

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 8894 OF 2022**

Vasant Shivram Patil

.. Petitioner

Versus

The State of Maharashtra and another .. Respondents

Shri Suresh D. Dhongade, Advocate for the Petitioner.

Shri A. S. Shinde, A.G.P. for the Respondent Nos. 1 and 2.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

DATE : 30.08.2022.

FINAL ORDER (*Per Sandeep V. Marne, J.*) :-

. By way of present petition, the petitioner assails order dated 22.02.2022 passed by the Maharashtra Administrative Tribunal, Mumbai Bench at Aurangabad, by which petitioner's Original Application No. 265 of 2021 has been dismissed. In the original application, the petitioner had prayed for condonation of break in service from 02.03.1986 to 23.11.1987 and from 01.02.1988 to 02.02.1989 and for treatment of his service from the date of initial appoint for the purpose of Assured Career Progression Scheme (for short 'ACPS').

2. Mr. Dhongade, learned advocate appearing for the petitioner submits that the case is covered by provisions of Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982 (for the sake of brevity hereinafter referred as to the "Rules of 1982"). He further submits that his case is fully covered by the decision of this Court in the case of **State of Maharashtra and others Vs. Tulshidas Vishwanath Dhanwade and others** in Writ Petition No. 581 of 2008 decided on 23.09.2019. He further submits that

similarly placed employees working in Mantralaya and Brihanmumbai Municipal Corporation are granted the benefit of counting temporary services from the date of their initial appointment and the petitioner is accordingly given discriminatory treatment.

3. Mr. Shinde, learned Assistant Government Pleader for the respondents/State, supports the order passed by the Tribunal. He submits that, the break period in the case of the petitioner exceeds one year and that therefore, same cannot be condoned. He further submits that in the case of **Tulshidas Vishwanath Dhanwade** (supra) relied upon by the Petitioner, there was no break in service. He prays for the dismissal of the petition.

4. After having heard the learned counsel for parties, we find that there are two breaks in service of the petitioner of 630 and 367 days. Mr. Dhongade has attempted to bring the case of the petitioner within the ambit of Rule 48(1) of the Rules of 1982 stating that the break in service was not beyond his control. However, Clause (c) of Sub Rule 1 of Rule 48 of the Rules of 1982 prescribes outer limit of one year for total period of break in service. Since the break in service in the case of the petitioner exceeds the period of one year, such break cannot be condoned as per the provisions of the Clause (c) of Sub Rule 1 of Rule 48.

5. Reliance of Mr. Dhongade on the decision of this Court in the case of **Tulshidas Vishwanath Dhanwade** (supra) would not assist petitioner's case as there were no break in service involved in that case. This Court has held in that judgment that if appointment is permanent with benefit of increments, albeit of temporary post, upon conversion of the post to permanent, the

service is required to be counted from the date of initial appointment. In the present case, the petitioner's initial appointment was not on permanent post. In para 4 of the affidavit in reply filed by the State before the Tribunal, it was specifically averred that "*Applicant's initial appointment was not against sanctioned post.*" Furthermore, there are breaks in his service which was not the case in the case of **Tulshidas Vishwanath Dhanwade** (supra). Therefore, the judgment is of no assistance to the petitioner.

6. Coming to the last contention of Mr. Dongade that the petitioner is given discriminatory treatment viz-a-viz similarly placed employees working in the Mantralaya and Brihanmumbai Municipal Corporation, we find that the said dispensation is made by way of Government Resolution dated 07.10.2016. We have gone through the said Government Resolution dated 07.10.2016 and find that a provision is made for counting of temporary 'continuous' services for the purpose of ACPS. Since the petitioner does not have continuous service prior to his permanent appointment, the said Government Resolution would have no application to his case. Therefore, the plea of discrimination raised by Mr. Dhongade cannot be accepted.

7. In the circumstances, we find that the petition filed by the petitioner is devoid of merits. The same is accordingly dismissed without any orders as to costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

