitioner has recorded the statement of learned A.G.P. made on behalf of the Government that the decision as regards the break in service of the petitioner will be decided by the State Government and in fact the proposal of the petitioner was forwarded to the State Government by the Deputy Director, Pune Division Pune in the light of Circular dated 10th May, 1989 which authorizes the State Government to take a decision of condoning break in service since period of break was more than one year. The Respondent authorities were alive to the fact that the said decision was to be taken by the State Government but instead the Deputy Director Pune Division Pune conducted hearing in compliance of directions issued by this Court on 26th October, 2010 and passed the impugned order on 10th January, 2011. The said impugned order therefore violates the

policy of the State Government as contained in the Government Circular dated 10th May, 1989. The said order is also not sustainable further on the ground that it has refused to condone the break in service of the petitioner on the ground that the break in service is after 30th September, 1974 and in terms of the Government Resolution dated 12th November, 1976, the break in service cannot be condoned if it is after 30th September, 1974 and 30th December, 1975. Our attention was invited to order of Division Bench of this Court (Nagpur Bench) in Writ Petition No. 1015 of 1999 on 15th October, 2008 wherein somewhat an identical issue was involved and the Court (Coram :K.J.Rohee & Prasanna B.Varale,JJ) had an opportunity to deal with the conditions contained in Government Resolution dated 12th November, 1976. The Court observed as follows :

8. "Shri Mohgaonkar also invited our attention to Appendix A which is an Accompaniment of Government Resolution, Education Youth Services Department No. PEN-1076-81126(1491) XII dated 12.11.1976 which provides that breaks after 30.9.1974 in respect of teachers should not be condoned. The cut-off date prescribed by the State for condoning the break in service is wholly irrational and it results in discrimination between the employees and it has no nexus with the

object sought to be achieved by the pension scheme. Perhaps that is why by Circular No. PEN-1088/120973(582)/Sec.Edu.6 dated 10.5.1989 the Secretary of Department of Education was empowered to condone the breaks in services of teachers even after 30.9.1074”.

The Division Bench allowed the writ petition by condoning the break in service with observation that the State was not justified in refusing to condone the break in service depriving of benefits of all along the service and such decision is against public policy.

9) In the light of the aforesaid facts, the impugned order cannot be sustained and needs to be set aside and is therefore set aside. The break in service of the petitioner is to be considered by the State Government in terms of the Policy of the State Government as contained in Government Circular dated 10th May, 1989. The matter is remanded to the State Government to take a decision on the communication dated 20th October, 2008 forwarded by the Deputy Director of Education, Pune to the State Government and we direct

the State Government to take a decision within a period of six weeks from today, particularly, in view of the fact that the Family of the Petitioner is deprived of Family Pension since the entire service rendered by the petitioner has not been held entitled for pension. The break in service of the petitioner has not been condoned by the respondent authorities, in spite of rendering 30 years of service.

10) Writ petition is partly allowed. Respondent No.1 – State Government to take decision on the proposal of Deputy Director, Education, Pune dated 20th October, 2008 as regards condonation of break in service of the petitioner within a period of six weeks and communicate the same to the petitioners on record.

11) Writ petition is disposed of in terms of above order. No order as to costs.

[SMT.BHARATI H.DANGRE, J.]

[S.C. DHARMADHIKARI, J.]