

Shubhada S Kadam

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3822 OF 2021**

Raghunath Dadasaheb Kumbhar & Ors ...Petitioners
Versus
Pimpri Chinchwad Municipal Corporation & Anr ...Respondents

**WITH
WRIT PETITION NO.3823 OF 2021**

Pushpa Vitthalrao Shinde & Ors ...Petitioners
Versus
Pimpri Chinchwad Municipal Corporation & Anr ...Respondents

**Dr Uday P Warunjikar, with Krantish Gadade, for the Petitioners.
Mr Deepak More, with Shivram Gawade, for the Respondent No. 1.
Mr NC Walimbe, AGP, for the Respondent-State.**

**CORAM G.S. Patel &
 S.G. Dige, JJ.
DATED: 3rd January 2023**

PC:-

1. In both petitions, Rule. Respondents waive service. By consent, Rule is made returnable forthwith and the Petitions are taken up for hearing and final disposal.

2. In both Petitions, the Petitioners seek that a decision taken by the 1st Respondent-Pimpri Chinchwad Municipal Corporation (“PCMC”) on 10th February 2021 and 26th March 2021 be quashed and set aside. There is a prayer for interim relief in these terms. The effect of the impugned decisions is to initiate a recovery against the salaries of the Petitioners, all of whom are employees of Pimpri Chinchwad Municipal Corporation or PCMC. The 2nd Respondent is the State of Maharashtra through its Secretary in the Education Department.

3. The facts are not contentious. They run like this. The PCMC Employment Office, Pune, called 550 people under an Employment Exchange Scheme to a written examination and an interview sometime in 1993 or thereabouts. Of these, 40 candidates were selected for the viva and 18 succeeded and were appointed as teachers. This was the beginning or genesis of a series of what are called ‘Stop Gap Arrangements’ that then followed. Throughout these papers, we are unable to find a single justification for the issuance of such ‘Stop Gap Arrangements’. In the normal course in government employment, one expects that there is a probationary period and, once that is successfully completed, a confirmation in the post to which the person is appointed. These Stop Gap Arrangements seem to be some sort of invention for purposes that are entirely unclear to us but with consequences that are potentially extremely detrimental to the petitioners.

4. These petitioners were appointed as teachers at the secondary level for the PCMC-run municipal school. Based on their test

rankings and also taking into account extant reservation policies, the Petitioners were appointed by different orders under Stop Gap Arrangements starting from about August 1993. Typically, each Stop Gap Arrangement ran for about six months. One of the conditions in this appointment order was that the Petitioners would not be entitled to get permanency or other benefits for a period of six months as this was temporary — a ‘Stop Gap Arrangement’. The Petitions recite that further Stop Gap Arrangements were issued after the expiry of the first one in 1994. A compilation is annexed at Exhibit “B”. Between each Stop Gap Arrangement, there was what is called a “technical break”. We fail to understand what is meant by ‘*technical*’ — there was either a break or there was not, and there were certainly break between successive Stop Gap Arrangements — but the suggestion clearly was that these breaks were formal or notional (hence ‘technical’), and not to be used adverse to the teacher-employees. This is evident from what followed and the conduct of the PCMC itself. The Petitioners all continued throughout as teachers. There is a submission that the PCMC did not pay vacation salaries and other benefits although the Petitioners’ services were satisfactory and without adverse comment, but that may not be material today. The fact remains that there was no adverse order against any of the petitioners. There was no departmental enquiry.

5. Ultimately, relying on Government Resolutions of 1974 and 1989, the PCMC considered the case of these Petitioners and others similarly situated. Seven Petitioners were appointed on probation as Secondary Teachers by an order of 30th September 1998. Another 11 Petitioners were appointed on probation to the same posts by a

separate order of 15th February 2000. The probation periods were typically for one year. The Petitioners completed their probations successfully. All were confirmed in their posts. Then, the Petitioners made representations including that from August 1993 their services be regularised and the benefits of the pay scale be extended to them. The PCMC Commissioner accepted these representations at least in part and extended the benefits of 1974 and 1989 Government Resolutions to the present Petitioners. It seems that a sum total of 13 breaks had taken place because of all these Stop Gap Arrangements. The entire matter went before the PCMC General Body and was placed before the competent authority. A selection committee met and made its recommendations. The recommendations of the Chattopadhyay Commission were also extended to the Petitioners. The Legal Committee of the PCMC sanctioned the proposal and an appropriate resolution was passed relaxing the applicable conditions. Finally, on 18th December 2007, the PCMC passed an order through its Secondary Education Department condoning the artificial breaks of as many as 18 teachers and granting the benefits of continuity of service, pay-scale and salaries to the present Petitioners. A copy of this order is at Exhibit "L" to the Petition.

