



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

WRIT PETITION NO. 1679 OF 2018

(Bapurao s/o Shriram Raut Vs. The State of Maharashtra and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C.A. Joshi, Advocate for petitioner.

Mr. S.M. Ghodeswar, Assistant Government Pleader for respondent Nos. 1 to 3.

Mr. A.V. Band, Advocate for respondent No. 4.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 26-08-2024

Heard learned Counsel for the respective parties.

2. After being appointed as Assistant Teacher on 28.6.1965, the petitioner resigned on 2.9.1979 and w.e.f. 3.9.1979, he joined services at the respondent No. 4 School.

3. It is claimed that the petitioner's services, in such an eventuality, having being superannuated on 30.6.1999, ought to have been considered from 28.6.1965 to 30.6.1999. In support of the contention, reliance is placed on the observations made by the Division Bench of this Court in the matter of **Pralhad Gopalrao Kobragade Vs. State of Maharashtra and Others** reported in **2018(6)Mh.L.J. 835**.

4. The contention of Mr. Joshi, learned Counsel appearing for the petitioner is, even if the petitioner has resigned on 2.9.1979, he has joined the new place on very next day i.e. on 3.9.1979 and as such, it cannot be

said that there is a break in service. Apart from above, his contention is that in view of joining on the very next day of the date of resignation, it cannot be said that the petitioner has foregone the earlier service for the purpose of calculation of pensionary benefits. As such it is urged that pensional service be considered w.e.f. 28.6.1965.

5. As against the above, Mr. Ghodeswar, learned Assistant Government Pleader would urge that the resignation on 2.9.1979 and joining on 3.9.1979 entails that the appointment on 3.9.1979 was a fresh appointment and the petitioner has given up his earlier period of service for all practical purpose.

6. It is further claimed that while calculating the pensionable service of the petitioner, reliance can be placed on the provisions of the Maharashtra Civil Services (Pension) Rules, 1982 particularly Rule 57(a) thereof and as such he sought dismissal of the petition.

7. At the outset, we are required to be sensitive to the admitted fact that the petitioner has superannuated on 30.6.1999 after joining services as Assistant Teacher on 28.6.1965 with change of employer in 1979.

8. Though, intermittently, the petitioner was not available for the purpose of improvement of his qualification, his resignation on 2.9.1979 from the service and joining on 3.9.1979 as Assistant Teacher is considered in the impugned order to be against his interest for the purpose of calculating the pensionable

service.

9. The similar issue fell for consideration before the learned Division Bench of this Court in the case of **Pralhad Gopalrao Kobragade** (supra). The learned Division Bench while dealing with the provisions of paragraph 7 of Pension Scheme of 4.11.1968 has observed thus:

"9. By the Government Resolution dated 4-11-1968, the Pension Scheme was made applicable to the employees in non-Government Secondary Schools. Para 4 of the Scheme states that the teachers recruited on or after 1st April, 1966 shall automatically be governed by the Scheme and such teachers will not be allowed to opt for the Contributory Provident Fund Scheme. Para 7 along with Conditions No.(1) and (2) therein, of the said Government Resolution being relevant, are reproduced below:

"7. In computing the length of qualifying service for pension under this scheme, all previous service, whether temporary, officiating or permanent, whether in one or more than one non-Government Secondary School, shall be taken into account. Subject to the general condition that the period of six breaks hereinafter referred to do not exceed two years, breaks in service on account of any of the reasons listed below not exceeding six in number, should not be treated as interruptions entailing forfeiture of past service :

(1) Break in service on account of resignation of the teachers from a non Government Secondary School, provided it is followed by his taking up service as a teacher in another recognized non-Government Secondary School and is not intervened by his taking employment in any other capacity. Out of the maximum number of six breaks that can be condoned, not more than breaks should, however, be on account of such resignation.

(2) Termination of service due to no fault of the teacher or on account of the circumstances beyond the control of the teacher. If the services of a teacher have been terminated on disciplinary grounds after following the prescribed procedure, such break in service cannot be condoned and the services rendered by the teacher in the school from which his services are so terminated on disciplinary grounds will not account for pension."

In computing the length of qualified service for pension under the Scheme, all previous service, whether temporary, officiating or permanent, whether in one or more than one non-Government Secondary School, has to be taken into account subject to the general condition that the period of each break does not exceed six months and the total period of six breaks does not exceed two years. The petitioner being appointed after 1-4-1966, was governed by the Pension Scheme. Thus, there cannot be any dispute that normally the past service of 20 years and 5 days rendered by the petitioner in Nashik Madhyamik Vidyalaya can be taken into consideration in computing the length of qualifying service for pension, though the petitioner worked in two different Schools before his retirement. The question is whether the break of 4 years and 1 month in the service of the petitioner from 1-7-1988 to 30-7-1992 is by itself enough to reject the claim of the petitioner for full pensionary benefits".

10. After having carefully gone through the judgment in ***Pralhad Gopalrao Kobragade*** (supra), it is apparent that the policy of the Government reflected in the Government Resolution dated 04.11.1968 made the pension scheme applicable to the employees working in the non-government secondary schools. Such teachers who are recruited on or after 01.04.1966 are automatically governed by the scheme. It appears that the Condition Nos. 1 and 2 of the said Government

Resolution even contemplates consideration of break in service caused upon resignation.

11. In view of the above, we deem it appropriate to allow the petition thereby declaring that the petitioner is entitled for the pensionary benefits for period of service rendered from 28.6.1965 to 30.6.1999. However, a statement is made by learned Counsel for petitioner that petitioner shall not claim any other benefits other than the terminal benefits in the form of pensionary benefits is accepted as an undertaking to the Court.

12. We direct the Management to submit appropriate proposal in regard to the entitlement of the petitioner for the aforesaid service period within eight weeks from today.

13. The respondent authorities, upon receipt of proposal may pass consequential order within a period of three months thereafter.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)