



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 3485 OF 2009

Dr. (Mrs.) Rekha Ramchandra RaoPetitioner

Vs.

State of Maharashtra and others Respondents

Mr. N.V. Bandiwadkar for the Petitioner

Mr.S.N. Bhosale,AGP for respondent Nos. 1 to 3

Mr. Anilkumar Patil for the Respondent No. 5

CORAM : SMT. RANJANA DESAI AND
A.A. SAYED, JJ.

DATE : 24TH SEPTEMBER, 2009.

P.C.

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 Shikshanshtra 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
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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. Bandiwadkar, 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.

A.A. SAYED J.

SMT. RANJANA DESAI, J.