

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 85 OF 2021

Mrs. Geetha Ganesh, Assistant Teacher ... Petitioner.

Versus

State of Maharashtra and Others. ... Respondents.

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Mr. Yashodeep Deshmukh, i/by Akshay Kapadia, for the Petitioner.
Smt. S.S. Bhende, AGP for the Respondent Nos.1 to 3.
Mr. Prabhat J. Dubey, for the Respondent No.5.

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**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATE : December 12, 2022.

P. C. : (Per Sharmila U. Deshmukh, J):

1. By this petition, the Petitioner seeks inclusion of two years of initial temporary service as an Assistant Teacher (English) rendered during the academic year 1997-1998 as part of her service and all consequential benefits as regards Career Advancement Scheme Benefits/Time Bound Promotion Scheme and re-fixation of pay.

2. Heard Mr.Yashodeep Deshmukh, Learned Counsel appearing for the Petitioner, Smt. S.S.Bhende, Assistant Government Pleader for Respondent Nos.1 to 3 and Mr. Prabhat J. Dubey for Respondent No.5-College.

3. The Petitioner was initially appointed on the temporary

basis as an Assistant Teacher in English subject , against an advertised post which was for reserved category, with effect from 20th November, 1997 in Respondent No.5 - C D Barfiwala Junior College, which appointment was duly approved by the Deputy Director of Education. The renewed appointment of the Petitioner as Assistant Teacher with effect from 16th June, 1998 in the same college for the academic year 1998-1999 was also approved by the Deputy Direction of Education. It is the case of the Petitioner that as the post was meant for reserved category, although the services of the Petitioner was continued on the said post, the Petitioner was at the relevant time being fully qualified and eligible to be appointed as an Assistant Teacher on regular basis was not appointed.

4. In the year 1999, the Respondent No.4-Tolani College of Commerce issued advertisement for the post of teacher in English subject, which was a sanctioned / vacant post meant for open category. The Petitioner applied and was appointed in the Respondent NO 4 College with effect from 16th June, 1999 on probation, the appointment being approved by the Deputy Director of Education by communication dated 29th February, 1999. In the interregnum, while leaving C D Barfiwala Junior College and joining Tolani College of Commerce, there was a summer vacation from 2nd May, 1999 to 15th June, 1999. The issue in the present case revolves around this period of summer vacation.

5. It is the case of the Petitioner that the Senior Auditor has approved the Petitioner's pay, according to the fifth pay with two

increments after taking into account the Petitioner's service in C D Barfiwala Junior College. However, subsequently, it was pointed that there was a mistake in the earlier pay fixation and the date of next increment should have been 1st November, 2019 instead of 1st November, 2000, which was required to be corrected in the service-book of the Petitioner. As the correction in the earlier pay-fixation required the permission of the Task Force, the concerned college was required to send the proposal for correction to the Senior Auditor, which would be recommended by the Senior Auditor to the Task Force. Accordingly, Tolani College of Commerce sent the proposal for correction in the date of increment in service-book from 1st November, 2000 to 1st November, 1999. By a communication of 29th June, 2017, the Task Force convened the decision that as the Petitioner's service in C D Barfiwala Junior College was terminated, she was not entitled for increment. After receipt of the communication, the proposal was sent once again to the Task Force for review and reconsideration stating that the Petitioner's services was wrongly shown as terminated from 2nd May, 1999, and the Petitioner is entitled for two increments, as per the applicable Government Resolutions and circulars. By the communication of 11th July, 2019, the Task Force convened their final decision holding that upon leaving first college and joining other college, if there is a break in service, the concerned college has to forward the proposal for condonation of break in service within a period of one year and as the same has not been done in the present case, the request is rejected.

6. The issue in the present case is whether the summer

vacation period from 2nd May, 1999 to 15th June, 1999 is to be treated as a service period or break in a service for which necessary proposal for condonation of break in service has to be forwarded by the concerned college within a period of one year.

7. Learned counsel for Petitioner submits that considering the payment of the vacation salary to the Petitioner by State Government for the period from 2nd May, 1999 to 15th June, 1999, it cannot be said that there is any break in service and the vacation period is to be construed as part of the service period. He further submits that that being the position in law, the Petitioner is entitled to a revised pay-scale with effect from 1st January, 1996 and also grant of Time bound promotion benefits on completion of 12 years with effect from the year 2000 by counting her initial temporary service and payment of arrears alongwith interest at the rate of 12% p.a.

8. In support of his contention, learned counsel for the Petitioner relied upon the following judgments:

- (i) ***Sumangala vs. The State of Maharashtra and Ors.***, in ***Writ Petition No.601 of 2005***, decided on ***12.10.2009***, by this Court (Nagpur Bench);
- (ii) ***Yuvraj Nathuji Rodye vs. Chairman, Maharashtra State Electricity Board, Bombay and Others***; reported in ***2008 (6) Mh.L.J. 384***;
- (iii) ***State of Andhra Pradesh and Another vs. Dinavahi Lakshmi Kameswari***; reported in (2021) 11 SCC 543.

