



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.4984 OF 2019

Mohammed Makaji Tamboli,
Age-56 years, Occupation:Assistant Teacher,
Holeshwar Vidyalaya, Hoal, Taluka-Kaij,
District-Beed,
Resident Of – Prashant Nagar,
Behind Bus Stand, Ambajogai,
Taluka-Ambajogai, District-Beed.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai-400 032,
- 2) The Deputy Director of Education,
Aurangabad Division, Aurangabad,
- 3) The Education Officer (Secondary),
Zilla Parishad, Beed,
- 4) The Head Master,
Holeshwar Vidyalaya, Hoal,
Taluka-Kaij, District-Beed,
- 5) The Secretary,
Baneshwar Education Society,
Bansarola, Taluka-Kaij,
District-Beed.

...RESPONDENTS

...
Ms. A.N. Ansari Advocate for Petitioner.
Mr. P.S. Patil, Additional G.P. for Respondent Nos. 1 to 3.
Mr. S.D. Kaldate Advocate for Respondent Nos.4 and 5.
...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 21st FEBRUARY, 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the respective parties finally, by consent.
2. The petitioner has filed present Petition seeking directions against respondent Nos. 4 and 5 i.e. management to submit the proposal to respondent No. 2 – the Deputy Director of Education, for condonation of break in services and to direct respondent No. 2 to decide the said proposal within a stipulated time.
3. The petitioner came to be appointed as assistant teacher by order dated 18th June 1989. Thereafter he was again appointed by order dated 14th December 1989 for a period of two years. The petitioner was again appointed with effect from 19th June 1991 for the academic session 1991-92. However, his

services came to be terminated orally and then again he was continued for the next academic year 1992-93. Again there was oral termination on 15th June 1992. The petitioner has challenged the said order by filing Appeal No.108/1992-M before the School Tribunal. The stay was granted and then the petitioner was continued on the post of assistant teacher. During the pendency of the said Appeal, the management entered into compromise with the petitioner and thereby withdrew the oral termination taking back the petitioner in service and therefore the Appeal came to be withdrawn on 8th September 1992. The petitioner contends that though the management agreed to continue the petitioner on the said post, however he was asked to work on a vacant post of the teacher who had gone for training. Therefore, the petitioner worked on that post from 25th August 1992 to 30th October 1992. Thus, the first break in service was from 16th June 1992 to 25th August 1992. Again there was break of ten days from 1st November 1992 to 10th November 1992. From 11th November 1992, the petitioner was given posting as assistant teacher with another school by the same management. He worked there till 1st July 2017. The petitioner had given application to respondent No. 4 - Headmaster that he should

forward proposal for condonation of break in service to the Deputy Director of Education. However, respondent Nos. 4 and 5 have not taken any action. The copies of the applications filed by the petitioner on 19th July 2011, 13th December 2011, 29th September 2017 and 4th January 2018 have been produced on record. The petitioner had then written applications to respondent No. 2 on 15th September 2018 and 26th February 2019 informing all the events and requesting him to consider his representation. When there is no reply by any of the authorities, the present Petition came to be filed.

4. Reply has been filed by respondent Nos. 4 and 5 i.e. Mr. Shashikumar Sambhaji Dhvajkari, Principal, Holeshwar Vidyalaya, Hoal, Taluka-Kaij, District-Beed. According to respondent Nos. 4 and 5, the petitioner was not appointed in the year 1989 on probation, but he came to be appointed during the leave vacancies, intermittently. The Appeal preferred by the petitioner before the School Tribunal was not withdrawn as there was a compromise. In fact the appointment of the petitioner on 11th November 1992 is fresh appointment. The petitioner, for the first time, prayed for condonation of break in service in 2011,

which was after completion of about 19 years of service, which cannot be condoned.

5. Heard learned Advocate Ms. Ansari appearing for the petitioner, learned Additional Government Pleader Mr. Patil for respondent Nos. 1 to 3 and learned Advocate Mr. Kaldate for respondent Nos. 4 and 5.

6. Learned Additional Government Pleader relies on the decision of this Court in *Dashrath Gangaram Gorme vs. The Hon'ble High Court of Bombay through it's Registrar General, High Court (Appellate Side), Bombay, Writ Petition No. 3989 of 2004, decided on 21st August 2017*, wherein this Court has dealt with Rule 45 and 48 of the Maharashtra Civil Services (Pension) Rules. In that case, when the junior clerk, petitioner therein, came to be appointed from the wait list during the period of leave vacancy and thereafter after his regular turn he came to be appointed, the seniority-list was never challenged for about 17 years, then it is held that the interruption in the service cannot be condoned.

7. The facts in the present case are very much clear. Though

the petitioner is saying that he came to be appointed as assistant teacher in 1989 by order dated 18th June 1989, there could not have been further appointment orders then. The petitioner is suppressing that those appointment orders were against the leave vacancies. The appointment order which petitioner has produced, clearly shows that he came to be appointed on 11th November 1992. He has also produced on record the order of withdrawal of his Appeal before the School Tribunal. It is the simple withdrawal of the Appeal and not in pursuant to any compromise. He has not produced on record any written compromise that was entered into between him and the management.

8. Another fact to be then taken into consideration is that though the petitioner came to be appointed on 11th November 1992, till 19th July 2011 he had never prayed for condonation of the break in service. Further fact is that since 19th July 2011 till 26th February 2019, it appears that the petitioner was only making representations and never approached this Court at any earlier point of time. The Petition, therefore, suffers from delay and laches. The observations from the decision in ***Dashrath Gangaram Gorme vs. The Hon'ble High Court of Bombay,***

Through its Registrar General (supra) as regards the legal position in respect of Rule 45, 48(1), 48(3) and 48(4) of the Maharashtra Civil Services (Pension) Rules are applicable here. Therefore, the case is not made out to exercise the constitutional powers of this Court and the Writ Petition deserves to be dismissed.

9. The Writ Petition stands dismissed. Rule stands discharged.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/MAR24