

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

WRIT PETITION NO.14213 OF 2018

Gautam S/o Vinayak Patil,
Age-51 years, Occu:Nil,
R/o-House No. 31, Sangam Garud Colony,
Behind Jai Hind Mangal Karyalaya,
Tq. & Dist-Dhule.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Department of Vocational Education
and Training [DVET], Mantralaya,
Mumbai-32,
- 2) The Director,
Vocational Education and Training,
Maharashtra State, Pune-4110001,
- 3) The Joint Director,
Vocational Education and Training,
Aurangabad Regional Office,
Near Bhadkal Gate, Aurangabad-431001,
- 4) The District Vocational Education and
Training Officer, Near Bhadkal Gate,
Aurangabad-431001,
Tq. & Dist-Aurangabad,
- 5) Milind Science Junior College,
Nagsen Nagar, Aurangabad,
Through its Principal.

...RESPONDENTS

...
Mr.Ramesh I. Wakade Advocate for Petitioner.
Mr.S.P. Sonpawale, A.G.P. for Respondents No. 1 to 4.
None present for Respondent No. 5.
...

**CORAM: SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.**

DATE : 8th MARCH, 2021

ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.

2. Petitioner had been appointed as full time inspector with effect from 24th August 1992 in respondent No. 5 – Milind Science Junior College, Aurangabad. Since then he has been working continuously, without any interruption. He was purportedly removed on 13th June 2003. The matter was taken to school tribunal, Nashik in Appeal No. DHL/8/2006 by petitioner, wherein parties to the dispute had been inter-alia, the deputy director of vocational education and training, Nashik, and the tribunal had passed the order to the following effect:

" O R D E R

The appeal is partly allowed.

The res. Nos. 1 & 2 are directed to reinstate the appellant on the same post with continuity of service only.

The relief of back wages claimed by the appellant stands rejected.

The management of respondent institute shall comply the order within 40 days from the date of the order.

Parties shall bear their own cost. "

3. Upon reinstatement on 24th February 2009, the service book shows that the period from 13th June 2003 to 23rd February 2009 is being treated as leave without pay.

4. The petitioner, subsequently, opted for voluntary retirement and his proposal for voluntary retirement had been recommended by respondent No. 4. However, said request has been negatived at the end of respondent No. 3 - the joint director, vocational education and training, Aurangabad. The proposal for voluntary retirement has been negatived on the ground of non-completion of 20 years service, under communication dated 25th October 2018.

5. Earlier, as the proposal for voluntary retirement of petitioner was not decided, the matter was taken up to this court and this court, by order dated 26th June 2018 in writ petition No. 14773 OF 2017, finding that respondent No. 3 was taking no steps to decide re-submitted proposal, had directed to decide the proposal on its own merits and preferably within a period of four months. After aforesaid order, impugned order dated 25th October 2018 has been passed, purporting to refer to that with the exclusion of period from 13th June 2003 to 23rd February 2009, petitioner does not complete 20 years qualifying service.

6. In the impugned order, there is reference to that, the tribunal had directed to reinstate the petitioner (appellant) on the same post with continuity of service, however, it appears that its implication has not been appreciated or rather has not been understood properly. The matter appears to have been decided very cursorily and casually. When the tribunal observes that the petitioner is entitled to continuity in service for the period of absence, the same ought not to have been excluded from the computation. Such deletion of period tends to undermine direction of the tribunal and tantamounts to render

the same redundant. Thus, impugned order is liable to be set aside.

7. Impugned order dated 25th October 2018, passed by respondent No. 3 – the joint director, vocational education and training, regional office, Aurangabad, is set aside. Petitioner's proposal for voluntary retirement be considered on considerations as above, as early as possible, preferably within a period of eight weeks from the date of receipt of writ of this order.

8. Rule is made absolute in aforesaid terms.

9. Writ petition is accordingly disposed of.

[ABHAY AHUJA, J.]

[SUNIL P. DESHMUKH, J.]

asb/MAR21