9. Learned Assistant Government Pleader appearing for the

State has opposed the relief sought on the ground that the Petitioner was initially appointed in the C D Barfiwala Junior College on purely temporary basis and there was a break in the service. She further contends that the relief sought by the Petitioner of inclusion of previous temporary service in Respondent No.5-College cannot be considered on account of failure to follow the procedure prescribed for condoning the said break in accordance with the Government Resolutions dated 10th May, 1989 and 12th November, 1996.

10. We have considered the rival submissions of the parties. There is no dispute as far as the factual matrix of the matter is concerned. It is an admitted position that the Petitioner was working as an Assistant Teacher in C D Barfiwala Junior College for the academic year 1997-1998, and came to be appointed in Tolani College of Commerce from 16th June, 1999. The period from 2nd May, 1999 to 15th June, 1999 was the summer vacation and for this period of summer vacation, the salary was paid by the State Government. At this juncture, it would be appropriate to reproduce Rule 13 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981,(MEPS Rules) which deals with the vacation and vacation pay, which reads under:

“13. Vacation and Vacation Pay :

(1) Subject to the provisions of this rule, all the employees on the teaching staff including Head Masters, Laboratory Assistants and Laboratory Attendants in a school be entitled to vacations as follows, namely:

(i) a short vacation which may either commence in a month of October or November every year generally to cover Diwali Festival;

(ii) a Summer vacation which may ordinarily commence in the month of May, every year.

The dates of commencement and the periods of vacations shall be notified by the Educational Inspector, or as the case may be, the Education Officer in Zilla Parishad.

(2) Non-permanent employee shall be entitled to the salary for the period of vacation if he had served for a major part of respective term and the temporary vacancy such as vacancy on account of leave, deputation or post created for a specific period, in which he was originally appointed continues to exist beyond the period of vacation and that the employee continues to be in service after the vacation.

(3) If the Management terminates the services of a non-permanent employee soon before the commencement of Summer vacation, such non-permanent employee shall also be entitled, in addition to vacation salary, to pay and allowances for the gap between the date of termination of his service and the date of commencement of the vacation if the Education Officer is satisfied that the termination of his service was on the ground other than the possibility of reduction in establishment.

(4) If a permanent employee after due notice, resigns his post in the school on the last working day of the term, he shall be entitled to the vacation salary.

(5) If a permanent employee after due notice, resigns his post in the school in the middle of the term and if the school is required to appoint a substitute who would otherwise be entitled to vacation salary under sub-rule (2), the permanent employee who has resigned

shall not be entitled to the vacation salary for the same period.

(6) Untrained teachers appointed in the Secondary Schools or Junior Colleges of Education during the period from the 16th July, 1969 to 6th February, 1974 (both days inclusive) and allowed to get trained at their own cost (by sanctioning leave for the entire period of training) shall be entitled to the vacation salary during the vacation immediately falling after their resuming duties on completion of training.”

11. A perusal of the aforesaid Rule of MEPS, shows that all the employees of the teaching staff are entitled to summer vacation which ordinarily commences in the month of May, and even non-permanent employees are entitled for salary of period of vacation if the employees have served a major part of respective term. Sub-Rule (3) of Rule 13, provides that in the case of termination of service of non-permanent employees before the commencement of vacation such non-permanent employee shall be entitled, in addition to vacation salary, to pay and allowances for the gap between the date of termination of service and the date of commencement of the vacation subject to the satisfaction of the Education Officer. Considering the Rule, in our opinion, if the Petitioner was paid the vacation salary, it cannot be said that the Petitioner was not in employment because payment of salary is a condition of service and is payable only if the Petitioner was in employment.

12. The reliance placed by the counsel for the Petitioner in ***Sumangala (supra)*** is appropriate as the said decision deals with the identical issue as to whether the discontinuation of the appointment of

the Petitioner at the end of the academic sessions and reappointment amounted to breaks which was required to be condoned. This Court in the said case *Sumangala (Supra)*, has held that vacation is not a break and if for this period, an employee is also paid salary under the Rules, the employee would be considered to be in employment.

13. We agree with the proposition laid down in the decision of *Sumangala (supra)*. Considering the statutory provisions, in our opinion, once the Petitioner has been paid salary for the period of vacation, there is no break in her service and the appointment of the Petitioner in Tolani College of Commerce immediately on the next date of the end of the vacation would entitle the Petitioner to the inclusion of two years of initial temporary services for claiming service related benefits. The decision of the Task Force dated 29th June, 2017 and 11th July, 2019 is not in conformity with the statutory Rule 13 of MEPS and decision of this Court in case of *Sumangala (supra)*.

14. Considering the aforesaid, the following order is passed.

ORDER

- (i) The services rendered by the Petitioner during the academic year 1997 to 1999 be counted for service related benefits;
- (ii) The Respondents to grant the time bound promotional scheme benefits and to carry out revision of the pay by taking into consideration the initial temporary service for the academic year 1997 to 1999;

- (iii) The Respondents to make the payment of the arrears due and payable after considering (i) and (ii) above, at the rate of 6% p.a., within a period of four months from today;
- (iv) The Writ Petition is allowed in the above terms.

[Sharmila U. Deshmukh, J.]

[Nitin W. Sambre, J.]