

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

WRIT PETITION NO.9221 OF 2021

Gajarabai w/o. Dadarao Garande
Age : 56 years, Occu: Service,
R/o. Primary Health Center, Madansuri,
Tq. Nilanga, Dist. Latur.

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through its Secretary,
Rural & Water Conservation Department,
Mantralaya, Mumbai.
2. The State of Maharashtra
through its Secretary
Finance Department,
Mantralaya, Mumbai.
3. The State of Maharashtra
through its Secretary
General Administrative Department,
Mantralaya, Mumbai.
4. The Divisional Commissioner (Revenue),
Aurangabad Region, Aurangabad.
5. The Dy. Director Health,
Latur Region, Dist. Latur.
6. The Chief Executive Officer,
Zilla Parishad, Latur,
Dist. Latur.
7. The District Health Officer,
Zilla Parishad, Latur,
Dist. Latur.
8. The Medical Officer
Primary Health Center, Madansuri,
Tq. Nilanga, Dist. Latur.

... **RESPONDENTS**

...
 Advocate for Petitioners : Mr. S.G. Munde
 AGP for Respondent/State : Mr. K.N. Lokhande
 Advocate for Respondent Nos.6 to 8 : Mr. U.B. Bondar
 ...

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

DATE : 03.08.2022

ORAL ORDER (SANDEEP V. MARNE, J.) :

Heard. Rule. The Rule is made returnable forthwith. With the consent of the parties, the matter is heard finally at the stage of admission.

2. By way of present petition, the petitioner seeks prayer to regularize her services from the date of initial appointment i.e. 30.08.1988 by condoning break in service on the post of Arogya Sevika (ANM). It is not in dispute that the services of the petitioner have been subsequently regularized with effect from 05.02.1994. The stand of the respondents is that there were breaks in service in respect of the period from 30.08.1988 to 04.02.1994 and unless those breaks are condoned, the petitioner cannot be granted the benefit of regularization of the said period of service. Undeniably the Divisional Commissioner has the power to condone the break in service and consequently grant the benefit of the regularization in respect of the period from 30.08.1988 to 04.02.1994.

3. The petitioner has placed reliance on the order dated 15.12.2008 by which the Divisional Commissioner has not only condoned breaks in service but also extended the benefit of regularization of services

in respect of 18 Arogya Sevak working in Zilla Parishad, Latur. Petitioner also places reliance on the order dated 18.07.2018 as corrected by the order dated 26.08.2020 in respect of Smt. R.P. Bedade who was initially engaged along with the petitioner by the same order dated 30.08.1988. By the said orders dated 18.07.2018 and 26.08.2020, the break in service in respect of Smt. Bedade is claimed to have been condoned.

4. The only defence taken by the Zilla Parishad is that even though the proposal for condonation of break in service of the petitioner was sent to the Divisional Commissioner on 02.12.2016, before the same could be decided, the petitioner not only retired from service but also Government Resolution dated 05.05.2018 came to be issued directing that there should not be any regularization in service for temporary establishment. The learned counsel for the petitioner counters the said objection by submitting that the said Government Resolution dated 05.05.2018 cannot have retrospective operation. Be that as it may. In case the proposal has indeed been forwarded by Zilla Parishad to the Divisional Commissioner on 02.12.2016, the same ought to have been decided by the Divisional Commissioner.

5. In the above back drop, we pass the following order:

ORDER

- i. In case, the proposal dated 02.12.2016 for condonation of break in service of the petitioner during the period from 30.08.1988 to 04.02.1994 is received by the Divisional Commissioner, the same

is directed to be decided within a period of two months from today.

- ii. In case, such proposal is not received by the Divisional Commissioner and/or not pending to the Office of Divisional Commissioner, Zilla Parishad, is directed to submit a fresh proposal to the Divisional Commissioner within a period of four weeks from today. Upon receipt of such proposal, the Divisional Commissioner is directed to decide the same within a period of 8 weeks thereafter.
- iii. In the event, the proposal in respect of the petitioner is favorably decided by the Divisional Commissioner, the petitioner be accorded all the consequential benefits.

6. The Writ Petition is accordingly disposed of. The Rule is made absolute.

(SANDEEP V. MARNE, J.)

(MANGESH S. PATIL, J.)