

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

904 WRIT PETITION NO. 6146 OF 2016

CHANDRAKANT GOKULDAS LUNE

..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS ..RESPONDENTS

...

Mr. Samir Vinod Nigam, Advocate for the Petitioner.

Mr. K. S. Patil, AGP for Respondent-State.

...

**CORAM : S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.**

DATED : 24th NOVEMBER, 2018.

PER COURT:-

1. The petitioner assails the order dated 29.07.2009 and 06.05.2013 passed by the respondents thereby refusing to condone the break in service.

2. Mr. Nigam, learned counsel for the petitioner submits that the petitioner on or about 04.07.1967 joined Premraj Sarda College, Ahmadnagar as an Assistant Teacher. The petitioner worked in the said college upto 06.06.1971. Thereafter, from 07.06.1971 to 31.05.1977 petitioner worked in Gautam Public School, Kopergaon, Ahmadnagar. However, in September 1976 the petitioner tendered his resignation, the same was accepted in May 1977. The petitioner thereafter joined Chatrapati Shivaji High School, Miri, District Ahmadnagar on

03.07.1981 and worked in the said school upto 13.06.1982. Thereafter on 14.06.1982 petitioner joined Ashoka Public School as Supervisor. He worked in the said school upto 14.06.1983. Thereafter on or about 15.06.1983 he joined SRK Public School, Belapur, Ahmadnagar and worked there upto 10.06.1984 as a Principal. On or about 11.06.1984, the petitioner joined Pravara English Medium School, Kolhar, District Ahmadnagar as Head Master. The petitioner on or about 24.06.1987 was terminated. The petitioner approached the School Tribunal by filing an Appeal. However, during the pendency of Appeal the institution reinstated the petitioner. Thereafter was paid six months salary and was relieved. On or about 19.06.1989 petitioner joined Bhatkundgaon High School in Shevgaon Taluka, District Ahmednagar as an Assistant Teacher and worked there till his retirement viz. 28.02.1997.

3. The learned counsel submits that the petitioner had worked for more than 23 years. According to the learned counsel, the petitioner forwarded his proposal for pension, the same is not considered. The claim of the pension was denied under the letter dated 29.07.2009 on the ground that there are about 10 gaps in the service of the petitioner. The petitioner made representation, the same was rejected on 06.05.2013. The learned counsel submits that the order of termination

issued by Pravara English Medium School, Kolhar on 24.06.1987 would not come in the way of the petitioner, as the order of termination was impliedly withdrawn by the institution. The petitioner was reinstated and was paid six months salary and thereafter relieved.

4. In view of that, it cannot be said that the petitioner was terminated from service and Rule 45 of the Maharashtra Civil Services (Pension) Rules, 1982 would not apply. The respondents are empowered to condone the break in service. The petitioner has worked continuously from 19.06.1989 to 28.02.1997 on a grant-in-aid school. His earlier services deserve to be counted for the purpose of pensionary benefits. The learned counsel submits that even if, one gap is condoned, the petitioner would be entitled for pension. According to the learned counsel, the respondents have failed to exercise the jurisdiction vested in them.

5. The learned A.G.P. submits that the petitioner is not entitled for pensionary benefits nor the break in service can be condoned.

6. The petitioner has rendered his services in Premraj Sarda College, Ahmadnagar so also Chatrapati Shivaji High School, Miri, District Ahmadnagar and Pravara English Medium School, Kolhar on unaided post. The services rendered on

unaided post cannot be counted for pension purposes. It is not the case that, at the time when the petitioner retired, those post that the petitioner has worked on unaided basis are brought on grant-in-aid.

7. More over, the service rendered with Gautam Public School, Kopergaon, Ahmadnagar for a period of six years cannot be counted, as the petitioner had resigned from service. Rule 46(1) of the Maharashtra Civil Services (Pension) Rules, 1982 suggest that resignation from service or post entails forfeiture of past service. Thereafter the petitioner had joined Chatrapati Shivaji High School, Miri, District Ahmadnagar and other schools. The petitioner worked in Pravara English Medium School, Kolhar. He was terminated from service. He had filed Appeal before the School Tribunal. It appears that, the Appeal before the School Tribunal was not prosecuted, as according to the petitioner he was reinstated, was paid six months salary and relieved. There is nothing on record to suggest that after termination of service, the petitioner was continued in service. The termination, removal or dismissal from service or post also entails forfeiture of past service as per Rule 45 of the Maharashtra Civil Services (Pension) Rules, 1982.

8. Rule 48 of Maharashtra Civil Services (Pension) Rules, 1982 lays down the powers of the

Government to condone the break in service. The petitioner's case also does not come in ambit and purview of the Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982.

9. For all the aforesaid reasons, it would not be possible to accept contentions of the petitioner. The petitioner's qualifying service would be less than eight years and that would be less than the qualifying service required for grant of pension.

10. In view of that, no relief can be granted to the petitioner. Writ Petition is accordingly dismissed. No cost.

11. In view of dismissal of the writ petition, Civil Application (St.) No.36013 of 2018 also stands disposed of.

(R. G. AVACHAT)
JUDGE

(S. V. GANGAPURWALA)
JUDGE