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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1774 OF 2013

Ansari Zafer Ahmed A. Rahim	..Petitioner
Versus	
The State of Maharashtra and Ors.	..Respondents

Mrs. S.S. Sonawane a/w Mr. Sayed Zia for the Petitioner.

Mr. Amar Mishra, AGP for Respondent Nos. 1, 9, 8 and 10 / State.

Mr. Javed Shaikh a/w Mr. H.C. Pimple for Respondent Nos. 2 to 8.

**CORAM: B. R. GAVAI &
SMT. BHARATI H. DANGRE, JJ.**

DATE: 19th APRIL, 2018

ORAL JUDGMENT: (Per B.R. Gavai, J.)

1] Rule. Rule is made returnable forthwith. Heard by consent of parties.

2] Petitioner has approached this Court praying for various reliefs, including directions to the Respondents to regularize services of the Petitioner till 31 March, 2011. Petitioner has prayed for direction that, the Petitioner should be paid service benefits for the service which he has rendered between 2nd October, 1972 to 31st March, 2011 and the consequential retiral benefits.

3] Facts, in brief, which are not in dispute are as under:-

4] Petitioner came to be appointed as Assistant Teacher in Respondent No. 8 – School. Petitioner continuously worked in the said School till 27th July, 1997.

5] It is the contention of the Petitioner that, in the year 1997, Petitioner fell ill and therefore had sought medical leave for one year. It is, however, submitted that since the Petitioner's condition did not improve, he could not join the School till 2000. It is the further case of the Petitioner that, when he recovered in the year 2000 and went to School to join services, he was not permitted to join. It is further his case that, since the Headmaster of the School was not permitting him to join the School, he was required to approach this Court by way of Writ Petition No.5 of 2010. The said Petition was disposed of by Division Bench of this Court vide order dated 21st July, 2010 thereby directing the Education Officer of the Municipal Corporation to decide the representation of the Petitioner. Accordingly, Petitioner's representation came to be decided vide order dated 31st March, 2011. Vide said order dated 31st March, 2011, it was directed that, Petitioner's services would come to an end with retrospective effect from 27th July, 1997 since the State Government had not issued any orders with regard to absence of the Petitioner for 13 years. It was, however, stated that the Petitioner's services between 2nd October, 1972 to 27th July, 1997 would be considered for granting him retiral benefits.

6] We find that, in the peculiar facts and circumstances of the case and particularly taking into consideration that the Petitioner has undisputedly rendered 25 years service, which period is pensionable, even without going into the question as to whether period of 13 years' absence is condoned or not, Petitioner should atleast be paid pension on the basis of his uninterrupted service between 2nd October, 1972 to 27th July 1997. For a moment, even if the period between 27th July, 1997 to 31st March, 2011 is not condoned, in no case the Petitioner can be denied pension on account of his earlier service between 2nd October 1972 to 27th July, 1997 which is admittedly a pensionable period. Insofar as period between 27th July, 1997 to 31st March, 2011 is concerned, the learned AGP has placed on record the Notice of Urban Development Department/Navi 21. It is stated that the matter with regard to condonation of break in service can be decided by the Municipal Commissioner since he is an appointing authority. It is therefore not necessary to refer the said matter to the State Government. Copy of the said Notice is taken on record and marked "X" for the purpose of identification. In that view of the matter, we find that the decision with regard to condonation of break in service can be decided very well by the Municipal Commissioner himself.

7] In the result, we allow the Petition in the following terms:-

- (i) The Commissioner of Municipal Corporation to take decision on the issue of condonation of break

in service of the Petitioner for the period between 27th July, 1997 to 31st March, 2011 within a period of four weeks from today. We make it clear that the period granted is an outer limit and the Court would not consider any request for extension of the period and may initiate suo motu proceedings against him for non-compliance of the order passed by the Court.

(ii) In the event, the Municipal Commissioner decides to condone the period of break in service by treating the Petitioner in service from 27th July, 1997 to 31st March, 2011, the Municipal Authorities shall work out the pension payable to the Petitioner by treating his service period between 2nd October, 1972 to 31st March, 2011 as pensionable and count the pensionable benefits accordingly.

(iii) In the event, the Municipal Commissioner decides to reject the proposal of the Petitioner for condonation of the period of break in service from 27th July, 1997 to 31st March, 2011, the Municipal Authorities shall work out the pension payable to the Petitioner by treating his service period between 2nd October, 1972 to 27th July,

1997 as pensionable and count the pensionable benefits accordingly.

(iv) The aforesaid calculations shall be made within a period of two weeks from the date of the decision of the Municipal Commissioner and Respondent – Corporation shall start paying pension to the Petitioner from the month of June, 2018 and shall pay all the arrears within a period of three months of the order passed by the Municipal Commissioner.

(v) In the event, the Municipal Commissioner passes an order rejecting the proposal of the Petitioner for condonation of break in service for the period from 27th July, 1997 to 31st March, 2011, the Petitioner would be at liberty to challenge the same before the appropriate forum and disposal of the present Petition would not come in the way of the Petitioner for challenging the same.

(vi) Rule is made absolute in the aforesaid terms.

(SMT. BHARATI H. DANGRE, J.)

(B. R. GAVAI, J.)