

(2025) 11 BOM CK 1788
In the Bombay High Court
Case No : Writ Petition No.3485 Of 2009

Rekha Ramchandra Rao

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-11-2025

Acts Referred:

Citation : (2025) 11 BOM CK 1788

Hon'ble Judges : Ashwin D. Bhobe, J; Ravindra V. Ghuge, J

Bench : Division Bench

Advocate : Vinayak R. Kumbhar, Rajendra B. Khaire, Ashwini Bandiwadkar, P.P. Kakade, P.N. Diwan, Anilkumar Patil, Zeel Jain, Digvijay Patil, Ashishraj Mane

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J

1. We have considered the submissions of the learned Advocates/Addl. GP on behalf of the litigating parties before us. We have perused the extensive order passed by this Court [Coram : Smt. Ranjana Desai (as Her Ladyship then was) and A.A. Sayed (as His Lordship then was), JJ.] dated 24th September, 2009. The same reads as under :

1. The petitioner has approached this Court for a direction to the 1st respondent i.e. the Secretary Higher and Technical Education Department, Government of Maharashtra to fix her pension and other retirement benefits on the basis of continuous service.

2. The case of the petitioner is that she was appointed as a lecturer in the college of the 5th respondent namely Shikshanshatra Mahavidyalaya, Malegaon Camp, Nashik on 15th July, 1975. In that college the petitioner worked upto 17-06-1979. The petitioner then worked in MSG Arts, Science and Commerce, Jr. College from 1-9-1980 to 31-08-1987. Thereafter the petitioner worked as a lecturer in MSG Arts, Science and Commerce Sr. College from 1-9-1987 to 31-5-1992. Thereafter from 1-6-1992 to 31-5-1995 the petitioner worked in

Sardar College of Education Malegaon, as the Principal. It must be noted here that the said college is unaided Government recognized college. Thereafter from 1-6-1995 to 31-1-1997 the petitioner worked as a lecturer in MSG Arts, Science, Commerce, Sr. College, Malagaon. Thereafter she worked in JAT Womens Arts, Science and Commerce Sr. College Nasik as the Principal from 1-02-1997 to 31-08-1997. From 1.9.1997 the petitioner has been working as a lecturer in MSG Arts, Science and Commerce College Malegaon.

3. At this stage it is also necessary to note that during the above period, there were certain breaks in the petitioner's service which are as under :-

BREAK IN SERVICE	Year Months Days
1 15.6.1976 to 15.7.1976	0 1 00
2 19.6.1978 to 19.6.1978	0 0 01
3 18.6.1979 to 31.8.1980	1 2 13
4 15.6.1981 to 30.6.1981	- - 15
5 1.6.1992 to 31.5.1995	3 2 00
(Service in unaided College)	
Total break in service	4 5 29

4. It is apparent that the petitioner has been working from 1975 onwards in Jr. and Sr. Colleges run by the 5th respondent. The case of the petitioner is that the breaks in her service which we have quoted hereinabove were beyond her control. According to the petitioner in the meeting dated 8-7-1997 the Management of the 5th respondent decided to recommend the petitioner's case for condonation of breaks in service. Vide letter dated 1-12-1997 as per resolution passed in meeting held on 8-7-1997 the Principal of the 5th respondent submitted proposal to the second respondent i.e. Director of Higher Education, Maharashtra State and requested that 488 days break in the petitioner's service be condoned. It appears that 3rd respondent by letter dated 1.4.1998 directed the Principal to resubmit the proposal by removing the deficiencies. Accordingly the proposal was resubmitted. The petitioner vide letter dated 14-7-1998 requested respondent No.3 that the period of deputation in Sardar College of Education (unaided) was wrongly treated as break in service. and that the said deputation period should not be treated as break in service. It is pertinent to note that by letter dated 19-8-1998 the 3rd respondent recommended the petitioner's case to the second respondent.

5. By letter dated 20-3-2007 the first respondent informed the second respondent that the request made for condonation of the break in service of the petitioner cannot be considered and the petitioner may be informed accordingly. The petitioner was communicated this in July, 2007. The petitioner is aggrieved by this letter and hence he has filed the petition.

6. We have heard Mr. Bandiwadekar, learned Counsel for the petitioner, Mr. Anilkumar Patil, learned Counsel for respondent No.5 and Mr. Bhosale, AGP for respondent Nos. 1 to 3.

7. Mr. Bandiwadekar, learned Counsel for the petitioner relied on G.R. dated 21st July, 1983. Mr. Bandiwadekar submitted that break in the petitioner's service from 18-06-1979 to 31-08-1980 is beyond the petitioner's control and is not because of the fault on the part of the petitioner. He submitted that during this period the Shikshanshatra Mahavidyalaya, College where she was working was disaffiliated by the Government from Pune University. Mr. Bandiwadekar submitted that so far as break from 1-6-1992 to 31-5-1995 is concerned the petitioner was sent to Sardar Education College on deputation and hence this period cannot be described as a break in service because it was beyond the control of the petitioner. Mr. Bandiwadekar submitted that therefore these two periods could not have been treated as breaks and in any case could have been condoned.

8. Mr. Bandiwadekar drew our attention to the G.R. dated 22nd November, 1993. clause 3A of the said G.R. which is relevant reads as under :-

(3) The Government has now decided that, the employees who are retiring from the non Agricultural Universities and the non Government recognized aided Colleges affiliated to them, and to whom the pension scheme is applicable, if such employees have rendered services previously in the same or any other college when it was partly or fully unaided, the services during the said period shall be held as qualifying service for pension subject to following terms and conditions :-

(A) Unaided College, the service in which is to be counted for the purpose of pension as aforesaid, should be fully aided on the date of retirement of the concerned employee.

9. Mr. Bandiwadekar pointed out that in the affidavit in reply filed in this petition it is stated that the petitioner does not fulfill condition laid down in clause 3(A) of G.R. dated 22.11.1993 which is quoted hereinabove because Sardar College of Education is not on 100% Grant in aid basis and therefore the service rendered by the petitioner in that college cannot be treated as qualifying service. Inasmuch as Sardar College of Education where the petitioner was sent on deputation, is totally unaided, the case of respondents 1 to 3 is that the said break cannot be condoned. Learned Counsel submitted that this condition is unreasonable, arbitrary and discriminatory and therefore it is challenged in this petition. He submitted that so far as Secondary Schools are concerned no such condition is imposed. Mr. Bandiwadekar drew out attention to G.R. dated 14th February, 1972, which pertains to Secondary Schools. He relied more particularly to paragraph 3 which reads as under :-

3. The question of considering the service rendered by Secondary School teachers in the two categories of unaided schools referred to in para 2 as qualifying service for purposes of pension has been examined by Government

and Government is now pleased to direct that when a teacher retires from an aided Non-Government Secondary School and in prima-facie covered by the pension scheme for teacher unaided Non-Government Secondary Schools the service rendered by him in the same school if and when it was unaided or in other unaided Secondary Schools where he might have previously worked should be allowed to be counted as qualifying service for the purposes of pension on the following conditions :

(a) The School concerned was duly recognised by the Education Department authorities.

(b) If the service rendered by teachers in unaided Secondary School falling in category (A) mentioned in para 2 above the teacher should be required to credit into Government Treasury the amount of contribution paid by the management of the unaided Secondary School into his contributory Provident Fund or the amount of pension contribution determined as per the rule in force whichever is more.

(c) If the service rendered by the teacher is in an unaided Secondary School falling in category (B) mentioned in para 2 above the teacher should be required to credit into Government Treasury the management's contribution if any credited to his contributory Provident Fund. If the management had not started the contributory Provident Fund at all the stipulation regarding crediting managements contribution into Government Treasury may be dispensed with as per the clarification issued vide Government Resolution, Education, Sports and Social Welfare Department No. SSN 1969 G, dated the 2nd March, 1971. Mr. Bandiwadekar submitted that pertinently, condition which is challenged in this petition is absent in this G.R.

10. Mr. Bandiwadekar then drew our attention to G.R. dated 3rd August, 1992 which pertains to Primary Schools. He pointed out that this Court had suo moto taken cognizance of representation made by retired primary teachers making a grievance that their service in unaided private Primary Schools was not counted for the purpose of pension. That writ petition being Writ Petition No.4658/1991 was decided by the Division Bench of this Court on 26th November, 1991. In the light of judgment delivered by the Division Bench in the said writ petition the Government issued G.R. dated 3rd August, 1992 stating the a decision taken by it in paragraph 4 thereof which reads as under :-

4 In pursuance of the decision rendered by the Bombay High Court in Writ Petition No. 4658 of 1991, in respect of the recognized and unaided private primary schools mentioned in para 3 above, the Government has now decided that the teachers who are retiring from the aided recognized private primary school and to whom the pension scheme is applicable, and such employees have worked in the same school when it was unaided, then the service rendered during the said period or in any other unaided recognized private primary school shall be admissible as qualifying service for the purpose of pension subject to the

following terms and conditions.

11. Mr. Bandiwadekar submitted that it is therefore appropriate that the State Government takes a decision to delete the condition 3(A) of G.R. dated 22nd November, 1993 in the interest of justice.

12. Prima facie we are of the opinion that submissions made by Mr. Bandiwadekar are well founded. We are however not expressing any final opinion on this aspect. We therefore, direct respondent Nos. 1 and 2 to file an additional affidavit after considering the matter independently in the light of observations made by us hereinabove.

