



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION No.7082 OF 2024

Niraj Durgaprasad Tiwari,
Aged 55 years, Occ. Service,
R/o. Vaishnavi Complex no.6,
Muraka Layout, Laheri Nagar, Wardha,
Tq. & Dist. Wardha.

: PETITIONER

...VERSUS...

1. Director,
Vocational Education & Training Directorate,
Maharashtra State, 3,
Mahapalika Marg, Mumbai.
2. Deputy Director,
Vocational Education and Training,
Regional Office, Civil line,
Nagpur-01,
Tq. & Dist. Nagpur.
3. Govindram Seksaria College of Commerce,
Through its Principal,
Jamnala Bajaj Marg, Civil line,
Wardha, Tq. & Dist Wardha.

: RESPONDENTS

=====

Mr. P.A. Kadu, Advocate for Petitioner.

Mr. Mrunal S. Naik, Assistant Government Pleader for Respondent
Nos.1 and 2.

=====

CORAM : **SMT. M.S. JAWALKAR AND**
NANDESH S. DESHPANDE, JJ.

RESERVED ON : **03rd FEBRUARY, 2026.**

PRONOUNCED ON : **11th FEBRUARY, 2026.**

JUDGMENT : (Per : NANDESH S. DESHPANDE, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. The present petition is filed under Article 226 of the Constitution of India for quashing and setting aside the order dated 02.09.2024 issued by the respondent No.1 i.e. the Director of Vocational Education and Training, Directorate, Maharashtra State, Mumbai and the communication from the respondent No.2 dated 10.09.2024 thereby refusing to condone the break in service with respect to the petitioner.

3. The facts as stated in the petition and which can also be seen from the record are as under :

That initially the petitioner was appointed on 01.11.1993 as a Full Time Instructor, at Girls Arts Junior College, Bori Arab, Taluka Darwaha, District Yavatmal till 08.07.2003. His service with the said College was duly approved by the respondent No.2. Thus, the petitioner having successfully completed probation period in the year 1995 has acquired the status of deemed confirmed employee as per the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. It is further stated in the petition that in the year 2000 the Minimum Competency Vocational Course (MCVC) run by the

said Junior College could not maintain the standard as required and, therefore, the respondent No.2 vide communication dated 18.08.2000 withdrew the recognition of the said College. It was further directed that the employees who are permanent Teachers of the School would be absorbed as per the provisions of the Rule 25A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (in short, "of the Rules"). Since the Deputy Director of Vocational Education failed to prepare the list as contemplated under the said Rules, the petitioner along with other similarly situated were required to approach this Court by way of Writ Petition No.860/2002. The said writ petition was disposed of by this Court vide order dated 14.07.2004 on a statement made by the State Government that the names of petitioners therein would be included in the waiting list as per the said Rules.

4. Accordingly, the respondent No.2 issued a Circular on 17.07.2004 stating therein that the name of petitioner is included in the list of excess teachers. Thereafter, vide letter dated 16.08.2004 the respondent No.1 informed the respondent No.2 that petitioner being entitled for absorption under the said Rule, he be absorbed at the respondent No.3 College against the post of Instructor (Office Management). Accordingly, the respondent No.3 College on 25.08.2004 issued a reinstatement order to the petitioner and he

joined on the said post with effect from the said date. The approval was granted to the reinstatement of the petitioner on 24.07.2006 w.e.f. 25.08.2004 i.e. the date on which he joined the respondent No.3 College. It is thus submitted by the petitioner that from 25.08.2004 till date he is continuously in service of the said College.

5. However, since the petitioner was treated as a fresh candidate and no benefit was given of service earlier rendered by him he made representation on 14.11.2019 and requested that instead of reinstatement his services should be treated as absorbed in the respondent No.3 College. Considering the request, the respondent No.2 modified his order to the extent by stating that approval is granted to the absorption of petitioner from academic Session 2004-2005 and the services of the petitioner from his initial date of appointment would be considered for all service benefits. It is thus clear that due to closure of earlier school, the petitioner was out of employment from 09.03.2003 to 24.08.2004 i.e. 413 days. Thus, there was a break in service which was accordingly recorded in his service record.

6. Since the said break was adversely affecting his pensionary benefits, the petitioner requested the Management to condone the break and grant him continuity in service. Acceding to his request the Management of respondent No.3 by resolution

unanimously decided to condone the said break in service, subject to approval of the competent officer i.e. respondent Nos.1 and 2. Acting on the said resolution of the respondent No.3, the respondent No.2 vide communication dated 28.07.2023 recommended to condone the break in service of the petitioner from 09.07.2003 to 24.08.2004.

7. Thereafter, the proposal of respondent No.3 along with recommendation of respondent No.2 was forwarded to the respondent No.1. The respondent No.1, however, by order impugned in the petition passed on 02.09.2024 refused to condone the break in service citing Rule 48 of the Maharashtra Civil Services (Pension) Rules, 1982, (in short, "Pension Rules") and stating that the condonation of break of more than 12 months is not permissible. The respondent No.1 communicated the said order to the respondent No.2 which in turn communicated the same to the respondent No.3. It is this action of the respondent No.1 refusing to condone the break in service of the petitioner which is impugned in the present petition.

