

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

959 WRIT PETITION NO.3323 OF 2019

Prakash s/o Sahebrao Jadhav,
Age 56 years, Occ. Service,
R/o. c/o. Zilla Parishad Central
Primary School, Akoledav,
Tq. Jafrabad, Dist. Jalna

... **Petitioner**

VERSUS

1) The State of Maharashtra,
Through Sectetary,
School Education Department,
Mantralaya Mumbai-32.

2) The Zilla Parishad, Jalna,
Tq. & Dist. Jalna
Through its Chief Executive
Officer

3) The Education Officer (Primary)
Zilla Parishad, Jalna,
Tq. & Dist. Jalna.

... **Respondents.**

...

Advocate for the Petitioner : Mr. Dhage Vivek J.
A.G.P for Respondent No. 1 : Mr. PS. Patil
Advocate for Respondent Nos. 2 and 3 : Mr. S.R. Yadav

CORAM : **MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : **21.06.2023**

PER COURT :

Heard.

2. The petitioner was appointed initially on temporary basis for a period of six months or till properly selected candidate was available, by the order dated 08.11.1990. Subsequently, his services were terminated by the

communication dated 30.04.1991 (Exh. 'P2') with effect from afternoon. Pursuant to the orders of this Court in Writ Petition No 1749/1994 he was given a fresh appointment with effect from 05.08.1994. By way of this petition, he is now seeking condonation of the intervening period under the provisions of Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982 (MSCR) which are admittedly applicable to the services of the petitioner.

3. The learned advocate for the petitioner Mr. Dhage would submit that by the impugned communication the authorities have refused to condone the delay on the ground that his was a fresh appointment and that it was not a continuous appointment having a break. He further points out that by resorting to proviso (c) to sub Rule (1) of Rule 48 of the M.C.S.R. since the break was for more than one year, the authorities have refused to condone the delay. He would submit that as per the three different clauses in the proviso (a), (b) and (c) of sub Rule 1 of Rule 48, the petitioner's case would fall under proviso (a). The petitioner was not responsible for the interruption and therefore the period could have been condoned. In the alternate, Mr. Dhage would submit that even as per sub Rule 3 of Rule 48, since there is no specific indication to the contrary, the petitioner is entitle to assume that interruption stands automatically condoned.

4. The learned advocate for the respondent Nos. 2 and 3 would submit that in fact there is no continuation in the service. Rule 48 contemplates that the earlier service is continued and there is a break which is not a fact situation in the matter. The petitioner's was a temporary appointment which was duly terminated and a fresh appointment was given after three years pursuant to the order of this Court. He would then submit that the petitioner has been claiming such condonation after a lapse of almost 17 years. In a similar fact situation, a coordinate bench of this Court in **Writ Petition No. 3989/2004 (Dashrath Gangaram Gorme Vs. The Hon'ble High Court of Bombay through it's Registrar(General) and others)** dated

21.08.2017 has taken a view that a request for condonation after such a long delay is not entertainable.

5. Rule 48 reads as under :

“48. Condonation of interruption in service :- (1) The appointing authority may, by order, condone interruptions in the service of a Government servant :

Provided that -

(a) the interruptions have been caused by reasons beyond the control of the Government servant;

(b) the total service pensionary benefit in respect of which will be lost, is not less than five years duration, excluding one or two interruptions, if any; and

(c) the interruption including two or more interruptions, if any, does not exceed one year.

(2) The period of interruption condoned under sub-rule (1) shall not count as qualifying service.

(3) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of civil service rendered by a Government servant under Government, shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(4) Nothing in sub-rule (3) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.

(5) The period of interruption referred to in sub-rule (3) shall not count as qualifying service.”

A plain reading of the three clauses of the provisos would reveal that they

would operate in tandem and not in isolation. The use of a semicolon after (a) and use of word 'and' at the end of (b) would make it explicitly clear that all the three pre-conditions are necessary concomitant for condoning the interruptions in the service. They cannot be read in isolation but will have to be read in conjunction. Unless a case falls under all the three clauses of the proviso (a), (b) and (c) there is no question of condonation of interruption. Consequently, when admittedly the intervening period was for more than one year, in view of the clause (c) which debars condonation of such interruption for a period exceeding one year, the petitioner would not be entitled to any condonation simply by referring to proviso (a).

6. Again, admittedly, the petitioner's initial temporary appointment was terminated by a specific order. Even if the petitioner's case is to be considered under sub Rule 3 of Rule 48, in view of sub Rule 4 which is an exception to sub Rule 3, the interruption cannot be treated as automatically condoned since the petitioner was removed from the service by a specific order.

7. Apart from the above state of affairs, as has been observed by this Court in Writ Petition No. 3989/2004 (supra) , even the petitioner's case suffers from delay and laches. After a slumber of about 17 years he has been seeking condonation of the alleged break. We are of the firm view that the petitioner is not entitled to any condonation of interruption by resorting to Rule 48 of the MCSR.

8. The Writ Petition is dismissed.

(SHAILESH P BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-