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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11606 OF 2017

Suryakant Anant Kapase & Ors. ...Petitioners
vs.
State of Maharashtra & Ors. ...Respondents

Mr.Lata Patne i/b Mr.Vinod Joshi for the Petitioner
Mr.P.G.Sawant, AGP for the respondent Nos.1 to 3.

CORAM : A.S.OKA, &
 M.S.SONAK, JJ.
DATE : OCTOBER 22, 2018

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Rule. The learned AGP waives service for the respondent. Our attention is invited to the order dated 14th July 2009 passed by the Maharashtra Administrative Tribunal on Original Application No.566 of 2007 filed by the petitioners. The present petitioners were appointed on temporary basis as strike recruits during the strike of the State Government employees in 1977-78. On the basis of the policy decision taken on 18th June 1983, the petitioners were absorbed in the Government service. A prayer was made by the petitioners by making a representation to the State Government to condone the technical breaks in their service from the dates of their respective initial appointments. By a communication dated 28th December 2005, the District Collector declined to condone the breaks in the

service of the petitioners on the ground that the same were not technical. The said decision of the Collector was challenged by the petitioners by filing Original Application No.566 of 2007. The challenge appears to be on the merits as well on the ground that in case of similarly placed employee (one Shri J.G.Mali), the benefit of condonation of breaks was granted. Therefore, the decision refusing to condone breaks was challenged on the ground of discrimination as well. In fact, paragraph 7 of the order dated 14th July 2009 records that the petitioners relied upon the order made in the case of four other employees in whose case breaks were condoned only for the purpose of pensionary benefit. A specific prayer which is recorded in paragraph 7 was that even they may be given similar benefit only for the purpose of pension. Eventually by the said order, the Tribunal directed the respondents therein to consider the cases of the petitioners for condoning the breaks in service in accordance with Sub-Rule 1 of Rule 48 of the Maharashtra Civil Services (Pension) Rules 1982 (for short "the said Rules") only for the purpose of pension.

2 It appears that a Writ Petition was filed by the State Government for challenging the Judgment and Order dated 11th November 2011 which was dismissed mainly on the ground of delay. The respondents challenged the order of dismissal of the petition by preferring a Special Leave Petition

which was dismissed on merits by order dated 18th February 2013. Ultimately, the petitioners were forced to file a Contempt Petition and perhaps only after the Contempt Petition was entertained that there were two orders passed. The first is dated 14th March 2014 by the State Government and the second is of 24th March 2014 which is by the District Collector. It appears from the second order dated 24th March 2014 that it is merely a communication of the order dated 14th March 2014 passed by the State Government.

3 The orders dated 14th March 2014 and 24th March 2014 were again challenged by the petitioners by filing Original Application No.19 of 2015. By the impugned Judgment and Order dated 18th February 2016, the said Original Application has been rejected.

4 The learned counsel for the petitioner pointed out that in the order dated 14th March 2014, no reason whatsoever has been recorded and it is simply reiteration of the earlier order dated 28th December 2005 which was set aside by the Maharashtra Administrative Tribunal in the order passed in Original Application No.566 of 2007. Her submission is that the case of the petitioners for condonation of breaks was not considered on merits.

5 The learned AGP invited our attention to the findings recorded in paragraphs 5 to 7 of the impugned Judgment and Order and submitted that the

order dated 14th March 2014 was challenged not on merits but on the ground of discrimination. He, would therefore, submit that no fault can be found with the impugned order of the Maharashtra Administrative Tribunal as well as the order dated 14th March 2014.

6 We have carefully considered the submissions. The petitioners had made a representation for condonation of technical breaks in their employment. By a communication dated 28th December 2005 issued by the State Government, the Divisional Commissioner, Pune was informed that the breaks in services of the petitioners were not of technical nature and therefore by exercising the power under Sub-Rule 1 of Rule 48 of the said Rules, the same could not be condoned.

7 The communication dated 28th December 2005 was challenged by the petitioners by filing Original Application No.566 of 2007. In paragraph 7 of the order dated 14th July 2009, the Tribunal observed thus:

“7 During the course of arguments, the learned advocate for the applicants produced copy of an order dated 13.2.2007 issued by the Government, condoning the breaks under Rule 48(1) of the pension Rules in case of S/Shri Kolki, Shevale, Kiledar and Shinde for the purpose of pension only. The applicants request that the same relief be given to them. A perusal of the order shows that in the four cases regularized therein, the breaks were for the period 1988-89, i.e after 18.6.1983. In view of this, there is no reason why the breaks should not

be condoned in the case of the applicants who are similarly placed.

