

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.4333 OF 2014

Ms. C. Aruna Ram

..Petitioner

Versus

State of Maharashtra and others

..Respondents

Mr. K. N. Joshi, Advocate for the Petitioner.

Mr. V. M. Mali, AGP for Respondent Nos.1, 4 & 5.

Mr. A. G. Kothari, Advocate for Respondent Nos.2 & 3.

CORAM : B. R. GAVAI &

DAMA SESHADRI NAIDU, JJ.

DATE : 18th APRIL 2019.

P.C.

1] The Petitioner, now retired, joined the third Respondent college on 21st August 1993. Before that, she worked, as she claims, in Vani Vidyalaya High School, from 15.06.1985 to 20.08.1993. Both the High School where she worked earlier and the College where she joined later are aided.

2] The petitioner joined the third Respondent college in August 1993, in a leave vacancy. As the incumbent, who went on leave, did not rejoin, the petitioner's services were continued, of course, with breaks. Eventually, the petitioner retired from service in 2011. When the petitioner, through the third respondent college, represented to the authority for the terminal benefits. She wanted the authorities to consider her initial appointment in August 1993 in the College, as well as her earlier service in

Vani Vidyalaya. But the respondent authorities were disinclined. So the petitioner has filed this Writ Petition.

3] The petitioner's counsel strenuously contends that the petitioner continued in service, ever since she had initially joined the service i.e. from 21.08.1993 with three breaks. Those breaks, according to him, amount to about four months. He has also submitted that the authorities initially refused to regularise the Petitioner's services. But, despite that, soon thereafter, the authorities, through a communication dated 20th March 2013, confirmed the petitioner's services, asserts the learned counsel. In this regard, he submits that as a communication was sent to the third Respondent college, it misplaced it. Therefore, the petitioner could not produce any proof about the regularisation.

4] At any rate, learned counsel maintains that the petitioner continued in service until her retirement, and this gives to rise a valid presumption that her services have been approved. On the count of the break in service, the learned counsel submits that the Regulations do permit the authorities to condone the breaks and regularise the services. In the end, he has urged this Court to direct the respondent authorities to grant to the petitioner pensionary benefits, by considering the petitioner's service not only in the third respondent college but also in Vani Vidyalaya High School earlier.

5] The learned counsel for the third respondent college has supported the petitioner's contentions. In elaboration, he endorses the petitioner's contention that she had been regularized. In the alternative, he submits that the break in service falls within the condonable limit. For that, he draws our attention to the Ext.O Government Resolution, dated 10th May 1989. Eventually, he contends that the Petitioner has served the third respondent college in a notified vacancy, with minimal breaks and, therefore, is entitled to all terminal benefits.

6] The learned AGP on the other hand contends that the petitioner initially was appointed in a leave vacancy. So that appointment ought to be treated as ad-hoc. She could get her terminal benefits, asserts the learned AGP, only for the period she worked regularly. He has, however, denied the petitioner's assertion that she had been regularised.

7] Heard Mr. K. N. Joshi, Advocate for the Petitioner, Mr. V. M. Mali, AGP for Respondent – State and Mr. A. G. Kothari, Advocate for Respondent Nos.2 & 3..

8] To begin with, the Petitioner served as a teacher in Vani Vidyalaya, High School from 15.06.1985. We could see the proceedings of the Deputy Director of Education, dated 25th September 1985, now shown to us across the Bench, approving the petitioner's services in that school: from

24th June 1985 on a permanent basis. Soon thereafter, with no break in service, the petitioner joined the third respondent college. The Government in its reply does admit that the petitioner had three breaks in service and that would amount to 4 months and 18 days. As Exh.'O' demonstrates, the break in service can be regularized if it does not violate any of the contingencies set out below:-

- “1) Breaks in total service should not be more than six.
- 2) Out of six breaks in service, more than three should not be on account of resignation.
- 3) Total period of six breaks in service should not be more than two years.
- 4) Duration of any break in service should not be more than twelve months.
- 5) Employee should not have secured employment elsewhere during the period of break.
- 6) Breaks in service should be one or different recognized secondary school/s.”

9] Let us look at the petitioner's claim in the light of the above conditions. No doubt, the petitioner worked in the third respondent college, in a regular vacancy. Earlier, she had her services regularised in the school, too. As per the Government Resolution dated 10th May 1989, the breaks in service should not exceed six; here, the petitioner has four.

10] By the same GR, the total period of the breaks in service should not be over two years; here the petitioner has about four months.

11] Thus, we should first reckon the approval the Deputy Director of Education granted to the petitioner of her services in Vani Vidyalaya High School from 15th June 1985 to 20th August 1993. Then, we should reckon the petitioner's continued service in the third respondent college. And we must reckon that in the light of the Government Resolution dated 10th May 1989.

12] In the end, we cannot but conclude that the petitioner has served in the third respondent college as regular employee and is entitled to her terminal benefits. Besides that, to reckon the length of her service, we must also count her initial service in Vani Vidyalaya High School from 15th June 1985 to 20th August 1993.

We therefore allow the Writ Petition, directing the authorities to pay to the petitioner all her terminal benefits as soon as the third respondent school submits proposal in that regard. The authorities must settle the petitioner's all terminal benefits expeditiously in six months from the date the Order is uploaded.

[DAMA SESHADRI NAIDU, J.]

[B. R. GAVAI, J.]