

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2250 OF 2021

Girish Manikrao Bobade
Aged 57 years, Occ. Service,
R/o 38, Govardhan Vihar,
Paratwada, Tq. Achalpur,
Dist. Amravati

... Petitioner

-vs-

1. Director, Vocational Education &
Training Directorate, Maharashtra
State, 3, Mahapalika Marg, Mumbai

2. Deputy Director,
Vocational Education and Training,
Regional Office, Morshi Road,
Amravati, Tq. & Dist. Amravati

3. Municipal Council, Achalpur,
Through its Chief Officer,
Tq. Achalpur, Dist. Amravati

... Respondents.

Shri Pravin S. Patil, Advocate for petitioner.

Shri D. P. Thakare, Additional Government Pleader for respondent Nos.1
and 2.

Shri R. R. Prajapati, Advocate for respondent No.3.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : September 26, 2022

Oral Judgment : (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned
counsel for the parties.

The petitioner came to be appointed as Assistant Teacher at a
Junior College on 18/06/1994. On completion of the period of
probation his services were duly approved and he continued as a
permanent employee of the Junior College. On account of the said
Junior College not maintaining the requisite standards, the Deputy

Director, Vocational Education and Training directed closure of the Junior College on 28/08/2000 and absorption of the services of the petitioner as a surplus teacher in some other institution. Since no steps were being taken by the Authorities in the matter of the petitioner's absorption, Writ Petition No.860/2002 was preferred. On 14/04/2004 after recording the statement made on behalf of the Authorities that the name of the petitioner would be taken on waiting list as per Rule 25(A) of the Maharashtra Employees of Private Schools (Condition of Services) Rules, 1981 (for short, the Rules of 1981), the writ petition was disposed of. Ultimately, the services of the petitioner came to be absorbed in a Higher Secondary School run by Municipal Council Achalpur. This was done on 30/08/2005. On 05/06/2009 the Municipal Council passed a resolution and condoned the period of break of 821 days from 09/07/2003 to 10/10/2005 which was prior to the petitioner's absorption. Separate order of appointment was accordingly issued to the petitioner however though it was stated that the initial appointment of the petitioner was on 03/07/1996, benefit of senior pay-scale was not immediately granted. Thereafter proposal was forwarded by the Municipal Council for grant of such benefit. On 18/04/2015 the Joint Director, Vocational Education and Training refused to grant the benefit of senior pay-scale to the petitioner on the ground that he had been appointed on 11/10/2005 which was the date of his absorption. The petitioner was also informed that necessary guidance had been sought by the State Government in that regard. Ultimately, after waiting for a considerable period of time and there being no response to the petitioner's request for grant of senior pay-scale, the petitioner has filed this writ petition for quashing the order dated 18/04/2015 passed by the respondent No.2.

2. In the reply filed on behalf of respondent Nos.1 and 2 it has been stated that under the Rules of 1981 there was no provision for condoning the break in service and hence guidance was sought from the State Government. However since there was a break in service of 821 days it was not possible to grant any relief to the petitioner. On behalf of the Municipal Council it is stated that the break in service has already been condoned by passing a resolution to that effect.

3. In the aforesaid backdrop, the question to be considered is whether the petitioner is entitled to grant of senior pay-scale after taking into consideration the fact that his services were absorbed with the Higher Secondary School run by the Municipal Council from 11/10/2005. The learned counsel for the petitioner submitted that the petitioner was a permanent teacher when the institution where he was serving was closed down. He was not responsible for such closure and therefore the petitioner was entitled for the benefit of Rule 25(A) of the Rules of 1981. The break in service of 821 days was already condoned by the Municipal Council and hence while considering the period of 12 years for the purposes of fixation of senior pay-scale, entire period of service will have to be taken into consideration. In support, the learned counsel placed reliance on the judgment of Division Bench in Writ Petition No.552/2019 (*Balkrishna Namdeo Phalke vs. Assistant Director of Vocational Education and Training and ors.*) decided on 09/09/2019. It was thus submitted that the impugned communication dated 18/04/2015 be set aside and the petitioner be granted senior pay-scale.

4. The learned Additional Government Pleader for respondent Nos.1 and 2 supported the impugned order. He relied on the affidavit filed on behalf of those respondents. It was stated that since the

petitioner did not complete 12 years service from 11/10/2005 when he was absorbed, he was rightly not granted such benefit. There was a break in service of 821 days and after considering the shortfall, he was held entitled for such relief thereafter.

The learned counsel for the respondent No.3 submitted that on 05/06/2009 a resolution was passed by the Municipal Council condoning the break of 821 days of service.

5. We have heard the learned counsel for the parties and we have perused the documents on record. From the factual backdrop referred to above it is clear that though the services of the petitioner were required to be absorbed on account of closure of the earlier institution on 28/08/2000, his services came to be absorbed with the Municipal Council only on 11/10/2005. The Municipal Council by passing a resolution on 05/06/2009 has condoned the period of 821 days that was required to be spent as the petitioner's services were not absorbed. We find that this Court in *Balkrushna Namdeo Phalke* (supra) has decided a somewhat similar issue. Therein the petitioner had been denied the benefit of senior pay-scale for the reason that the period between de-recognition of the earlier institution and subsequent absorption did not result in completion of 12 years service where the services were sought to be rendered from the date of absorption. In paragraph 5 of the said judgment it has been observed as under :

“ 5] In view of the earlier adjudication as pointed above, the service rendered by the petitioner with effect from 01/07/1991 in the earlier school till its de-recognized school i.e. on 13/04/2006, cannot be ignored. It cannot be treated that there was a break in service of the petitioner from 13-04-2006 to 16-01-2008. It has to be taken into consideration notionally even for the purposes of fixation of senior pay-scale and counting of 12 years of service.

The action of the respondent rejecting the claim of the petitioner on 21/09/2017 cannot therefore, be sustained and it will have to be quashed and set aside.”

6. We find that the petitioner is similarly situated. The period of 821 days resulting in break in service has already been condoned by the Municipal Council and therefore the petitioner's entire period of service is required to be taken into consideration. Though the petitioner may not get actual monetary benefit out of the same, he would be entitled for notional consideration of the said period of 821 days for the purposes of fixation of senior pay-scale from his initial appointment. The order dated 18/04/2015 has been passed on the premise that the petitioner was duly appointed on 11/10/2005. Since the petitioner was a permanent teacher and his services were absorbed thereafter on absorption, it could not be said that he was re-appointed. The petitioner cannot be deprived of the earlier service rendered as well the period during which his services were not absorbed so as to deprive him of the benefit of continuity and senior pay-scale.

Hence for aforesaid reasons, the order dated 18/04/2005 is set aside. It is directed that the absorption of the petitioner on 11/10/2005 by the Municipal Council shall not be treated as re-appointment. As a result, the earlier order dated 08/07/2012 holding the petitioner entitled for senior pay-scale from 02/10/2010 stands restored. The respondent Nos.1 and 2 shall within a period of three months take all necessary steps to grant the petitioner benefit of senior pay-scale in accordance with law.

Rule is made absolute in aforesaid terms with no order as to costs.