

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2558 OF 2017

Shaikh S. D.

..Petitioner

V/s.

The Secretary, Higher and
Technical Education and Ors.

..Respondents

Mr. Sanjiv A. Sawant for the Petitioner.

Mr. S. B. Kalel, AGP for the Respondent-State.

Mr. I.M. Khairdi a/w. Mr. P. N. Joshi for Respondent No.4.

**CORAM : SUNIL B. SHUKRE AND
G. A. SANAP, JJ.**

DATE : 8 MARCH 2022.

P. C.

Heard. There are corrections in the order passed on 1/3/2022. The words in the third and fourth line of paragraph No.2 mentioned as "the period from 21/6/2022 to 5/11/2007 has not been condoned because this was the period when the petitioner was in service on account of oral termination of his services as a Lecturer" be substituted by the following words "the period from 21/6/2000 to 5/11/2007 has not been condoned because this was the

period when the petitioner was not in service on account of oral termination of his services as a Lecturer". Similarly, in line No.10 in paragraph No.2 the date mentioned is "21/6/2007" which is to be substituted by date "21/6/2000" and in paragraph No.5 the word "Respondent No.5" be substituted by the words "D. M. K. G. Science College"

2. We have passed a detailed order on 1/3/2022 expressing our *prima facie* opinion. It has been pointed out by learned AGP that the period between 21/6/2000 to 5/11/2017 was the period when the Petitioner was not in actual service and therefore, he submits that because of this period, the Petitioner could not be granted continuity in service.

3. Learned counsel for the Petitioner stated that there is however, a document at page No.233 of the paper book of the petition in the form of office note containing internal remarks of the Higher Technical Education Department which shows that in principle decision was taken for granting permanency and continuity in services with consequential benefits to the Petitioner and therefore, a direction has been issued that corrigendum be issued clarifying the aspect of granting of continuity in service to the

Petitioner. This document is of the date of 6/4/2009. Learned counsel for the Petitioner further submits that thereafter no corrigendum has been issued but according to learned AGP, impugned order dated 9/1/2015 could be considered to be also indicative of the corrigendum contemplated by the document at page 233.

4. Now after having gone through the impugned order dated 9/1/2015, we come across some facts which are not consistent with the facts established on record. The Petitioner was appointed as a Lecturer in Chemistry on 1/8/1989 in DMKG Science College , Mangalweda, District Solapur and such the appointment was on open post. However, the post to which the Petitioner was appointed was actually not meant for open category candidates but was reserved for candidates belonging to Scheduled Tribes which was later on changed to a seat reserved for Scheduled Caste candidates. The impugned order further narrates the events that took place after the appointment of the Petitioner which ultimately lead to oral termination of the Petitioner from his service in the said college with effect from 21/6/2000. Impugned order further shows that the said termination was challenged by the Petitioner before the College Tribunal and the College Tribunal, Pune dismissed this Petition finding

that the oral termination by the Administrator of the College was perfectly legal and correct. The impugned order further shows that this order has attained finality. It further shows that the Petitioner joined the college on 5/11/2007 and thus, the question arose for condoning break in service and granting continuity in service for the period from 20/6/2000 till 5/11/2007. The impugned order found that the Petitioner was not in actual service during this period of time and therefore, the Petitioner would not be entitled to any continuity in service by condoning his break in service. However, while doing so the impugned order also held that the Petitioner could not be granted continuity in service even from the initial date of appointment i.e. 1/8/1989 till his oral termination which took place on 21/6/2000. The communication dated 21/6/2008 issued by Divisional Joint Director, Kolhapur Region shows that break in service of the Petitioner for the period from 1/8/1989 till 22/4/1993 was condoned by the University and thus, the Petitioner was granted continuity in service for total period of 294 days. This communication further shows that from 28/6/1994 till 28/6/2000 the Petitioner was in continuous service and therefore, there was no question of any continuation of break in service. But, this communication is silent about the services of the Petitioner during the period from 23/4/1993

till 19/6/1994. There is no order available on record granting or refusing continuity in service during the period from 23/4/1993 till 19/6/1994.

5. Thus, we find that there is a lot of confusion about rendering of continuous service by the Petitioner and also condonation of break in service of the Petitioner. The impugned order while holding that the Petitioner not being in service during the period from 21/6/2000 till 5/11/2007 is not entitled to any continuity in service also holds that the Petitioner is not entitled for any continuity in service with effect from 1/8/1989 although, by the communication of the Divisional Joint Director, Kolhapur Region, the fact of granting continuity in service for a period of 294 days during the period from 1/8/1989 till 22/4/1993 has been already acknowledged. On the other hand, the internal note dated 6/4/2009 at page 233 shows that in principle decision has been taken for granting permanency and continuity in service with consequential benefits to the Petitioner and that a direction has also been issued for issuing necessary corrigendum regarding grant of continuity in service to the Petitioner. Although, it is stated that the impugned order can be read as corrigendum, we do not think it to be so because it does not refer to any internal office note.

6. In view of the above, we find that it is necessary that confusion that is prevailing presently regarding rendering of continuous service by the Petitioner and granting condonation of service breaks of the Petitioner during intervening periods has to be removed by reconsidering the whole issue and therefore, we are also of the view that impugned order cannot be upheld by us to be legal and valid.

7. In the result, we partly allow the Petition. The impugned order is hereby quashed and set aside. We direct Respondent Nos. 2 and 3 to reconsider the whole issue regarding condoning break in service of the Petitioner and granting of continuity in service with consequential benefits to the Petitioner by examining the entire service record of the Petitioner. Respondent Nos.2 and 3 shall thereafter submit appropriate proposal to Respondent No.1 for his decision in accordance with law. We further direct Respondent No.1 to take his decision on the proposal submitted to him by Respondent Nos.2 and 3 at the earliest but within 3 months from the date of receipt of the proposal. The proposal shall be forwarded by Respondent Nos. 2 and 3 within a period of 4 months from the date of appearance of the Petitioner before

Respondent No.3. The Petitioner to appear before Respondent No.3 on 21/3/2022 with liberty to the Petitioner to produce before Respondent No.3 all relevant documents including a copy of service book.

8. The Petition is disposed of in above terms. The final decision taken by Respondent No.1 shall be communicated to the Petitioner within a period of one week from the date of the decision.

(G. A. SANAP, J.)

(SUNIL B. SHUKRE, J.)