

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

WRIT PETITION NO. 141 OF 2017

Dr. Agrawal Richa
Assistant Professor at A, S & C
Guru Nanak Khalsa College
Matunga, Mumbai, residing at
M-1308 Bhoomi Breeze
Raheja Estate, Borivli (E),
Mumbai 400 066

.. Petitioner

Vs.

1. The University of Mumbai
University building, Fort,
Mumbai 400 032
through its Registrar

2. The State of Maharashtra
through Principal Secretary
Department of Education
Mantralaya, Mumbai 400 032.

3. The Joint Director of Higher
Education, Mumbai Region,
Elphinstone Technical School,
Mahapalika Marg,
Mumbai 400 001.

4. Shiromani Gurudwara Prabandhak
Committee's Guru Nanak Khalsa College
through its Local Managing Committee
registered Society/Charity Trust,
Guru Nanak Khalsa College,
Matunga, Mumbai 400 019.
(through its Secretary)

5. Guru Nanak College of A, S & C
Matunga, Mumbai 400 019
(through its Principal)

.. Respondents

Mr.C.R. Sadasivan I/b Mr.N.M. Ganguli for petitioner.

Mr.Rui Rodrigues for respondent No.1.

Mr.Manish Upadhye, AGP for respondent Nos.2 and 3.

**CORAM : R. M. BORDE &
N.J. JAMADAR, JJ.**

DATE : 6TH JUNE 2019

JUDGMENT (Per N.J. JAMADAR, J.)

1. Rule. Rule made returnable forthwith and, with the consent of the learned counsels for the parties, heard finally.

2. By this petition under Article 226 of the Constitution of India, the petitioner assails the action of the University of Mumbai, the respondent No.1, of rejecting a proposal for condonation of break in the petitioner's service of 38 days.

3. The petition arises in the backdrop of the following facts :-

The petitioner is a qualified lecturer. The petitioner was initially appointed, on the post of lecturer, at Rizvi College, Mumbai, after following due selection process, with effect from 10th June 2008, on probation, for a period of two years. The said appointment was then duly approved by the respondent No.1. Rizvi College, however, terminated the services of the petitioner. When the petitioner challenged the said order of termination before the College and University Tribunal, Mumbai, Rizvi

College withdrew the said termination order, realising its unsustainability. However, the petitioner's services were again terminated with effect from 6th June 2010. The petitioner assailed the said termination by preferring appeal No. 13 of 2010. In the meanwhile, the petitioner came to be appointed as lecturer with Guru Nanak College of A,S and C, Matunga - respondent No.5, run by respondent No.4. In view of the subsequent development, the petitioner did not pursue appeal No.13 of 2010 for the purpose of reinstatement. The appeal came to be disposed of by order dated 14th November 2011.

4. The petitioner has since been confirmed in the post of Assistant Professor in the respondent No.4 - institution. The petitioner became eligible for grant of placement benefits in the senior scale and selection grade. The petitioner, thus, applied for condonation of break in service of 38 days from 6th June 2010 to 13th July 2010, which was stated to be purely of a technical nature, through the respondent No.5. The respondent No.1, by communication dated 18th July 2016, conveyed to the respondent No.5 that the break in service was not condoned by the respondent No.1- University as in terms of the government resolution dated 21st July 1983, the said break could not be condoned since the petitioner's services were terminated by Rizvi College before completion of her probation period satisfactorily. The petitioner pursued the matter with the authorities by

pointing out the governing government resolution and the legal position. However, vide communication dated 25th October 2016, the respondent No.1 informed the petitioner that the earlier communication dated 18th July 2016 (whereby the prayer to condone the break in service was rejected) stood unchanged. Hence, this petition.

5. The respondent No.1 has resisted the prayers by filing an affidavit in reply. The substance of the resistance putforth by the respondent No.1 is that the petitioner's services were terminated by her former employer-Rizvi College with effect from 6th June 2010 and the challenge mounted by the petitioner to the said termination by filing appeal No.13 of 2010 before the University Tribunal was unsuccessful. Consequently, the order of termination of the services of the petitioner by Rizvi College attained finality. As the petitioner did not pursue the prayer for reinstatement, the University Tribunal was persuaded not to grant even the monetary benefit for the said period. Banking upon a stipulation in the government resolution, dated 21st July 1983, which, *inter-alia*, incorporates the condition for condonation of break in service, it was asserted that since the services of the petitioner have been terminated on disciplinary ground, after following the prescribed procedure, the break in service cannot be condoned.

6. We have heard Shri C.R. Sadasivan, the learned counsel for the

petitioner, Shri Rui A. Rodrigues, the learned counsel for the respondent No.1 and Shri Manish Upadhye, the learned AGP for the respondent Nos.2 and 3.

