

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

WRIT PETITION NO. 603 OF 2018

VIJAYKUMAR GANPATRAO NIMBALKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr.A.D.Sugdare, Advocate for the petitioner
Mr.S.K.Tambe, AGP for the respondent/State

**CORAM : S.V. GANGAPURWALA &
S.M.GAVHANE, JJ.**

DATED : 05.09.2018

P.C. :-

. Learned counsel for the petitioner submits that the petitioner had filed the Original Application before the Maharashtra Administrative Tribunal, Aurangabad seeking condonation of break in service during his ad-hoc appointment as a Medical Officer before he was selected by the MPSC on regular basis.

2. It is submitted by the learned counsel for the petitioner, that the petitioner was initially appointed as a Medical Officer under order dated 12.01.1987 as bonded candidate for two years or till candidate is selected through MPSC, whichever is earlier. The applicant was thereafter selected

through MPSC under order dated 11.07.1995. The petitioner is seeking condonation of break in service for following dates 03.07.1994, 04.07.1994 and 05.07.1995 which will make him continuous from 12.01.1987. Learned counsel submits that temporary service from 12.01.1987 till 11.07.1995 can be treated as qualifying service under Rule 30 and 33 of the Maharashtra Civil Services (Pension) Rules, 1982. Learned counsel submits that this court has considered the said aspect in writ petition No.3338/2005 under order dated 14.02.2011 so also the service rendered on Adhoc basis /temporary basis has to be considered for pension as per Rules 30 of the MCS (Pension) Rules. Learned counsel submits that the Division Bench of this Court in writ petition No.3690/2005 under order dated 19.12.2006 and writ petition No.7458/2010 under order dated 19.07.2011 has considered the said aspect and has given the benefits to the petitioners therein.

3. Learned AGP submits that the Rule 30 will have to be read in consonance with the Rule 33 of the MCS (Pension) Rules. The service has to be continuous. There is a break in service. The tribunal has rightly considered the said aspect.

4. We have considered the submissions of the learned counsels for the parties.

5. This court in its order dated 14.02.2011 in writ petition NO.3338/2005 has considered the said aspect. It observed thus:

“This petition is directed against the judgment and order, passed by the Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad, dated 07.10.2003, in Original Application No.301 of 2003. The order of the Tribunal reads thus:

The present matter is fully covered by the order passed by this Tribunal in Original Application No.149 of 2003 on 26.08.2003. We can, therefore, dispose of the present petition too by directing the Respondent authorities similarly. The present Original Application accordingly stands disposed of at the threshold by directing the Respondent authorities to ignore all the artificial technical breaks by condoning the same and /or sanctioning E.L. in respect of such days of artificial/technical breaks. In result the petitioner shall be entitled to annual increments and leave as is admissible to the ad hoc appointees.

It is needless to clarify that the Govt. in Public Health Department's Resolution dated 31.01.2003 and 10.04.2003 to the extent of giving a day's technical /artificial break in two spells of appointments has stood rendered ineffective by this order of Tribunal.

4. It is further clarified that appointments can be given spell after spell but without giving a technical/artificial break in between two spells. Recovery directed of the

amount towards increments already paid to the applicant hereby stands quashed and set aside.

2. This Court is informed that the State did not carry the order dated 26.08.2003, passed in Original Application No.149 of 2003 in further proceedings. In other words, the order dated 26.08.2003, passed in Original Application No.149/2003, attained finality.

3. We are further informed that though the State did not carry the order dated 26.08.2003, passed in Original Application No.149/2003, by way of writ petition in this Court, the State has challenged the similar order, as is challenged in the present writ petition, by way of different petitions, including Writ Petition No.3484 of 2005. This Court, vide order dated 27.11.2008, dismissed the said writ petition along with several other writ petitions. The order, passed by this Court, dated 27.11.2008 in this group of petitions, was further carried to the Supreme Court in SLPs, being SLP Nos.18902-18915 of 2010. The Supreme Court has dismissed all the SLPs on the ground of delay as well as on merits. In the circumstances, learned counsel for the Respondents, submits that this writ petition also deserves to be disposed of in terms of the order dated 27.11.2008, passed by this Court in Writ Petition No.3484 of 2005.”

6. It is further submitted that the artificial break in service is on account of holiday on the said dates. Considering the aforesaid judgments referred by the petitioner, service of the petitioner shall be counted from the initial date of appointment i.e. 12.01.1987 for the purpose of earned leaves, increments and pension and for no

other purposes and not for claiming seniority.

7. With these observations, the writ petition stands disposed of. No costs.

[S.M.GAVHANE,J.]

[S.V. GANGAPURWALA,J.]