

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

WRIT PETITION NO.10263 OF 2019

Shivaji s/o Buvaji Belekar
Age : 60 years, Occu.: Retire,
R/o.: Kaushalya Niwas, Belekar
Colony at Post Tq. Karjat,
District : Ahmednagar

.... PETITIONER

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department
Mantralaya Mumbai - 32
 2. The Director,
Vocational Education and Training
Mumbai at Mumbai.
 3. The Joint Director,
Vocational Education & Training
Nashik at Nashik
 4. The District Vocational Education
and Training Officer, Ahmednagar,
Tq. and Dist. Ahmednagar
 5. Yeshwant Shikshan Sanstha,
Karjat at Karjat, Tq. Karjat
Dist - Ahmednagar,
Through its Secretary
 6. Shri Amarnath Madhyamik Va
Ucha Madhyamik Vidyalaya,
Karjat, Dist Ahmednagar
Through its Principal
- RESPONDENTS

...
Advocate for Petitioner : Mr. A. G. Talhar
AGP for Respondent Nos.1 to 4 : Mr. A. S. Shinde

....
**CORAM : C. V. BHADANG AND
SANDIPKUMAR C. MORE, JJ.**

DATED : 6 JULY 2022.

ORAL JUDGMENT (Per : C. V. BHADANG, J.):

Rule. Rule made returnable forthwith. The learned AGP waives service for the contesting respondent Nos.1 to 4. Heard finally by consent of the parties.

2. By this petition under Article 226 of the Constitution of India the petitioner is challenging the order dated 26 June 2018 passed by the third respondent- Joint Director of Vocational Education and Training, Nashik thereby holding that there is no necessity to condone the breaks in the service of the petitioner.

3. The petitioner was appointed as a full time teacher in the respondent school on 8 October 1993 and Deputy Director of Vocational Education and Training, Nashik granted approval to the said appointment. However, in respect of five consecutive appointments, the respondent Deputy Director while granting approval to the appointment have shown one days break in service of the petitioner.

4. On 4 April 2003, the petitioner applied to the respondent for condonation of in all six breaks on the ground that actually there were no breaks in the service of the petitioner and the notional breaks were

created only while granting approval. The respondent – management sent the proposal recommending the condonation of the breaks. According to the petitioner the District Vocational and Training Officer also by his report on 16 April 2004 recommended the condonation of such breaks.

5. It appears that certain discrepancies were noticed in the proposal and management had rectified the same.

6. In the meantime, the petitioner stood retired on attaining age of superannuation on 30 April 2018. It is subsequent to this that on 21 August 2018 the second respondent placing reliance on the government resolution dated 20 April 2007 has found that as petitioner had otherwise put in qualifying service in order to entitle him for pensionary benefits, there is no need for condonation of the breaks.

7. We have heard the learned counsel for the parties. Perused record.

8. On behalf of the petitioner reliance is placed on the judgment and order dated 28 January 2019 of this court in a batch of writ petitions bearing Writ Petition No. 1136 of 2016 and others in which according to the learned counsel in similar circumstances this court had directed condonation of break in service of the petitioners, which was of 17 days, 18 days and 4 days. It is pointed out that even in that case this court had noticed that there were no actual breaks in service but only technical break was given on account of the fact that the approval was given on yearly basis. It is submitted that a similar view has been taken by this court in *Chief Executive Officer Vs. Satish Dnyanoba Gaikwad and*

others, 2013 (7) ALL. M.R. 523. The learned counsel for the petitioner has also placed a reliance on the decision of this court (Nagpur bench) in *Vasant Hiraji Kaddo vs. State of Maharashtra and others, 2009(1) Bom.C.R. 743*, in which this court has disapproved the policy decision of the State Government not to condone the break in service (where the employee had otherwise put in qualifying service) as this court had found that there was no logic in the said reason.

9. Mr. A. S. Shinde, the learned AGP has submitted that the case of the petitioner is squarely governed by the government resolution dated 20 April 2007 and in particular clause 4 thereof. It is submitted that the State Government has taken a policy decision not to condone such breaks where the concerned employee has otherwise put in qualifying service in order to entitle him for the pensionary benefits. It is submitted that it is only in cases where the concerned employee on account of such breaks has not completed the qualifying service (and thereby disentitling him to the pensionary benefits) that the case of condonation can be considered on a case to case basis.

