

(2008) 10 BOM CK 0121
In the Bombay High Court
Case No : Writ Petition No. 1015 of 1999

Vasant Hiraji Kaddo

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 15-10-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Secondary School Code — Rule 70.1

Citation : (2008) 6 ALLMR 638 : (2009) 1 BomCR 743

Hon'ble Judges : Varale Prasanna B., J;Rohee K, J

Bench : Division Bench

Advocate : A.D. Mohgaonkar, for the Appellant; S.B. Ahirkar, A.G.P., for the Respondent

Judgement

Rohee K.J., J.—By this petition under Article 226 of the Constitution of India, the petitioner seeks (i) quashing of the communication dated 4.1.1998 made by under Secretary, Government of Maharashtra (respondent No. 1) to the petitioner and the communication dated 2.3.1998 by the Deputy Director of Education, Nagpur Region, Nagpur (respondent No. 3) to the Head Master, Yugantar Mahiya Vidyalaya, Nagpur in respect of condoning the break in service period of the petitioner and (ii) directing the respondents to condone the break in service of the petitioner on par with two other employees and finalise the pension of the petitioner accordingly.

2. The facts which gave rise to the present petition are all admitted and they are as under:

The petitioner having acquired the qualification of B.Sc. B.T. was appointed as Assistant Teacher in Mahatma Gandhi Vidyalaya, Armori on 18.10.1956. He was confirmed there and thereafter was promoted as Head Master in the same school on 1.4.1958. However, on 1.5.1961 the services of the petitioner were terminated by paying three months' salary he being permanent employee. This was the first break in his service. Thereafter on 1.6.1961 he was appointed as

Head Master in Katol High School, Katol. On 6.4.1969 he resigned from the said post. His resignation was accepted on 1.10.1969 and he was relieved on 6.10.1969. This was the second break in his service. Thereafter he was appointed as Assistant Head Master in temporary post in Tidke Vidyalaya, Nagpur on 26.7.1971. However, his services were terminated on 25.6.1972. This was the third break in his service. Thereafter he was appointed as Head Master in Pragatik Vidyalaya, Koradi on 3.7.1972. His services were terminated on 30.4.1974. This was the fourth and last break in his service. Lastly he was appointed as Assistant Teacher in Yugantar Mahila Vidyalaya, Nagpur on 14.8.1976 and continued there till he retired on attaining the age of superannuation (i.e. 60 years) on 30.9.1988. Thus he rendered total service of 32 years including the break of about 4 years 3 months and 15 days. All these schools wherein the petitioner served were aided and recognised and the petitioner served there on full time basis and was permanent employee.

3. Even before his retirement, the petitioner made a representation to the Education Officer, Zilla Parishad, Nagpur on 30.11.1987 for condoning the said break in his service period. The case of the petitioner was also recommended by the Education Officer as well as Deputy Director of Education to the Government. However, by communication dated Nil July, 1992 the Education Department informed the petitioner its regret that the break in service during the period from 1.5.1974 to 13.8.1976 cannot be condoned as per the prevailing rules. Thereafter the petitioner made several representations to the Secretary, Education Department, Bombay. However, by communications dated 4.1.1998 and 2.3.1998 the petitioner was informed that the break in his service cannot be condoned. The petitioner has challenged those communications.

4. According to the petitioner the breaks in the service of Shri B.L. Deshmukh and Shri Jagdish Khebudkar were condoned by the State. However, the petitioner was discriminated and has been denied the benefit of his long service while giving pensionary benefit to him.

5. Respondents No. 1 to 3 as well as respondent No. 4 filed separate returns. According to them there has been no discrimination as alleged by the petitioner because the petitioner's case cannot be equated with that of Shri B.L. Deshmukh and Shri Jagdish Khebudkar. The breaks in the services of those two teachers were condoned because under normal Rules they were not entitled for any pension and in order to allow them to draw at least minimum pension, the break in their services was condoned as special cases. The policy of the State Government is not to condone break in service in order to enhance the pension. Thus the petitioner is not entitled to the relief sought.

6. We have heard Shri A. D. Mohgaonkar, Advocate for the petitioner and Shri S.B. Ahirkar, A.G.P. for the respondents.

7. Shri Mohgaonkar invited our attention to Rule 70.1 of the Secondary School Code under the caption "Pension/Provident Fund". It provides that every

employee on a full-time basis in aided and recognised schools who was appointed before 1st April, 1966 and had exercised in writing his option for a pension scheme, shall be eligible to get pension as per Rules prescribed by Government. Shri Mohgaonkar further invited our attention to Annexure-34 of the Secondary School Code which provides for "Pension Scheme for the employees in the Non-Government Secondary Schools." Clause (1) of the said Scheme provides that:

Government directs that the pension, gratuity and other retirement benefits admissible to the Maharashtra State Government servants under the Revised Pension Rules, 1950, as amended from time to time, should be made applicable to full time teaching staff in recognised and aided Non-Government Secondary Schools in the State who retires on or after 1st April, 1966.

Clause 7 of the Scheme provides that:

In computing the length of qualifying service for pension under this Scheme, all previous service, whether temporary, officiating or permanent, either in one or more than one Non-Government Secondary School, shall be taken into account. Subject to the general condition that the period of each break does not exceed 6 months and the total period of six breaks hereinafter referred to do not exceed two years, breaks in service on account of any of the reasons listed below not exceeding six in number, should not be treated as interruptions entailing forfeiture of past service.

(1) Break in service on account of resignation of the teachers from a Non-Government Secondary School, provided it is followed by his taking up service as a teacher to another recognised Non-Government Secondary School and is not intervened by his taking employment in any other capacity. Out of the maximum number of six breaks that can be condoned, not more than three breaks should, however, be on account of such resignations.

(2) Termination of service due to no fault of the teacher or on account of the circumstances beyond the control of the teacher. If the services of a teacher have been terminated on disciplinary grounds after following the prescribed procedure, such break in service cannot be condoned and the services rendered by the teacher in the school from which his services are so terminated on disciplinary grounds will not account for pension.

8. Shri Mohgaonkar also invited our attention to Appendix-A which is an Accompaniment of Government Resolution, Education Youth Services Department No. PEN1076-81126(1491) XII dated 12.11.1976 which provides that breaks after 30.9.1974 in respect of teachers should not be condoned. The cut-off date prescribed by the State for condoning the break in service is wholly irrational and it results in discrimination between the employees and it has no nexus with the object sought to be achieved by the pension scheme. Perhaps that is why by Circular No. PEN-1088/120973/(582)/ Section -Edu. 6 dated 10.5.1989 the Secretary of Department of Education was empowered to condone the breaks in services of teachers even after 30.9.1974.

9. Shri Mohgaonkar pointed out that in case of the petitioner all those contentions are fulfilled and hence there was no difficulty in condoning the break in his service for the period from 30.4.1974-14.8.1976 which is of 2 years 3 months and 13 days.

10. The reasons put forth by the respondents for not condoning the break in service of the petitioner are (i) that the policy of the State is not to condone the break in service in order to enhance the pension and (ii) that the cases of Shri B.L. Deshmukh and Shri Jagdish Khebudkar cannot be equated with that of the petitioner, because those two employees would not have been entitled for any pension unless the break in their service was condoned and hence the same was condoned as special cases. We are unable to find any logic in these reasons. If it is the policy of the State to give pension to every employee on a full-time basis in aided and recognized schools appointed before 1st April, 1966, there is no question of any policy of the State not to condone break in service in order to enhance pension. If an employee is benefitted in calculation of his pension by condoning break in his service, there is no reason why such break should not be condoned. In fact it would be in consonance with the pension scheme introduced by the State. Hence the ground for not condoning the break in service of the petitioner does not stand to reason.

11. So far as equating the case of the petitioner with that of Shri B.L. Deshmukh and Shri Jagdish Khebudkar, it is true that they cannot be equated because in the absence of condonation of break in their services, those two employees would not have been entitled to draw any pension. However, this does not mean that if because of the condonation of break in service of the petitioner, he is benefitted by getting more pension, the break in his service should not be condoned. It may not be forgotten that the petitioner rendered 32 years of total service including break for 4 years 3 months and 15 days. As the last break in the service of the petitioner is not condoned, his pension has been calculated on the basis of his service of about 12 years only whereas if the last break in the service of the petitioner is condoned, he would get benefit of the earlier 16 years of service. Since the last break in the service of the petitioner for 2 years 3 months and 13 days is not condoned, he gets pensionable service only from 14.8.1976 to 30.9.1988 i.e. for about 12 years whereas if the last break in the service of the petitioner is condoned, he would get benefit of earlier 20 years of service for calculating pension and pensionable benefits. In our view the State was not justified in refusing to condone the last break in service of the petitioner depriving him all the benefits of the long service. Such a decision is against public policy. We are surprised to see that the last break in the service of the petitioner was not condoned by the State despite the authorities below having recommended the case of the petitioner for condonation of break in service.

12. In view of above reasons, we find that the communication by the State dated Nil July, 1992 so also the communication dated 4.1.1998 and 2.3.1998 are liable to be quashed and set aside. Hence we pass the following order:

The petition is allowed. The communications dated 4.1.1998 by the Under Secretary, Government of Maharashtra (R-1) to the petitioner and 2.3.1998 by the Deputy Director of Education, Nagpur Region, Nagpur (R-3) to the Head Master, Yugantar Mahila Vidyalaya, Nagpur are hereby quashed and set aside. Respondent No. 1 is directed to condone the break in service of the petitioner and to refix the pension of the petitioner accordingly Rule is matte absolute in the above terms.