8 Accordingly, this Original Application is partly allowed and the Respondents are directed to consider the cases of the applicant for condoning the breaks under Rule 48(1) of the Pension Rules, for the purpose of pension only. There will be no order as to costs.”

8 There is a specific observation made in paragraph 7 that there is no reason why the breaks should not be condoned as the petitioners were similarly placed as S/Shri Kolki, Shevale and Shinde. The said Judgment and Order dated 14th July 2009 in Original Application No.566 of 2007 has admittedly attained finality as the Writ Petition filed by the respondents against the said Judgment and Order as well as SLP have been dismissed. Thus, by the order dated 14th July 2009, the Tribunal held that the present petitioners were similarly placed as four employees and there is no reason why the breaks should not be condoned in the cases of the present petitioners. There is no dispute that the present petitioners were the applicants in Original Application No.566 of 2007. Perhaps, while passing the order dated 14th March 2014, the finding recorded by the Maharashtra Administrative Tribunal in the order dated 14th July 2009 was not at all noticed by the State Government apart from the fact that no reasons were assigned for rejecting the prayer for condonation of breaks in service. Perusal of the order dated 14th March 2014 shows that there are absolutely no reasons recorded. In the earlier order dated 28th December 2005 which was set aside by the

aforesaid Judgment and Order dated 14th July 2009, at least one reason was recorded that the breaks were not technical breaks. The said reason was not accepted by the Tribunal while passing the order dated 14th July 2009.

9 Thus, the State Government has completely disregarded the findings recorded in paragraph 7 of the order dated 14th July 2009 of the Tribunal which binds the State Government. In fact, the petitioners would have been justified in alleging contempt against the State Government. During the pendency of the proceedings, all the petitioners except one petitioner have superannuated. In fact, one of the petitioners namely first petitioner has died and his legal heirs have been brought on record.

10 After holding in paragraph 7 of the order dated 14th July 2009 that the cases of the petitioners were similar to the cases of the four employees mentioned in paragraph 7, the Tribunal directed the State Government to re-consider the cases of the petitioners for condonation of breaks only for the purposes of pension. Obviously, the re-consideration was ordered in terms of the findings recorded in the Judgment and Order dated 14th July 2009. Unfortunately, the findings recorded in paragraph 7 by the Tribunal have been completely brushed aside by the State Government though it was bound by the same. Therefore, we have no option but

to direct the State Government to pass appropriate order in terms of the Judgment and Order dated 14th July 2009. We make it clear that the State Government is bound by the findings recorded in paragraph 7 of the Judgment and Order dated 14th July 2009 in the Original Application 566 of 2007.

11 All the aforesaid aspects have not been considered by the learned Member of the Tribunal in the impugned Judgment and Order. In fact, what is held in paragraph 7 of the earlier order of the Tribunal has not been considered.

12 Therefore, the impugned order cannot be sustained and accordingly, we pass the following order:

(I) The impugned Judgment and order dated 18th February 2016 passed by the Maharashtra Administrative Tribunal in Original Application No.19 of 2014 is hereby quashed and set aside;

(II) Original Application No.19 of 2015 stands allowed in terms of this Judgment and order;

(III) The order/communication dated 14th March 2014 issued by the State Government and the communication dated 24th March 2014 issued by the District Collector are hereby quashed and set aside;

(IV) We direct the State Government to take appropriate decision on the prayer of the petitioners for condonation of breaks in terms of the directions issued by the Maharashtra

Administrative Tribunal by Judgment and Order dated 14th July 2009 in Original Application No.566 of 2007;

(V) While passing a fresh order, the State Government shall consider not only what is held in paragraph 7 of the Judgment and Order dated 14th July 2009 but also what is held in this Judgment and Order;

(VI) The order shall be passed by the State Government as expeditiously as possible and in any event within a period of six weeks from the date on which this Judgment and Order is uploaded;

(VII) Rule is made partly absolute on above terms;

(M.S.SONAK,J.)

(A.S.OKA,J.)