

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

14 WRIT PETITION NO.1136 OF 2016

Pramod Madhukar Patil
Age-47 years, Occu-Service,
R/o. Tapi Nagar, Bhusawal,
Dist. Jalgaon.

..Petitioner

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya Mumba – 32.
2. The Joint Director of
Technical Education and
Training, Nashik Division,
Trambak Naka, Old Agra
Road, Nashik – 2.
3. The Chairman,
Dnyanprakash Mandal, Hingone,
Tq. Yawal, Dist. Jalgaon.
4. Madhyamik and Uccha Madhyamik
Prabhat Vidyalaya, Hingone,
Tq. Yawal, Dist. Jalgaon.

..Respondents

**WITH
WRIT PETITION NO.1138 OF 2016**

Rajendra s/o Ganpat Borole,
Age-47 years, Occu-Service,
R/o- At Post Chinawal, Tq. Raver,
Dist. Jalgaon.

..Petitioner

VERSUS

1. The State of Maharashtra,
Through its Secretary,

Education Department,
Mantralaya Mumba – 32.

2. The Joint Director of
Technical Education and
Training, Nashik Division,
Trambak Naka, Old Agra
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Dnyanprakash Mandal, Hingone,
Tq. Yawal, Dist. Jalgaon.
4. Madhyamik and Uccha Madhyamik
Prabhat Vidyalaya, Hingone,
Tq. Yawal, Dist. Jalgaon. ..Respondents

**WITH
WRIT PETITION NO.1082 OF 2016**

Sanjay s/o Ganesh Pardeshi
Age-45 years, Occu-Service,
R/o- Vaibhavi Bunglow Phase-I,
Tapi Nagar, Bhusawal,
Dist. Jalgaon. ..Petitioner

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya Mumba – 32.
2. The Joint Director of
Technical Education and
Training, Nashik Division,
Trambak Naka, Old Agra
Road, Nashik – 2.
3. The Chairman,
Dnyanprakash Mandal, Hingone,
Tq. Yawal, Dist. Jalgaon.
4. Madhyamik and Uccha Madhyamik

Prabhat Vidyalaya, Hingone,
Tq. Yawal, Dist. Jalgaon.

..Respondents

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Mr. Ajay G. Talhar, Advocate for the Petitioners.
Mr. S. G. Karlekar, AGP for Respondents-State.

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATED : 28th JANUARY, 2019.

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

1. Rule. Rule made returnable forthwith.
With consent of the parties, matter is taken up for
hearing at admission stage.

2. These writ petitions assail the order
passed by the Deputy Director of Education refusing
to condone the break in service of petitioners. The
proposal was submitted by the management for
condonation of break in service of these
petitioners. As far as the petitioner Mr. Borole
is concerned there are three breaks of one day each
totaling three days. In case of petitioner
Pardeshi the condonation of break is also for three
days one day each thrice. In respect of Mr. Patil
there are four break of one day each totaling four
days. The proposal for condonation of break in
service is rejected on the count that as per the
Government Resolution dated 10.05.1989 the pension
is to be given on the basis of last pay drawn and
only because there should be better pensionary

benefits the break cannot be condoned.

3. We have heard Mr. Talhar, learned counsel for petitioner and Mr. Karlekar, learned A.G.P..

4. The reference has been given by the management of condoning the break in service of 17 days, 18 days and 4 days in respect of one Mr. Jawale Kishor Arjun, Mr. Patil Avinash Kisan, Mr. Mahajn Nomdas Kisan, Mr. Mahajan Kishor Sitaram and Mr. Choudhari Subhash Pitambar by the Deputy Director of Education. The contention is that the Petitioners are similarly placed and are also employees of the same institution. The break in service it appears has occasioned because every time fresh appointment orders were issued on year to year basis to these petitioners up to the year 1996-1997. The same was probably on the ground that backlog of reserved post was not filled in. It is not the case of respondents that when the petitioners were appointed they were appointed on the post meant for reserved category candidates. The approval has has been granted to petitioners each time. The post on which petitioners are appointed were vacant and petitioners could be appointed on those posts. Only because the backlog was not filled in, approval is granted year to year to petitioners. The break is a technical break in service and that too because of vacation period. In fact the vacation period will have to be counted

in the continuity. The Deputy Director of Education has taken a similar view in case of the above referred five persons and their break in service of 17 days, 18 days and 4 days has been condoned.

5. In the present case in fact actually there is no break in service, but only a technical break is given. The management in its proposal has also referred to the fact that these petitioners are similarly situated as other persons named above. All are serving in the same institution and all are similarly placed.

6. Factually, when there is no actual break in service, but only technical break was given only on the count that the approval was given on yearly basis.

7. We certainly would not have considered case of petitioners, had the appointments of petitioners being made on the reserved posts. However, that does not appear to be the case. The petitioners appointments were on vacant posts and they were eligible to be appointed on the said posts.

8. Considering the aforesaid conspectus, the impugned order is quashed and set aside. The similar view has been taken by this Court in case of **Chief Executive Officer Vs. Satish Dnyanoba**

Gaikwad & Anr. reported in 2013 (7) All. M.R. 523.

9. In light of the above, impugned orders are quashed and set aside. The respondents shall condone the break in service of petitioners. Consequential benefits shall accordingly follow.

10. Rule accordingly made absolute in above terms. No costs.

(A. M. DHAVALA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE