
(2019) 02 BOM CK 0091
In the Bombay High Court
Case No : Writ Petition No. 2578 Of 2013

Ashok Ramchandra Joshi

APPELLANT

Vs

Vidya Vaibhav Shikshan Mandal And ors

RESPONDENT

Date of Decision : 28-02-2019

Acts Referred:

Maharashtra Civil Services (Pension) Rules, 1982 — Rule 46
Constitution Of India, 1950 — Article 226

Citation : (2019) 02 BOM CK 0091

Hon'ble Judges : S.C. Dharmadhikari, J;M.S. Karnik, J

Bench : Division Bench

Advocate : Anupama B. Shah, R.J. Dhond, Jyoti Chavan, Shaikh Mushtak Mohamed

Final Decision : Dismissed

Judgement

M.S.Karnik, J

1. Heard

2. Rule. The respondents waive service. By consent, Rule made returnable forthwith and heard finally.

3. By invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner prays for a direction to the respondents to take into consideration his continuous qualifying service from 14/06/1969 as without any break and accordingly his pay may be fixed by granting Vth and VIth Pay Commission scales, senior scale and selection grade. He further prays to fix his pension and other retiral benefits accordingly.

The brief facts of the case are as under :

4. The petitioner was appointed on 14/06/1969 as an Assistant Teacher in English High School, Majiwade. He worked in the said School till 11/06/1972. The petitioner resigned on 24/03/1972. Thereafter he joined the Maharashtra

Vidyalaya conducted by Brahman Shikshan Mandal, Thane. He worked in the said School for the period 12/06/1972 to 12/06/1977. After obtaining B.Ed qualification, the petitioner resigned and joined as Head Master in Chhatrapati Shivaji High School conducted by Maharashtra Samaj, Ghatkopar from 13/06/1977 where he worked till 13/08/1986 i.e. for a period of 9 years 2 months and 1 day. The petitioner resigned as Head Master and thereafter joined the Dnyan Prasarak Shikshan Sanstha's Airoli Madhyamic Vidyalaya, Airoli, School where he worked for a period from 14/08/1986 to 05/07/1988. The petitioner's services were terminated orally on 13/06/1988. This termination of service was challenged before the School Tribunal. The School Tribunal set aside termination vide order dated 29/06/1990. In a challenge by the Management to the order passed by the School Tribunal, the order of School Tribunal was set aside, with the result, the order passed by the Management terminating the service of the petitioner was confirmed.

5. Thereafter the petitioner joined the services of respondent No.2 - Shivaji Vidya Mandir School, Bhandup where he worked for period from 19/06/1991 upto 30/06/2002.

6. Learned Counsel for the petitioner submits that the petitioner has been continuously working from the date of his initial appointment on 14/06/1969. It is her contention that the break in service from 13/06/1988 to 18/06/1991 was due to pendency of the Appeal before the School Tribunal. After the School Tribunal allowed the Appeal on 29/06/1990, the petitioner was hopeful that he would be reinstated. Learned Counsel submits that since he was not reinstated and the Management filed Writ Petition before this Court challenging the order passed by the School Tribunal, he had no option, but to take up an employment with the respondent No.2 - School with effect from 19/06/1991. She thus submits that though the order passed by the School Tribunal was set aside by this Court on 20/06/2008, the break in service from 13/06/1988 to 18/06/1991 deserves to be condoned for considering the pensionary and other retiral benefits.

7. Learned Counsel for the petitioner relies upon G.R. dated 10/05/1989 which is at page 102 of the paper-book. In her submission, the petitioner has worked continuously. She submits that as there are provisions to condone the break in service and that the petitioner fulfills these conditions to be eligible for condonation of breach in service.

8. Per contra, learned AGP would submit that resignation given by the petitioner was accepted by the Management which has resulted into forfeiture of petitioner's service in view of Rule 46 of the Maharashtra Civil Services (Pension) Rules, 1982. Learned AGP would submit that as per G.R. dated 10/05/1989, which incorporates various conditions subject to which break in service can be condoned, the petitioner does not fulfill clauses 3 and 4 disentitling the petitioner the benefit of condonation of break in service.

9. We have heard learned Counsel for the parties. We have gone through the

Petition. We have also gone through the affidavit-in-reply filed on behalf of respondents No. 3 and 4. A short issue that arises for consideration is whether the break in service of the petitioner from 13/06/1988 to 18/06/1991 deserves to be condoned in the light of G.Rs dated 04/11/1968 and 31/08/1972 and G.R. dated 10/05/1989.

10. The petitioner joined Dnayan Prasarak Shikshan Sanstha's Airoli Madhyamic Vidyalaya, Airoli, School on 14/08/1986 where he worked upto 05/07/1988 when the petitioner's service came to be terminated. The petitioner challenged the oral termination before the School Tribunal. The petitioner succeeded in his challenge before School Tribunal and the order of termination was set aside on 29/06/1990. The judgment and order of the School Tribunal was challenged by the Management in this Court. This Court allowed the Petition filed by the Management vide order dated 20/06/2008. The termination thus become effective. During the pendency of the Petition, as the petitioner was not reinstated in compliance of the order passed by the Tribunal, he joined as an Assistant Teacher with respondent No.1 - School with effect from 19/06/1991.

11. A reading of the conditions of the G.Rs dated 04/11/1968 and 31/08/1972 which are incorporated in GR dated 10/05/1989 indicates that to be eligible for condonation of break in service, the concerned has to comply with as many as 6 conditions. 4th condition is that the duration of any break in service should not be more than 12 months. The petitioner was terminated on 13/06/1988. Though the petitioner succeeded before the School Tribunal, in the Petition filed by the Management, the order passed by the School Tribunal was set aside. If the Management's Petition in this Court were not to succeed, then, of course, there was no difficulty in granting condonation of break in service. However, as the order of School Tribunal was set aside by this Court, the period from 13/06/1988 to 18/06/1991 will have to be regarded as break in service and as it relates back to 13/06/1988 from which date it has to take effect. The petitioner cannot be said to be in employment during this period. This break in service is obviously more than 12 months. The petitioner therefore is not eligible for the condonation of break in service in view of clause 4 of the G.R dated 10/05/1989. The petitioner's right for condonation of break in service is not absolute, but is governed by the said G.R.

12. In this view of the matter, there is no merit in the Petition and the same deserves to be dismissed. Rule is discharged with no order as to costs.