

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6160 OF 2016

1. Ramnath S/o Pandurang More
aged 39 years, occ. Service as
Assistant Teacher at Zilla Parishad
Primary School, Parner
Tq. Ambad, Dist. Jalna.
2. Santosh S/o Shankarrao Avhad
aged 40 years, occ. Service as
Assistant Teacher at Zilla Parishad
Primary School, Panegaon,
Post Dahipuri, Tq. Ambad
Dist. Jalna.

Petitioners

Versus

1. The State of Maharashtra
Through the Secretary to the
Government of Maharashtra
in School Education & Sports
Department, Mantralaya,
Mumbai 32.
2. The Divisional Commissioner
Aurangabad Division,
Aurangabad.
3. The Chief Executive Officer
Zilla Parishad, Jalna.
4. The Chief Accounting Officer
& Financial Officer,
Zilla Parishad, Jalna.
5. The Block Education Officer,
Panchayat Samiti, Ambad
Dist. Jalna.

6. The Accounts Officer and
Head of Pay Verification Squad,
Zilla Parishad, Jalna. Respondents

Mr. N.P.Patil Jamalpurkar, Advocate for the petitioners.
Mr. G.O. Wattamwar, AGP for respondents No. 1 and 2.
Mr. A.D. Aghav, Advocate for respondents No. 3 to 6.

WITH
WRIT PETITION NO. 6148 OF 2016

1. Smt. Rahel Chandarrao Wadpalli
aged 40 years, occ. Service as
Assistant Teacher at Dr. Frazer
Boys High School, Jalna.
2. Shahdeo S/o Sarjerao Bhosale
aged 39 years, occ. Service as
Assistant Teacher at Zilla Parishad
Primary School, Parner
Tq. Ambad, Dist. Jalna.
3. Narayan S/o Laxman Shinde
aged 36 years, occ. Service as
Assistant Teacher at Zilla Parishad
Primary School, Dharkalyan
Tq. & Dist. Jalna.
4. Rameshwar S/o Babanrao Kale
aged 36 years, occ. Service as
Assistant Teacher at Zilla Parishad
Primary School, Mohadi
Tq. & Dist. Jalna. Petitioners

Versus

1. The State of Maharashtra
Through the Secretary to the
Government of Maharashtra
in School Education & Sports

Department, Mantralaya,
Mumbai 32.

2. The Chief Executive Officer,
Zilla Parishad, Jalna
3. The Education Officer (Secondary)
Zilla Parishad, Jalna.
4. The Education Officer (Primary)
Zilla Parishad, Jalna.
5. The Chief Accounting Officer &
Financial Officer,
Zilla Parishad,
Jalna.

Respondents

Mr. N.P.Patil Jamalpurkar, Advocate for the petitioners.
Mr. G.O. Wattamwar, AGP for respondents No. 1 and 2.
Mr. A.D. Aghav, Advocate for respondents No. 3 to 6.

**CORAM : SUNIL P. DESHMUKH &
B. U. DEBADWAR, JJ.**

DATE : 20th January, 2020.

ORAL JUDGMENT : (PER SUNIL P. DESHMUKH, J.)

1. Rule. Rule made returnable forthwith.
2. Heard finally, with the consent of learned counsel for the respective parties.
3. Petitioners in both the writ petitions are similarly placed in the sense that before joining Zilla Parishad services as Shikshan Sewak, they were employed in private aided schools and were confirmed teachers.

4. It appears that there were lot of such cases where the persons who were employees of private management, have subsequently been appointed and taken on the rolls by Zilla Parishad. However, their service period with the private management was not considered for the purpose of pension as well as for protection of pay scale, and were being deprived of benefit of the same though the institutions were aided institutions.

5. In the circumstances, as a welfare state, it appears that the State of Maharashtra has taken two decisions under Resolutions. Government Resolution dated 13.01.2009 gives benefit of past service in private aided institutions to the employees in higher secondary and junior colleges for pension, if the conditions under Rule 48(1) of the Maharashtra Civil Services (Pension) Rules are satisfied and complied with. The Government of Maharashtra has issued another resolution dated 15.09.2011 wherein it has been referred to that the incumbents ought to have served earlier in the institutions which were given 100% grant-in-aid and, in such cases, past service in private institution of the incumbents, would be taken into account for the purpose of pension as well as protection of their pay scale which they were getting while they were serving in private institution.

6. Pursuant to the Government Resolutions, the Chief Executive Officer, Zilla Parishad, Jalna, issued an ordinance protecting the pay scale of petitioners. He also passed order condoning the break in service of petitioners pursuant to Rule 48(1) of Maharashtra Civil Services (Pension) Rules. It appears that these orders have been objected to by the Accounts Officer, Pay Verification Chief Squad, Zilla Parishad, Jalna. In view of the objection, it appears that the Chief Executive Officer, Zilla Parishad, Jalna, had referred the matter to the Divisional Commissioner, Aurangabad. The Divisional Commissioner, Aurangabad, under communication dated 02.12.2017, had considered the provisions under Rule 48(1) are in respect of interruption in service of a Government Employee and observed that condonation of break pursuant to said rule by the Chief Executive Officer would not be in accordance with the Rules.

7. Mr. N.P. Patil Jamalpurkar, learned counsel for petitioners heavily relies on two Government Resolutions referred to above and contends that what is sought to be given under the two Government Resolutions is being taken away cursorily under the impugned communication by the Divisional Commissioner. He submits that there had been no opportunity given whatsoever to the

petitioners to approach the Divisional Commissioner. He further submits that in lots of other such cases, condonation of breaks have taken place and benefits are being received by such persons who were similarly placed as the petitioners. He purports to refer to a few such cases in support of his submission.

8. Learned counsel for Zilla Parishad, however, contends that the cases of individuals relied upon have different factual background and accordingly, the orders have been passed.

9. Learned AGP states that the Divisional Commissioner has taken into account relevant aspect of the matter that the petitioners are not Government servants and therefore, benefit of condonation of break in pursuance of Rule 48 may not be available to the petitioners.

10. Having regard to aforesaid, it emerges that the Government Resolutions referred to above have not been taken into account by the Divisional Commissioner before issuing the impugned communication whereas the orders passed by the Chief Executive Officer, Zilla Parishad, Jalna, appear to be having regard to said

Government Resolutions. It would be expedient that the two Government Resolutions referred to above would be taken into account by the Divisional Commissioner. In the circumstances, the impugned communication is set aside restoring the matter before the Divisional Commissioner. The Divisional Commissioner may take a fresh look into the matter taking into account the two Government Resolutions and if necessary, may also hear the petitioners.

11. In view of aforesaid, impugned communication dated 03.10.2017 of the Education Officer (Primary), Jalna, in Writ Petition No. 6148/2016, adversely affecting the petitioners, stands set aside. Rule made absolute accordingly.

(B. U. DEBADWAR)
Judge

dyb

(SUNIL P. DESHMUKH)
Judge