8. We have heard Mr. P.A. Kadu, Advocate for the petitioner and Mrs. Mrunal S. Naik, learned Assistant Government Pleader for the respondent Nos.1 and 2.

9. Mr. P.A. Kadu, learned counsel for the petitioner

submits that the respondent No.1 has grossly erred in refusing to condone the break in service as it was admitted fact on record that the closure of the earlier junior college was not attributable to the petitioner and, therefore, the break in service ought to have condoned. It is his submission that petitioner was not responsible for closing down of the said College and, therefore, necessary consequence as provided under Rule 25A of the M.E.P.S. Rules ought to have been followed. He further submits that the provisions of the Pension Rules would not come in picture in view of the fact that the petitioner was kept out of employment due to closure of the earlier school upto his absorption in service with respondent No.3. He further submits that the petitioner having been declared as a surplus employee was absorbed in the respondent No.3 College as per the provisions of Rule 25A of the Rules and, therefore, ought to have granted continuity in service notionally without any backwages. Lastly, he submits that this Court in somewhat identical situation in Writ Petition No.552/2019 and Writ Petition No.2250/2021 had an occasion to deal with the issue wherein it is held that such break ought to have been condoned.

10. Per contra, learned Assistant Government Pleader appearing for the respondent Nos.1 and 2 specifically submits that

Rule 48 of the Pension Rules are rightly applied by the authority below. By taking us through the said Rule, Assistant Government Pleader submits that Rule 48(1)(c) specifically states that the power to condone interruption in the service is circumscribed by the fact that the said period should not exceed one year. She, therefore, supports the impugned order.

11. In the backdrop of these facts we have carefully gone through the record of the matter and the contentions advanced by the learned counsels for the respective parties. As can be seen from the facts on record, the fact that the Junior College in which the petitioner was initially working, he having acquired status of a permanent employee and the said College subsequently being closed down, are admitted facts. It is also an admitted fact that the petitioner was absorbed in respondent No.3 College on 25.08.2004 and was granted approval on 24.07.2006 from the date of his absorption. Thus, the facts emerging from the record clearly states that from the period from 09.03.2003 to 24.08.2004 i.e. for 413 days the petitioner was out of employment. However, as can be seen from the record, no fault can be attributed to the employee. The closure of earlier Junior College due to omission to maintain standard as prescribed by the competent authority cannot be attributed to the employee like the petitioner. It was not his fault

that as he was not absorbed he had to approach this Court in earlier round of litigation mentioned supra. Further no fault can be attributed to the petitioner for the interruption in service as stated above.

12. It can also be seen that the respondent No.3 i.e. his employer has already passed a resolution condoning break in service subject to approval of the competent authority. The respondent No.2 has also considered in favour of the petitioner and forwarded the proposal to the respondent No.1.

13. In the backdrop of these facts if provisions of Section 48 of the Pension Rules are seen, the said Rule contemplates power of the appointing authority to condone interruption in the service of a Government servant. Proviso (a) of sub-rule (1) of the Rule 48 confers power on the appointing authority to condone interruption in the service of a Government servant if the interruptions have been caused by reason beyond his control. Even if proviso (c) provides that the period of interruption should not exceed one year, in our view, proviso (a) would be governed in the present situation. A purposive interpretation of the said Rule would lead us to the conclusion that in the present case proviso (a) would govern the situation since due to the facts stated supra the interruption in service was beyond the control of the said Government servant i.e.

the petitioner. It is thus clear that even if Rule 48 is said to be applicable in the present case, the reliance placed on proviso (c) by the respondent No.1 is totally erroneous. It ought to have been seen by the respondent No.1 that the petitioner cannot be held liable for closure of the earlier College and consequent break in service till his absorption in the respondent No.3.

14. As has been rightly relied upon by the petitioner Co-ordinate Benches of this Court had an occasion to deal with the identical situation. Moreover, in Writ Petition No.2250/2021 the petitioner therein was similarly situated with that of the present petitioner. In the said judgment the Division Bench held that the period of 821 days resulting in break in service is already condoned by the employer and, therefore, the employees entire period of service is required to be taken into consideration.

15. We agree with the earlier views taken by the Co-ordinate Division Benches. The petition is, therefore, is liable to be allowed. We, therefore, pass the following order :

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned order dated 02.09.2024 issued by the respondent No.1 – The Director, Vocational Education & Training Directorate, Mumbai and the communication of the respondent No.2

- Deputy Director, Vocational Education and Training, Nagpur dated 10.09.2024 thereby refusing to condone the break in service of the petitioner is quashed and set aside.

(iii) It is hereby declared that the period from 09.07.2003 to 24.08.2004 is a period of continuity in service and is not the break in service and the petitioner is entitled for consequential benefits including continuity of service and pensionary benefits.

(iv) The petition is disposed of in above terms and rule is made absolute.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)