

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.2795/2017

Meena D/o Nandlal Widhwani,
aged about 52 Yrs., Occ. Service,
R/o Flat No.202, Ambika Grace
Apartments, Behind Eden Garden
Restaurant, Koradi Road, Nagpur.

..Petitioner.

..Vs..

1. State of Maharashtra,
through its Deputy Director
Technical & Vocational Education,
Civil Lines, Nagpur.
2. Vidarbha Youth Welfare Society,
Amravati, Off : Chandak Bunglow,
Amravati (Camp), through its
Secretary.
3. Smt. Sakhubai Khadatakar
Junior College,
through its Principal at Girola (Ingle),
Wardha, Tq. & Dist. Wardha.
4. Bharat Education Society,
Near Sangh Building, Mahal,
Nagpur, through its President.
5. Ramnagar Bharat Junior College
Ramnagar, Nagpur, through its
Head Master.

..Respondent.

Shri G.M. Shitut, Advocate for the petitioner.
Shri A.A. Madiwale, A.G.P for respondent No.1.
Shri R.D. Bhuibhar, Advocate for respondent Nos.2 and 3.
Shri A.A. Bansod, Advocate for respondent Nos.4 and 5.

CORAM :- SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.
DATED :- 11.8.2021.

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

Heard Shri G.M. Shitut, learned counsel for the petitioner, Shri A.A. Madiwale, learned A.G.P. for respondent No.1, Shri R.D. Bhuibhar, learned counsel for respondent Nos.2 and 3 and Shri A.A. Bansod, learned counsel for respondent Nos.4 and 5.

2. The petitioner, the full time Instructor in M.C.V.C. course having been appointed on 18.10.1993 was terminated from her service on 23.6.2005 by respondent No.3 college after the Deputy Director of Education, Technical and Vocational sent a communication to respondent No.3 college that its M.C.V.C. course taught to 10+2 classes had been closed. Such a case of the termination of services of petitioner would fall under Rule 26(4) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "Rules of 1981"). It then followed that the petitioner become entitled to all the rights and benefits which flowed from termination of her service which was in fact retrenchment on account of closure of studies as provided under Rule 26.

3. It is the case of the petitioner that she is entitled for condonation of her break in service as, after her such retrenchment on 23.6.2005, she was absorbed on the directions of the Deputy Director of Education, Technical and Vocational in respondent No.5 junior

college run by respondent No.4 on 15.5.2006. Such absorption was within a period of one year from the date of termination of service / retrenchment of the petitioner.

4. It is seen from the documents filed on record that the Deputy Director of Education, Technical and Vocational by his different communications dated 28.7.2006, 20.1.2017 and 25.1.2017 sent to respondent Nos.4 and 5 directed them to initiate the necessary action under the provisions of Rules of 1981 for condoning the break in service of the petitioner and submitting the appropriate proposal to them, however, respondent Nos.4 and 5 have not taken any action in the matter and, therefore, the petitioner has filed this petition.

5. As we have already noted that the petitioner, after termination of her services / retrenchment under rule 26, was entitled to have all the benefits flowing from rule 26, the case of the petitioner would be required to be considered favourably for condonation in break of her service. In fact this also appears to be the intention of respondent No.1, when he sent aforesaid three communications to respondent No.5. There are also circulars issued by the Education Department, which, in the present case would fortify the rights of the petitioner. These circulars are of 10th May, 1989 and 3rd September, 1993 which are taken on record today and marked documents "A" and "B". In this

view of the matter, we direct respondent Nos.4 and 5 to act upon the communications dated 28.7.2006, 20.1.2017 and 25.1.2017 and prepare a proposal for condonation of break in service of the petitioner in accordance with guidelines stated in the circular dated 10th May, 1989 and 3rd September, 1993 and forward the same to respondent No.1 for his appropriate decision, in accordance with law, in the matter. Such proposal shall be forwarded by respondent Nos.4 and 5 to respondent No.1 within a period of three weeks from the date of receipt of copy of this order. Petition is **allowed** in these terms. Rule accordingly.

6. Authenticated copy of the order be furnished to the learned counsel for the petitioner and also to learned A.G.P. for its being sent to the Deputy Director of Education, Technical and Vocational.

7. It is made clear that if the break in service of the petitioner is condoned, the petitioner would be at liberty to assert whatever rights that may accrue to her on account of such condonation of break in service.

JUDGE

JUDGE