



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

WRIT PETITION NO. 8349 OF 2022

RAKESH S/O KHUSHAL SHIKHARAME

VERSUS

STATE OF MAHARASHTRA AND OTHERS

Ms. Ayushi H. Dangre, Advocate for petitioner.

Shri S. M. Ukey, Additional Government Pleader for respondent No.1.

Shri Uttam Chakravarty, Advocate h/f Shri V. S. Dhote, Advocate for
respondent Nos.3 and 4.

CORAM:- NITIN W. SAMBRE AND

ABHAY J. MANTRI, JJ.

DATED : 01/04/2024.

P. C. :

1. We have heard Ms. Ayushi Dangre, learned counsel appearing for the petitioner at length.

2. The initial appointment of the petitioner was on the post of Senior Clerk on compassionate ground. The said appointment came to an end abruptly as the order of appointment dated 22/08/2011 would not be effective.

3. It is informed that the post of Senior Clerk against which the petitioner was initially appointed, remained vacant from 2014.

4. The petitioner seeking compassionate appointment continued persuasion with the respondents and order of appointment of petitioner afresh on the post of Junior Clerk came to be issued on 15/03/2021.

5. The contentions are that the petitioner cannot be put at fault for not continuing the services as it is clearly failure of the respondent - management and also Education Authorities to accommodate the petitioner on the post as against the appointment order. According to Ms. Dangre, learned counsel, post of Senior Clerk remained vacant till 2014 and in that eventuality, from 2014 to 2021, the Education Officer should have condoned the break in service and should have ordered continuity.

6. As against above, the contentions of the respondents-State is that the petitioner after 2011 has not taken any steps even against the management or the respondent-State in the matter of continuation of his employment on the post of Senior Clerk.

7. Merely by making representation, the petitioner cannot pray for a time barred claim to come within limitation. It is claimed that the termination order of 2014 was never questioned against the interest of the petitioner.

8. We have appreciated rival claims.

9. Even if the initial appointment of the petitioner was on the post of Senior Clerk on compassionate ground, the fact remains that the termination order of the petitioner was not agitated by the petitioner within reasonable period before the Court, which the petitioner has failed to do so.

10. Though the petitioner is justified in claiming that the petitioner has persuaded the issue with the respondent through representation, however, that by itself it would not give rise to legal right in favour of the petitioner to claim continuity in service from the date of initial appointment on the post of Senior Clerk, the vacancy was not in existence for a period from 2014 to 2021 i.e. the date on which the petitioner got appointment on the post of Junior Clerk.

11. In such an eventuality, the break in service from 2014 to 2021 cannot be condoned by the respondent as the initial appointment was on the post of Senior Clerk. However, the subsequent appointment accepted by the petitioner was on the post of Junior Clerk.

12. Even otherwise, for want of vacancy, it cannot be said that the petitioner has right to claim continuation in service.

13. We are of the view that no indulgence in extraordinary jurisdiction is made out.

14. Petition stands dismissed.

[ABHAY J. MANTRI, J.]

[NITIN W. SAMBRE, J.]