7. A strenuous effort was made by Shri Sadasivan, the learned counsel for the petitioner, to draw home the point that the respondent No.1 was not justified in rejecting the proposal of condonation of break in service of 38 days; for which the petitioner was not at all at fault. The respondent No.1 did not appreciate the highhandedness of the action of termination of service of the petitioner by her former employer Rizvi College. In any event, the fact remained that the petitioner had rendered services from 10th June 2008 to 5th June 2010 and a right had accrued to the petitioner to count the said period of service for the purpose of conferment of the benefit of senior scale and selection grade. The authorities, therefore, could not have negated the claim of the petitioner on the premise that the order of termination passed by Rizvi College, was not set aside by the University Tribunal. As the petitioner was already employed with the respondent No.5 on the date the appeal No.13 of 2010 was taken up for hearing by the learned Presiding Officer, College and University Tribunal, Mumbai, i.e., 14th November 2011, the petitioner was within her rights in not pursuing her claim for reinstatement in service of Rizvi College. Thus, the said appeal came to be disposed of without delving into the merits of the

matter.

8. In order to lend support to the aforesaid submission, the learned counsel for the petitioner placed reliance upon a judgment of the Supreme Court in the case of *Sharadendu Bhushan Vs. Nagpur University, Nagpur and Ors.*¹. In the said case, the question before the Apex Court was whether the length of service for the conferment of benefit of the grade of the lecturer (Senior Scale) ought to be within the same University. The experience of the University teaching, in colleges affiliated to Calcutta University, was not taken into account. When the petitioner therein challenged the said action, the High Court had refused to entertain the challenge to the action of the University. The Supreme Court held that the High Court obviously fell into an error in assuming that the length of service within the University was the basis. It was found that the emphasis in the circular was on the experience gained by the teacher while in the employment of University and not in the continuity of service within the same University.

9. The facts of the aforesaid case appear to be quite distinct. The question which arises for consideration in this case, i.e., whether the break in service ought to be condoned even when the cause of the break in service is the termination of previous employment for disciplinary or other ancillary reasons, did not arise for consideration in the aforesaid case

1 AIR 1988 SCC 335

before the Apex Court.

10. Admittedly, the petitioner had assailed the order of termination dated 30th April, 2010 in appeal No. 13 of 2010 before the jurisdictional tribunal. Indisputably, the petitioner did not pursue the challenge and restricted her claim for wages for the period commencing from her termination to the date she joined the respondent No.5-college (the very same 38 days break in service, the condonation of which was sought by the petitioner). The learned Presiding Officer, University Tribunal, by the judgment and order dated 14th November 2011, was persuaded to hold that nothing was pointed out to show that the alleged termination was bad and illegal. It was further found that no case was made out for even grant of the restricted relief of monetary benefit for the intervening period. It is incontrovertible that the petitioner has not assailed the said order of the University Tribunal, and, thus, attained finality.

11. The situation which thus obtains is that the services of the petitioner came to be terminated by her former employees-Rizvi College before she could satisfactorily complete the probationary period. The challenge to the said order of termination failed. It would be contextually relevant to note the relevant part of the government resolution dated 21st July 1983, which reads as under :

“The termination of service due to no fault of the employee or on account of the circumstances beyond the control of the employee will not be counted as break. If the services of the employee have been terminated on disciplinary ground after following the prescribed procedure, such a break cannot be condoned and the services rendered by the employee in the College or the University from which his services are so terminated on disciplinary ground, will not be accounted for the pension.”

12. On a plain reading of the aforesaid stipulation, we are inclined to agree with the submission of Shri Rui Rodrigues, the learned counsel for the respondent No.1, that the petitioner's case cannot be said to be one of a break accruing in service on account of no fault of the employee or on account of the circumstances, beyond the control of the employee. On the contrary, there is a justifiable ground to hold that the termination of the services of the petitioner by her former employer was in the context of the conduct reflecting upon the efficiency of the petitioner to discharge the services satisfactorily. The break in service, which accrued on account of the termination of the service of the petitioner, in these circumstances, cannot be said to be of a mere technical nature. The respondent No.1 was thus justified in regulating its decision on the anvil of the aforesaid stipulation in the government resolution dated 21st July 1983. It is more so for the reason that the challenge to the termination failed and attained finality.

13. For the foregoing reasons, we are of the considered view that the

respondent No.1 had correctly applied the governing provisions to the facts of the case and justifiably exercised the authority not to condone the break in service. Resultantly, the petitioner is not entitled to the relief in the nature of writ of mandamus directing the respondent No.1 to condone the break in service.

14. The petition thus stands dismissed. However, there shall not be order as to costs.

15. Rule stands discharged.

[N.J. JAMADAR, J.]

[R. M. BORDE, J.]