



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

WRIT PETITION NO. 5108 OF 2024

Vinod Kisanappa Teware,
Aged 64 yrs,
R/o. Gandhinagar, Banosa,
Tq. Daryapur, Dist. Amravati

..... **PETITIONER**

...V E R S U S...

1. State of Maharashtra,
through its Secretary for Education
and Sports Ministry, having
his office at Mantralaya, Mumbai

2. Education Officer, (Secondary),
Akola Zilla Parishad, having his
office at Zilla Parishad Akola,

3. Shri Matidhanabai Vidyalay
through its Head Master, having
office at Balapur, District Akola

....**RESPONDENTS**

Mr. N.B. Rathod, Advocate for Petitioner.
Mr. A.V. Palshikar, AGP for respondent Nos.1&2/State.

CORAM:- AVINASH G. GHAROTE & ABHAY J. MANTRI, JJ.
DATE : 11.02.2025

JUDGMENT (Per : Abhay J. Mantri, J.)

1. **Rule.** Heard finally with the consent of the learned
counsels for the parties.

2. The petitioner, feeling aggrieved by the order dated
09.03.2020, passed by respondent No. 1, thereby rejecting the

proposal for condonation of a break in service, has preferred this petition.

3. On 25.06.1988, the petitioner was appointed an Assistant Teacher in Saraswati Kanya Vidyalaya. Respondent No. 2 approved the appointment vide order dated 07.03.1989 w.e.f. 25.06.1988. On 30.03.1991, the said school suddenly, without any notice of hearing, terminated the petitioner's services, and therefore, the petitioner approached the School Tribunal vide Appeal No. 37/1991.

(a) On 21.04.1991, the learned Tribunal granted a stay to the termination order. On 01.04.1993, the learned Tribunal set aside the termination order and directed respondent No. 2 to absorb the petitioner under Rule 25A of the Maharashtra Employees of Private Schools Rules 1981 (for short- "*The Rules*"). It further appears that during the pendency of the appeal, the school issued a notice of closure of the school to the employees, which the employees challenged. The learned Tribunal vide order dated 31.01.2003 directed respondent No. 2 to add all the employees on the wait list and absorb them in a newly opened aided school as per the provisions of the rules.

(b) In 2012, respondent No. 2 added the petitioner's name to the waitlist, which was to be maintained. On 28.02.2013, respondent No. 2 issued an order to the Head Master of Smt. Dhanabai

Vidyalay, Akola directing to absorb the petitioners. Pursuant to the said order, the petitioner was allowed to join services from 01.03.2013. Respondent No. 2, vide order dated 22.08.2013, approved his absorption. Despite the absorption, the petitioner was neither given back wages nor maintained his seniority. Instead, he was treated as a new appointee and given a salary as a newly recruited employee.

(c) In such circumstances, the petitioner addressed the application to the Deputy Director of Education, Amravati, on 28.01.2015 and requested a grant of continuity in service with consequential benefits. In the meantime, on 31.05.2018, the petitioner was superannuated. In the backdrop above, the petitioner has approached this Court to claim continuity in service along with consequential benefits by condoning a break in service as the respondents failed to take action in view of the settled legal position of law.

4. The learned Counsel for the petitioner by relying on the decision dated 06.09.2022 of this Court in *Govind Phulsing Rathod Vs. Education Officer (Sec.), Akola Zilla Parishad and Ors (MANU/MH/3060/2022)* submitted that the issue involved in the matter is squarely covered by the decision above and seeks declaration for the entitlement of full pension by setting aside the order impugned.

5. In response to the same, learned AGP, after going through the record and judgment relied upon by the petitioner, submits that the issue involved in the matter is covered by the judgment in the case of ***Govind Phulsing Rathod***(supra).

6. We find that the appointment of the petitioner on 25.6.1988, and approval of such appointment by the order dated 7.3.1989 w.e.f. 25.6.1988, is not disputed. The termination of the petitioner has been set aside by the Tribunal which would relate back to the date of appointment, thereby granting continuity to the petitioner. The subsequent closure and absorption, cannot be considered to be a fresh appointment, as the same is necessarily relatable to the original appointment of the petitioner dated 25.6.1988. The matter is also covered by what has been held in ***Govind Phulsing Rathod*** (supra), in view of which, we deem it appropriate to allow the petition in terms of the above decision.

In the aforesaid background, we pass the following order:

- i) The impugned order/communication dated 09.03.2020 is hereby quashed and set aside.
- ii) As a sequel, it is held that in terms of the Government Resolution dated 01.04.2016 and especially clause 3 thereof, the break in service stands condoned. Consequently, the petitioner would be entitled to the relief of continuity in service to receive pensionary

benefits. The claim for back wages is rejected.

- iii) Respondents are to take necessary steps in that regard and make pensionary benefits available to the petitioner in accordance with the Government Resolution dated 01.04.2016 within eight weeks from the receipt of the copy of this judgment.
- iv) Petition is partly allowed in the above terms. No costs.
- v) Rule accordingly.

(ABHAY J. MANTRI, J.)

(AVINASH G. GHAROTE, J.)