

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

WRIT PETITION NO. 1579 OF 2004

Onkar S/o Nathu Narkhede
Age : 74 Years, Occu. : Pensioner,
R/o 144, Mohan Nagar, Jalgaon,
Since deceased through his L.Rs.

1. Sanjiv Onkar Narkhede,
Age : 57 Years, Occu. : Service,
2. Smt. Shila Onkar Narkhede,
Age : 79 Years, Occu. : Household,
3. Rajiv Onkar Narkhede,
Age : 55 Years, Occu. : Service,
4. Sushil Onkar Narkhede,
Age : 52 Years, Occu. : Service,

All R/o Flat No. 14, Building No. 1,
Seema Garden, Shivtirth Nagar,
Dist. Pune.

.. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai – 32.
2. The Director of Higher Education,
Central Building, Pune.

3. Principal,
Dhanaji Nana Mahavidyalaya,
Faizpur, Tq. Yawal,
Dist. Jalgaon.
4. Advocate General,
State of Maharashtra,
High Court Annex, Mumbai. .. Respondents

Shri Ajay G. Talhar, Advocate for the Petitioner.

Shri S. P. Sonpawale, A.G.P. for Respondent Nos. 1 and 2.

Mrs. Chaitali Kutti/Choudhari, Advocate for the Respondent No.

3.

The Respondent No. 4 is served.

**CORAM : S. V. GANGAPURWALA AND
S. M. GAVHANE, JJ.
DATE : 31ST AUGUST, 2018.**

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. The petitioner assails the order rejecting the claim for condonation of break in service of four days.

2. We have heard Mr. Talhar, the learned counsel for the petitioner and Mr. Sonpawale, the learned Assistant Government Pleader for respondents/State.

3. The contention of the learned Assistant Government Pleader is that, in view of Rule 48(1)(b) of the Maharashtra Civil Services (Pension) Rules as the break in service is less than five years, the same cannot be condoned. The learned A. G. P.

further submits that, the petitioner stood retired on attaining age of superannuation on 31.01.1991 and application for condonation of break in service was made on 23.03.2001. As per the Government Resolution, the application for condonation of break in service has to be made two years prior to retirement. The authorities have not committed any error.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. It is not disputed fact that, the petitioner was in service with the Sales Tax Department of the State of Maharashtra from 06.01.1958 to 06.06.1962. The petitioner was issued with appointment order on 07th May, 1962 by the Arts and Science College, Faijpur. The petitioner has signed the muster from 11.06.1962 with the Faijpur college and the contention is that the break in service is of four days. According to the learned counsel for the petitioner, the petitioner had joined on 07.06.1962, but as vacation existed a separate muster was not kept and on reopening after vacation since 11.06.1962 the muster has been signed. However, the petitioner joined on 07.06.1962. The certificate has been issued by the college to the effect that, the muster is not kept in vacation and that is why muster must have not been signed. That does not mean that the petitioner has not joined on 07.06.1962 with the college at Faijpur.

6. In view of that, the very premise on which the application was moved seeking condonation of break in service of four days is erroneous. There is no break in service so as to insist for condonation of break in service.

7. Considering aforesaid factual matrix, we hold that, there is no break in service and the service of the petitioner shall be counted from 07.06.1962 for all practical purposes. The impugned order as such is quashed and set aside. The respondents are directed to count the service of the petitioner continuous since initial date of appointment with the Sales Tax Department till the date of his retirement with the Faijpur college. Rule is made absolute in above terms. No costs.

Sd/-

[S. M. GAVHANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

bsb/Aug. 18

Bhalchandra
Sudhakar
Bodke

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