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

913 WRIT PETITION NO.1973 OF 2020
WITH CA/10738/2021 IN WP/1973/2020

**PRABHU ALIAS PRABHAKAR MAHADEO DHUMAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Ms P. R. Wankhede, Advocate for petitioner;
Mr S. B. Yawalkar, A.G.P. for respondent Nos.1 to 3;
Mr A. V. Patil Indrale, Advocate for respondent No.4

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 6th October, 2021

PER COURT:

1. The petitioner is before us with a prayer that his breaks in his service till 31/07/1985, may be condoned and he may be granted pensionary benefits.

2. The following factors have been considered by us :-

(a) The petitioner was an Ex-serviceman, who served in the Indian Army at Delhi from 20/02/1958 as a 'Clerk Junior Division' till 24/09/1966;

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(b) On 01/09/1967, he entered in service of the Osmanabad Zilla Parishad as an 'Assistant Teacher' in Jawahar Vidyalaya, Anadur, Tq. Tuljapur and worked till 11/06/1972;

(c) As the Senior Clerk passed away in the School, he was appointed as 'Senior Clerk' from 12/06/1972 and worked till 28/03/1983;

(d) Since he fell ill, he did not report for duties from 01/03/1983 till 01/08/1985, when he rejoined;

(e) After rejoining, he worked for the period 01/08/1985 till 30/11/1987;

(f) From 01/12/1987, he disappeared and claims to have filed an application in November 1995 for reporting for duties;

(g) He attained the age of superannuation on 30/06/1997;

(h) The petitioner does not pray for any benefits for the period 01/12/1987 till 30/06/1997.

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3. This petition has been filed on 24/01/2020 i.e. after 33 years praying for condoning the longest break of 2 years and 5 months in between 01/03/1983 till 31/07/1985. His prayers at clause 'B' and 'C', read as under :-

“B) Rule may kindly be made absolute by directing the Resp.No.1 to 3 in general and Resp.No.4 in particular to issue appropriate order condoning the period of break in petitioner’s service from 01/03/1983 to 31/07/1985.

C) Rule may be kindly be made absolute thereby further directing Respondents to process and finalize the pension case of the petitioner within stipulated period of time after condoning the petitioner’s break in service by Resp.No.4.”

4. The learned Advocate for the respondent - Management submits that as the petitioner used to disappear from duties on several occasions and remained absent from 01/03/1983 to 31/07/1985, such absence from service has to be treated as break in service.

5. This Court cannot consider disputed questions and adjudicate as to whether the petitioner was actually unwell,

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whether he had obtained leave, whether he had tendered his medical papers while rejoining duties, etc.

6. In view of the above and considering the record placed before us, including the affidavit-in-reply filed by the respondent - State, on behalf of respondent No.3, and the Management, respondent No.4, we do not find that this Court could exercise its extra-ordinary jurisdiction under Article 226 of the Constitution of India. So also, though the petitioner contends that certain representations were being made from 1995 till the filing of this petition, representations over a period of 33 years cannot be a ground for entertaining the petition after an inordinate delay.

7. The learned Advocate for the petitioner submits that the petitioner has recently passed away on 11/09/2021.

8. Even if, the oral request of the learned Advocate on behalf of the surviving wife, to bring legal heirs on record is accepted, we do not find that any purpose would be served by taking the legal heirs on record in the above facts and circumstances of the case.

9. In view of the above, we are of the view that this petition cannot be entertained even on merits, and since the petitioner has passed away, the petition abates and is disposed off. Pending civil application does not survive and stands disposed off.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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