10. The learned AGP submitted that the case of *Pramod Patil* (supra) as well as the decision in the case of *Vasant Kaddo* (supra) are distinguishable on facts. In so far as decision in *Pramod Patil* is concerned, it is pointed out that the Division Bench of this court had no occasion to consider the government resolution dated 20 April 2007 which has also been noticed by this court in order dated 26 February 2022 passed in this petition. In so far as the case of *Vasant Kaddo* is concerned, it is submitted that the appointment in the said case was

against a post which was admissible to grant in aid unliking present case whereas for certain period the school / post was on unaided basis.

11. We have carefully considered the circumstances and submissions made. A perusal of the record makes it writ large that the petitioner was appointed on a clear vacancy as a full time teacher in the respondent-school on 8 October 1993 and for initial period of 1994 to 1998 approval was granted to the said appointment. However, in so far as the five consecutive approvals are concerned, while granting approval a break of only one day was shown.

12. As perusal of the details of the break (at page No.43 of the compilation) shows that except in respect of the appointment dated 30 June 1994 where the break is of two days i.e. 11 June 1994 and 12 June 1994, for the subsequent four appointments for the year 1995, 1996, 1997 and 1998 the break is only of one day. Thus, we find that factually there was no actual break in service but only technical break was given while granting approval which was also a case in Writ Petition No. 1136 of 2016 and others.

13. It is true that the Division Bench while deciding Writ Petition No.1136 of 2016 had no occasion to notice or consider the government resolution dated 20 April 2007. However, the Division Bench of this court sitting at Nagpur in **Vasant Hiraji Kaddo** (supra) had an occasion to consider the effect of the said government resolution and in particular the condition by which it was stipulated that it was the policy of the government not to consider the case for condonation where the employee / incumbent had put in qualifying service so as to entitle him

to the pensionary benefits. The Division Bench in **Vasant Kaddo** (*supra*) has held thus in para 10 of the judgment :

"10. The reasons put forth by the respondents for not condoning the break in service of the petitioner (i) that the policy of the State is not to condone the break in service in order to enhance the pension and (ii) that the cases of Shri B.L. Deshmukh and Shri Jagdish Khebudkar cannot be equated with that of the petitioner, because those two employees would not have been entitled for any pension unless the break in their service was condoned and hence the same was condoned as special cases. We are unable to find any logic in these reasons. If it is the policy of the State to give pension to every employee on a full-time basis in aided and recognized schools appointed before 1st April, 1966, there is no question of any policy of the State not to condone break in service in order to enhance pension. If an employee is benefited in calculation of his pension by condoning break in his service, there is no reason why such break should not be condoned. In fact it would be in consonance with the pension scheme introduced by the State. Hence, the ground for not condoning the break in service of the petitioner does not stand to reason."

(Emphasis supplied)

14. It can thus be seen that this court had already held that once it is a policy of the State Government to give pension to employee on a full time basis there is no logic why the cases of condonation cannot be considered where the employee has otherwise put in sufficient qualifying service.

15. In so far as the ground that the post against which the petitioner was appointed was an unaided post, the learned counsel for the petitioner

submitted that the provisions of the Maharashtra Employees of Private School Regulation Act, 1977 are applicable both to aided and unaided schools. In such circumstances, we find that it would be appropriate for the respondent – authorities to reconsider the proposal for condonation of break in the light of the applicable provisions. However, the same shall not be rejected placing reliance on clause-4 of the government resolution dated 20 April 2007. We expect the respondent – authorities to take a decision within a period of eight weeks from receipt hereof.

16. Depending upon the order passed on the proposal for condonation of breaks, proposal for pensionary benefits of the petitioner shall be processed expeditiously within a period of eight weeks thereafter.

17. Rule is made absolute in the aforesaid terms.

SANDIPKUMAR C. MORE, J.

C. V. BHADANG, J.

VS Maind/-