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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3893 OF 2016

Shri Laxman Motiram Pawar

...Petitioner

*Versus*

The State of Maharashtra & Ors.

...Respondents

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Mr. N.V. Bandiwadekar, with Mr. Vinayak Kumbhar i/b. Mr.  
M.G. Bagkar for the Petitioner.

Mrs. P.J. Gavhane, AGP for Respondent Nos.1, 2 and 5.  
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CORAM : R.D. DHANUKA &  
R.I. CHAGLA, JJ.

DATE : 2 AUGUST, 2021

ORDER :

1. Rule. Rule made returnable forthwith.

2. Learned AGP for State waives service for  
Respondent Nos.1, 2 and 5. No reliefs are sought against  
Respondent Nos.3 and 4. Heard finally by consent of parties.

3. By this Writ Petition filed under Article 226 of the  
Constitution of India, the Petitioner has prayed for quashing

and setting aside the impugned order dated 15th December, 2014 passed by the Respondent No.2 refusing to condone the break in service of the Petitioner as Assistant Teacher in the Respondent No.4 - School and further seeks an order and direction against the Respondent No.2 to condone the break in service of the Petitioner for 73 days i.e. from 1st May, 2006 to 12th July, 2006 in the said post of Assistant Teacher in the Respondent No.4 school and for all consequential service benefits.

4. It is the case of the Petitioner that the Respondent No.3 issued advertisement in the newspaper inviting candidates for interview for one post of Assistant Teacher, B.A., B.Ed (Marathi), reserved for Scheduled Tribe Category. The Petitioner applied for the said post. The Petitioner remained present for selection on 6th July, 2005. On 6th July, 2005 the Respondent No.4 issued letter directing the Petitioner to remain present in the school on 7th July, 2005 for lesson teaching. The Petitioner attended lesson teaching which was found satisfactory by the Management.

5. The Petitioner appeared for final interview on on

12th July, 2005 and was successful and was selected and was recommended for appointment in the said post. On 13th July, 2005 the Petitioner was issued the order of appointment as Assistant Teacher with effect from 15th July, 2005 on probation for a period of two years in the post reserved for Scheduled Tribe Category. On 22nd August, 2005, the Respondent No.4 submitted proposal to the Respondent No.2 for approval of the said appointment of the Petitioner. Thereafter on 3rd June, 2006, the Respondent No.2 issued order granting approval only for the academic year 2005-2006 on temporary basis. On 7th June, 2006, the Management terminated the services of the Petitioner at the end of the academic year 2005-2006.

6. It is the case of the Petitioner that when the Petitioner approached the Respondent No.4, he was informed that it was a technical termination and his services would be continued in the next year also. The Respondent No.4 thereafter issued an order on 28th June, 2006 directing the Petitioner to approach the school for appointment. On 13th July, 2006, the Petitioner was given an order of appointment as Assistant Teacher in the same post and in the said pay scale

with effect from 13th July, 2006 and on probation for a period of one year reserved for Scheduled Tribe Category. The Respondent No.4 thereafter on 1st August, 2006 submitted the proposal to the Respondent No.2 for approval. Respondent No.2 issued an order of approval on 14th March, 2007 on probation with effect from 13th July, 2006.

7. On 22nd August, 2008 the Respondent No.4 submitted proposal to the Respondent No.2 seeking permanent approval to the appointment of the Petitioner after expiry of the probation period. The Respondent No.2 issued an order dated 23rd April, 2009 granting permanent and regular approval to the Petitioner upon completion of probation period with effect from 13th July, 2006. It is the case of the Petitioner that in view of such illegal approach on the part of Respondent Nos.2 and 4 there was a technical break in service for a period of 35 days.

8. On 20th August, 2011 the Petitioner made representation requesting the Respondent No.4 to condone break in service for a period of 73 days. The Management on 9th March, 2013 passed Resolution to submit a proposal to the

Respondent No.2 and seek condonation of break in service of the Petitioner. However, on 15th December, 2014, the Respondent No.2 issued impugned order and informed the Respondent No.4 that the proposal for condonation of break in service for the period of 73 days is rejected as per the provisions of the Government Resolution dated 31st October, 2005. The Petitioner has impugned the said order dated 15th December, 2014 in this Petition.

9. Mr. Bandiwadekar, learned Counsel for the Petitioner invited our attention to the various documents annexed to the Petition and would submit that admittedly the said permanent post was available when the Respondent No.4 issued order dated 15th December, 2014. The Respondent No.4 after following the requisite procedure under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 read with Rules 1981 issued the letter of appointment to the Petitioner on probation for a period of two years. He submits that since the appointment of the Petitioner was made on clear vacancy reserved for ST candidate, the Petitioner was rightly appointed for a period of two years on probation basis. The Respondent No.2 however,

granted approval only for the academic year 2005 – 2006 on temporary basis. After few days, the Management issued a fresh letter of appointment on the same post without advertising for the said post. The Respondent No.2, however, approved the said appointment to the Petitioner on the said post again on probation basis for a period of one year with effect from 13th July, 2006.

10. It is submitted by the learned Counsel for the Petitioner that since the Respondent No.4 Management has followed the requisite procedure which position is admitted by the Respondent No.2 in the Affidavit in Reply, at the first instance, the Respondent No.2 could not have granted approval on only one academic year and that also on temporary basis. He submits that the said itself shows inconsistency.

