



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

Writ Petition No.4022/2022

Ms Saiful V The State of Maharashtra and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr. Anand Parchure, Adv for petitioner.
Mr. Shaikh Majid, Adv for resp. no.2.
Mr. M.I. Dhatriak, Adv for resp. no.4.
Mrs. K. Joshi, AGP for resp. nos. 1 and 3.

CORAM : AVINASH G GHAROTE &
URMILA JOSHI-PHALKE, JJ.

DATE : 01-09-2023

Heard learned Counsel for the petitioner.

2. The petition challenges the Resolution No.25 dated 21-12-21 passed in the special meeting of Nagar Parishad, Kamptee, rejecting the claim of the petitioner for condonation of break in service of 113 days. The learned Counsel for the petitioner submits that since the petitioner was reappointed there cannot be break in service and even if it is to be so construed, in light of Annexure-XXXIV of the Secondary School Code Clause 7(ii), she is entitled for such condonation.

3. Mr Dhatriak, learned Counsel for respondent no.4 opposes the contention and submits that the appointment of the petitioner on the second occasion by the order dated 05-07-2006 (pg 29) was a fresh appointment and therefore the question of any condonation would not arise.

4. Learned AGP Mrs. Joshi for respondent nos. 1 and 3 and Mr Sheikh, learned Counsel for respondent no.2 support the submission of Mr. Dhattrak, learned Counsel.

5. It is not in dispute that the petitioner was initially appointed on 23-09-1998 as an Asstt. Teacher in a post which was reserved for Scheduled Caste category, in spite of the fact that the petitioner belongs to the Muslim community which has no caste system and on that count her caste claim was invalidated by the Caste Scrutiny Committee by an order dated 08-03-2006. In pursuance to which, the services of the petitioner were terminated by an order dated 13-03-2006 (pg 23). This termination came to be challenged by the petitioner in WP No. 1275/06, which came to be withdrawn on 30-06-2006 with liberty to make a representation against the order of termination to the Municipal Council.

6. The Municipal Council thereafter passed order on 05-07-06 by appointing the petitioner in a seat available for the open category. The petitioner is still in service with the respondent no.4.

7. The contention that the order dated 05-07-06 was an order of reappointment and therefore would amount to continuation of the earlier services of the petitioner, cannot be accepted for the reason that there is no order or resolution passed by the Municipal Council withdrawing or cancelling the order of termination dated 13-03-2006. The order of

appointment dated 05-07-06 therefore will have to be construed as fresh appointment. This is also, for the reason that while the earlier employment of the petitioner was in a seat reserved for the Scheduled Caste category, the appointment by order dated 05-07-06 was in an open category seat.

8. Though reliance is placed upon Annexure-XXXIV clause 7(ii) of the Secondary School Code to contend that the termination of the service was not due to any fault of the petitioner or/and was on account of circumstances beyond the control of the petitioner and therefore the break in service needs to be condoned, in our considered opinion, the same is clearly not justified for the reason that the petitioner in the original place itself could not have been appointed to a post reserved for the scheduled caste candidate. The petitioner has already enjoyed that post and its benefits from 1998 till 2006 and its benefit and the emolument received for that duration by the petitioner have not been asked to be returned. The petitioner, therefore cannot claim ignorance that the original appointment of the petitioner was on account of no fault on her part. That being the position, the aforesaid clause cannot come to the rescue of the petitioner. We therefore do not find any merit in the petition, the same is dismissed. No costs.

JUDGE

JUDGE