13. Copy of our order be forwarded to the State Government and the 2nd respondent by the learned AGP.

14. Affidavit in reply as directed by us be filed within a period of 2 weeks.

15. Office is directed to place this matter on board on 8th October, 2009.

2. All the contentions of the parties have been dealt with extensively by the Court in the order dated 24th September, 2009. We do not find that any other issue remains to be considered at this stage.

3. Insofar as prayer clause (c) is concerned, we find from the interim order that this Court has referred to the said Government Resolution dated 22nd November, 1993, more specifically clause 3A in paragraph nos.8 and 9 and a final conclusion was drawn in paragraph nos.10 to 12, as quoted above.

4. There is no dispute that the Petitioner was working in a grant-in-aid institution before her deputation to the Sardar College of Education for two years from 1st June, 1992 to 31st May, 1994. She was allowed to keep lien on her post in the Senior College of Respondent No.5. After the completion of the two years of deputation, it was decided that she would be allowed to rejoin her original post with Respondent No.5. The Petitioner, therefore, joined as the Principal of the Sardar College of Education, Malegaon and completed her two years on deputation. Considering her efficient functioning, the Citizen Welfare Education Society requested Respondent No.5 to extend her deputation for one more year. Such extension was granted for the period from 1st June, 1994 to 31st May, 1995 and the lien was correspondingly extended. On 1st June, 1995, the Petitioner returned to her parent College on her original post as Lecturer in Botany in M.S.G. Arts, Science and Commerce College, Malegaon Camp.

5. The Petitioner was again sent on deputation to the J.A.T. Mahila Arts, Science and Commerce College at Malegaon as Principal from 31st January, 1997. It was a Senior Government recognised College and was fully aided, operated by Jadeed Anjuman Talim Modern Education Society, Malegaon. She completed her deputation on 1st September, 1997 and returned to her original post as Lecturer in Botany.

6. On 1st October, 1998, since the Petitioner had acquired Ph.D., she was placed

in the Selection Grade Lecturer Scale. Later on, she was transferred as Reader in S.P.H. Arts, Science and Commerce College, Mahila Mahavidyalaya, Malegaon Camp on 16th June, 2008. It was a Government recognised and aided Senior College operated by Respondent No.5 Management.

7. It is in the above backdrop that the Management passed a Resolution on 8th July, 1997 recommending the case of the Petitioner for condonation of break in service.

8. The State Government concluded vide its letter dated 1st August, 2001 that because the Petitioner was working with Sardar College of Education, which is an unaided Senior College, from 1st June, 1992 to 31st May, 1995, there cannot be condonation of such break in service.

9. We cannot persuade ourselves to agree to such a decision of the State Government. This Court has drawn a prima facie conclusion in its interim order dated 24th September, 2009. Taking into account the peculiar facts of the case and keeping in view that during this period of deputation, the salary of the Petitioner was drawn by the parent College, the State Government should have taken a pragmatic approach.

10. This litigation before us cannot be termed as adversarial litigation. So also, there is no illegality in deputing the Petitioner to another College, who performed her duties as a Principal with the concerned College for three years by keeping a lien on her post of Lecturer in Botany in a fully aided institution. During this period, her salary was drawn from her parent College. The Petitioner answered the call of duty when the Management deputed her for two years and granted a one year extension with the Sardar College which was an unaided institution. Since the Petitioner was a permanent employee of a 100% grant-in-aid institution and was drawing salary from the salary grants even while she was on deputation with the unaided College, we do not find that this period of three years could be treated as a break in service.

11. In view of the above, this Petition is partly allowed in terms of prayer clauses (b) and (d), which read as under :

(b) By a suitable writ, order or direction this Hon'ble Court may be pleased to quash and set aside the impugned order dated 20.3.2007 (Exhibit BB hereto) issued by the Respondent No.1 by which he has refused to condone the break in service of the Petitioner in Unaided Senior College and accordingly the Respondent No.1 be directed to condone the said break in service and to treat that service as continuous service and qualifying service for the purpose of pension and other retirement benefits;

(d) By suitable writ, order or direction this Hon'ble Court may be pleased to hold and declare that the service rendered by the Petitioner in the Unaided Senior College by name Sardar College of Education, Malegaon Camp, Malegaon, District; Nashik run by the Citizen Welfare Education Society, Malegaon from

1.6.1992 to 31.5.1995 and the career 488 days break shall be treated as qualifying service for the purpose of pension and other retirement benefits payable to the Petitioner upon her retirement from the service as on 30.11.2010 in the College run by the Respondent No.5 Society and accordingly the Respondents be directed to determine the pension and other benefits to the Petitioner on the basis of the entire service rendered by the Petitioner, i.e., w.e.f. 15-07-1975.

12. Rule is made partly absolute in the above terms.

13. No order as to costs.