11. Learned counsel for the Petitioner submits that since the Petitioner was not responsible for the technical break granted by the management, the Respondent No.2 ought to have condoned such technical break in service for a period of 73 days.

12. Learned Counsel for the Petitioner invited our attention to the Rule 13(3) of the MEPS Rules 1981, providing that if the Management terminates the services of a non-permanent employee soon before the commencement of Summer vacation, such non-permanent employee shall also be entitled, in addition to vacation salary, to pay and allowances for the gap between the date of termination of his service and the date of commencement of the vacation if the Education Officer is satisfied that the termination of his service was on the ground other than the possibility of reduction in establishment. He submits that the same principle will apply to the facts of this case in view of technical break in service granted to the Petitioner in view of the illegal order passed by the Respondent No.2.

13. Mrs. Gavhane, learned AGP for Respondent Nos.1, 2 and 5 on the other hand invited our attention to the impugned order passed by the Respondent No.2 and also the letter of proposal submitted by the management and would submit that since that the Management itself had applied for approval for the second time for appointment of the Petitioner with effect from 13th June, 2006, the Respondent No.2 has rightly

granted the approval and the Petitioner was accordingly rightly refused the benefit of the Government Resolution 31st October, 2005 prescribing non payment of pension to the employees appointed prior to 1st November, 2005. Learned AGP supported the orders passed by the Respondent No.2 which are impugned in this Petition.

14. A perusal of the Affidavit in Reply filed by the Respondent No.5 clearly indicates the admitted position that the Respondent No.4 had sought permission from the Respondent No.5 to fill in the vacant post in the Respondent No.4- School. The Respondent No.5 had granted permission on 21st June, 2005 to the Respondent No.4 to fill in the vacant post. The Respondent No.4 had also sent a letter dated 14th June, 2005 to the Employment Exchange for requirement of Assistant Teacher in the Respondent No.4 school. The Employment Exchange had sent a letter dated 29th June, 2005 to the Respondent No.4 along with the list of 9 candidates for the post of Assistant Teacher.

15. The Respondent No.4 only thereafter issued an advertisement calling for suitable candidates for the post of

Assistant Teacher in the Respondent No.4 School. Though the Respondent No.5 in the said Affidavit in Reply has alleged that the advertisement issued by the Respondent No.4 was alleged to be defective and as a result thereof meritorious and eligible candidates could not apply for the said post, no such reasons are recorded in the order passed by the Respondent No.2, refusing to condone the break in service and also not granting approval from the date of initial appointment. A perusal of the said Affidavit in Reply clearly indicates that although the procedure as prescribed under the provisions of MEPS Act read with Rules 1981 was followed by the management. The Respondent No.2 granted approval only for one academic year on temporary basis.

16. In our view, if according to the Respondent No.2, the Management had not followed requisite procedure for appointment of the Petitioner on the said post, the Respondent No.2 could not have granted approval for appointment of the Petitioner even for one year.

17. The management was required to terminate the services of the Petitioner in view of the said order dated 3rd June, 2006

on expiry of the academic year 2005-2006. The Respondent No.2 did not dispute that within a short span the Petitioner was appointed on the same post and again on probation for a period of one year on the reserved category vide letter of appointment dated 13th June, 2006. In our view, the management rightly considered the probation period of one year in the said letter in view of earlier appointment which was approved by the Respondent No.2 for two years. The Respondent No.2 did not dispute that while issuing a letter of appointment dated 13th June, 2006, the management was not required to followed the procedure once again by issuing advertising and calling for the reserved category candidate from the Employment Exchange. In our view the Respondent No.2 thus considered this fact ought to have granted approval with effect from the initial appointment and on the basis of the letter dated 13th July, 2006 and in any event, by condoning the break in service period of 73 days.

18. Be that as it may, in our view there was a technical break in service effected by the Respondent No.4 in view of the erroneous order passed by the Respondent No.2 and thus the Petitioner had made out a case of condoning the break

in service and to avail of all the benefits of future pension fund under the Government Resolution dated 31st October, 2005. In our view the appointment of the Petitioner has to be considered from the date prior to 1st November, 2005 for the purpose of eligibility of the pension and for all other benefits.

19. In our view the orders passed by the Respondent No.2 on 31st December, 2014 thereby refusing to condone the break in service period of 73 days with effect from 1st May, 2006 to 12th July, 2006 deserves to be set aside. The Petitioner is entitled for condonation of break in service period of 73 days and consequently entitled for the benefit of the said Government Resolution 31st October, 2005 for payment of future pension on the terms and conditions set out therein.

20. We, therefore, pass the following order:-

i) The Writ Petition is allowed in terms of prayer clauses (b) and (c).

ii) Rule is made absolute accordingly.

iii) The Respondent No.2 shall apply provisions of Maharashtra Civil Services (Pension) Rules, 1982, Maharashtra Civil Services (Computation of Pension) Rules, 1984 and The General Provident Fund Scheme with effect from initial appointment i.e. 15th July, 2005 and shall take consequential steps as expeditiously as possible and in any event within four weeks from today.

iv) Parties to act on an authenticated copy

**[R.I. CHAGLA J.]**

**[R.D. DHANUKA, J.]**