6. The problem began with objections from the Chief Auditor to the condoning of these technical breaks. The objection that triggered the recovery action is of 5th March 2014, because of which decisions were taken by the Secondary Education Department of the PCMC to initiate recovery proceedings against the present Petitioners.

7. The Petitioners points out that there are other persons who have been granted benefits of condonation of these artificial breaks and continuity of services. All the Petitioners in Writ Petition No. 3822 of 2021 have retired/superannuated.

8. The challenge is to the directions to the headmaster/s to recover the amount of salary relatable to the breaks that could not, according the auditor, be condoned.

9. Previous orders of this Court indicate that the matter has shuttled between the Deputy Director of 2nd Respondent and the PCMC without result. We are hardly surprised by this.

10. Internally, between the auditor and the education department, the controversy seems to be whether the condonation should be of *days* or of *breaks*. The two are not necessarily synchronous, i.e., each break is not exactly of one day. There is also a view of the auditor that no more than six breaks could be 'condoned'. The Chief Auditor seems to have arrived at a particular method of computation of the break and a particular interpretation of what is meant by the break. Are the total number of days to be reckoned or are the total number of breaks are to be counted? Nobody seems to be able to decide this.

11. Something fundamental seems to have been overlooked in all this. Plainly, to 'condone' is to *pardon* or *forgive*. The question is not how much should be condoned, but whether there is any act or omission *on the part of the Petitioners* that requires pardon,

forgiveness or condoning. The breaks were not caused by the Petitioners. These are not cases where the Petitioners by their own acts of commission or omission are guilty or even accused of being guilty of interrupting their own service. The breaks are indeed artificial. The Petitioners had no choice in the matter. They had to take the Stop Gap Arrangements as they were handed out. Those created artificial breaks and these artificial breaks were forced upon the Petitioners. What is sought to be swept under the catch-all phrase of 'condonation' is, therefore, no act or omission by the Petitioner but the breaks forced and created by the PCMC itself. What are we being told and shown? That the PCMC created these breaks in the Petitioners' service. Now the PCMC is told by its auditor that the PCMC's own self-generated breaks cannot be pardoned — and that the Petitioners, all dutiful and long-serving employees of the PCMC — must bear the consequences and face recovery from their salaries or pensions. That is an action that is conceived in inequity and nurtured in unfairness. For it is hardly equitable now for any authority, let alone some auditor, to say that an employee of the 1st Respondent, the PCMC, who has served the corporation as a secondary teacher without fault, without adverse comments, without disciplinary proceedings, should now be made to suffer a financial loss and encounter recovery proceedings merely because some person in the PCMC's Education Department, some 40 years ago, felt it prudent to generate these Stop Gap Arrangements and create artificial breaks. The consequences of that municipal action cannot in law or equity be visited upon the Petitioners.

12. To put it even more plainly, any such action of recovery is *ex facie* manifestly arbitrary and discriminatory. It is entirely unlawful and *ultra vires* Article 14 of the Constitution of India. We do not see how the Chief Auditor of the PCMC can force a Municipal Corporation, an instrumentality of the State, into taking such *ultra vires* action. This is a classic case of thoughtless book-keeping becoming the enemy of justice and equity. Indeed, except for the auditor, even the PCMC and its standing committee agrees that all breaks should be condoned. To paraphrase Professor Michael Sandel of the Harvard Law School, *that is the right thing to do*.

13. What is to be remembered is this: the fault that is to be condoned is that of the PCMC in generating these breaks. It is not the fault of the Petitioners. Years of faultless service cannot result in such punitive action because of some administrative failure on the part of the employer.

14. In our opinion, the recovery actions impugned in the Petitions cannot be sustained. Both the Petitions succeed.

15. Rule is made absolute accordingly.

16. In the facts and circumstances of the case, there will be no order as to costs.

(S.G. Dige, J)

(G. S. Patel, J)