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

WRIT PETITION NO.10544 OF 2016

Balaji s/o Vithalrao Mitkar,
Age 48 Years, Occu. Service,
Asstt. Teacher in Shri. Shankarrao Chavan,
Secondary School, Asarjan Camp,
Tq. Dist. Nanded,
R/o Asarjan, Tq. Dist. Nanded

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Higher and Technical Education
Department, Mantralaya,
Mumbai – 400032
2. The Education Officer (Secondary),
Zilla Parishad, Nanded,
Dist. Nanded
3. Sanskar Wardhini Shikshan Prasarak
Mandal, Jayprakash Nagar,
Asarjan Camp, Nanded,
Tq. Dist. Nanded,
Through its Secretary
4. Head-Master,
Shri. Shankarrao Chavan Secondary
School, Asarjan Camp, Nanded,
Tq. Dist. Nanded run by
Sanskar Wardhini Shikshan
Prasarak Mandal, Jayprakash Nagar,
Nanded, Tq. Dist. Nanded

..RESPONDENTS

(2)

Mr. G.J. Karne , Advocate for petitioner;
Mr. S.K. Tambe, A.G.P. for respondents no.1 & 2;
Mr. V.P. Sawant, Advocate for respondents no.3 & 4

**CORAM : R.D. DHANUKA
AND
S. G. MEHARE, JJ.**

DATE : 6th April, 2022

ORAL JUDGMENT (Per R.D. Dhanuka, J.)

1. Rule. Mr. Tambe, learned A.G.P. waives service for respondents no.1 and 2 and learned Counsel Mr. Sawant for respondents no.3 and 4.

2. Rule made returnable forthwith.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner prays for a Writ of Mandamus directing respondents no.1 and 2 to condone the break in service of the petitioner relating to summer vacation for the year 1998, 1999 and 2000 and to grant him three annual increments for such three years. The petitioner also seeks a Writ of Certiorari for quashing and setting aside the order dated 22.4.2009 passed by the Education Officer (Secondary), Zilla Parishad, Nanded and prays for condonation of

(3)

break in service of the petitioner relating to the summer vacation of the year 1998, 1999 and 2000 and to grant him three annual increments for those three years.

4. Learned Counsel for the petitioner invited our attention to the order passed by the Education Officer rejecting the proposal submitted by the management for condonation of break in service. Learned Counsel relied upon the Government Resolution dated 10.5.1989, annexed at page 46 of the petition.

5. At this stage, we do not propose to go into the issue whether the petitioner was appointed on leave vacancy during those three years, on year to year basis, or not. The fact remains that under the said Government Resolution dated 10.5.1989, the issue of condonation of break in service can be decided only by the State Government, as rightly canvassed by Mr. Tambe, learned A.G.P. for the State. The Education Officer, thus, could not have passed any order on the proposal submitted by the management for condonation of break.

(4)

6. The consequential benefit of condonation of break can also be decided by the State Government depending upon the outcome of the proposal submitted by the management to grant condonation of break in favour of the petitioner for the summer vacation period of the year 1998, 1999 and 2000.

7. The impugned order dated 22.4.2009 passed by the Education Officer, is accordingly quashed and set aside, being without jurisdiction.

8. Respondent no.1 is directed to consider the said proposal submitted by the management for condonation of break, within a period of six months from the date of receipt of copy of this order, without being influenced by the observations made by the Education Officer in the impugned order dated 22.4.2009 and in accordance with law. If respondent no.1 is of the view that the petitioner as well as the management have made out a case for condonation of break for aforesaid three years, consequential benefits shall be granted by respondent no.1 to the petitioner within three months from the date of passing of such order. If the order passed by respondent no.1 would be adverse to the interest of the petitioner, the petitioner

(5)

would be at liberty to take appropriate recourse to challenge the same.

9. This Court has not expressed any views on the merits of the proposal submitted by the management for considering condonation of break for three vacation period.

10. It is made clear that the proposal already submitted by the management shall be submitted to the Deputy Director of Education, to be routed through the Education Officer, for consideration. The Education Officer shall forward such proposal to the Deputy Director of Education within four weeks from today.

11. Writ Petition is disposed of in aforesaid terms.

12. All contentions of both parties are kept open.

13. Rule is made partly absolute. No order as to costs.

14. Parties to act on authenticated copy of this order.

(S. G. MEHARE, J.)

(R.D. DHANUKA, J.)

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