

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 134 /2006 (S.B.)**

Shri Sanjay S/o Namdeorao Puriji, Age : 51 Years,  
Occupation – Physician, in Employees State Insurance  
Scheme Hospital at Nagpur, R/o Plot No. 224,  
Ramnagar, Nagpur.

**Applicants.**

**Versus**

- 1) The State of Maharashtra,  
Through The Secretary to Govt. of Maharashtra,  
Medical Education and Drugs Dept.,  
Mantralaya, Mumbai.
- 2) The Director of Medical  
Education and Research, Dental  
College Building Near St. Georges Hospital,  
Near, Chatrapati Shivaji Terminal, Mumbai.
- 3) State of Maharashtra, through  
The Secretary to the Govt. of Maharashtra,  
Ministry of Health, Public Health Department,  
Mantralaya, Mumbai-32.
- 4) The Dean,  
Govt. Medical College, Nagpur.

**Respondents**

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**Shri M.M.Sudame, Id. Advocate for the applicant.**

**Shri M.I.Khan, Id. P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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**JUDGMENT****(Delivered on this 08<sup>th</sup> day of Nov., 2017)**

Heard Shri M.M.Sudame, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the Respondents.

2. The applicant came to be appointed as a Lecturer in the Department of Medicine in the Government Medical College, Nagpur as he was eligible and qualified for being so appointed. He was possessing qualification of M.B.B.S. and M.D. (Medicine) at the time of initial appointment. He was appointed purely on temporary basis for the first time, vide order dated 19/08/1981. His appointment was for a maximum period of four months or till the regular candidate is appointed by the Maharashtra Public Service Commission or D.S.B. whichever is earlier. His services were terminable without any notice at any time. According to the applicant, inspite of such four months' temporary appointment, the applicant continued to serve as a Lecturer from 1981 till he was regularly appointed on 04/06/1985 on the recommendation of M.P.S.C., barring one or two interruptions. It is stated that the applicant was given artificial breaks on 20/12/1981, 20/04/1982, 19/08/1982, 18 and 19/12/1982, 19/04/1983 to 21/04/1983, 18/04/1984 to 17/08/1984.

3. The applicant, after getting regular appointment made a representation to the Government of Maharashtra on 03/09/2002 and

requested that his earlier services prior to his regular appointment may be regularized and the breaks in the services may be condoned. The applicant did not receive any information or was not communicated anything on his representation and, therefore, he filed application under Right to Information Act and on his application he came to know vide communication dated 03/05/2003 that his services cannot be treated as continued in view of the provisions of Rule 48 (1) (b) of the Maharashtra Civil Services (Pension) Rules 1982. Being aggrieved by the said communication, the present O.A. is filed.

4. The applicant has prayed that the communication dated 17/02/2006, vide which the impugned order dated 03/05/2003 was communicated to him, be quashed and set aside and it be declared that the applicant is entitled to regularisation of all his services as a Lecturer on temporary basis / locum basis from 19/08/1981 to 14/05/1985 by releasing four increments due on 18/08/1982, 19/08/1983, 19/08/1984 and 19/08/1985. The applicant also prayed that the Respondents be directed to revise the applicant's pay by releasing four annual increments as already stated and the Respondents be directed to ignore the artificial breaks in the applicant's services.

5. The Respondents resisted the claim by filing reply affidavit on 11/09/2006 and subsequently on 29/09/2017. It is stated that the State of Maharashtra has refused to condone the breaks in the services of

the applicant by referring to provisions of Section 48(1)(b) of the Maharashtra Civil Services (Pension) Rules 1982 as applicant does not fulfil the conditions mentioned in the proviso there to. The Respondents justified the order.

6. This Tribunal vide order dated 09/06/2010 was pleased to allow the application and the Respondents were directed to condone the artificial/ technical breaks during the applicant's services as a Lecturer from 19/08/1981 till his regular selection and appointment by the State Government. The Respondents were also directed to release the amount of annual increment in applicant's favour within three months.

7. Being aggrieved by the order passed by this Tribunal on 09/06/2010, the State preferred Writ Petition No. 09/2011 before the Hon'ble High Court at Bombay, Bench at Nagpur. The Hon'ble High Court vide order dated 24/04/2017 was pleased to remand the case to this Tribunal with following observations:-

" On hearing the learned counsel for the parties and on a perusal of the order of the Tribunal, it appears that though the State Government had specifically rejected the application made by the respondent for condonation of the technical and artificial breaks in his services by referring to Rule 48 (1) (b) of the Maharashtra Civil Services (Pension) Rules, 1982, the Tribunal has not considered the said provision at all. The Tribunal has not considered whether the State Government could have rejected the application made by the respondent under the provisions of Rule 48 (1) (b) of the Rules, Sub Rule 1 (b) of Rule 48 of the Rules provides that the interruptions in the service of a Government servant could be condoned provided the total service pensionary benefits that would be lost is not less than five years duration, excluding one or two interruptions, if any. The provisions of Rule 48 (1) (b) of the Rules are not considered by the Tribunal while deciding the original

application filed by the respondent. It would be necessary in the circumstances of the case to remand the matter to the Tribunal to decide the original application afresh in accordance with law.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned order is quashed and set aside. The matter is remanded to the Tribunal for deciding the original application filed by the respondent, as early as possible in accordance with law."

8. The Id. counsel for the applicant Shri Marathe submitted that there are number of Judgments delivered by this Tribunal, where by this Tribunal was pleased to direct the State Government to condone technical breaks. He invited my attention to such Judgments in O.A. No. 301/2003, O.A. No. 218/2004 and O.A. No. 30/2003. I have carefully gone through those Judgments and I am satisfied that the facts of the said cases in respect of Judgment are not analogous with the present set of case. The copies of the said Judgments placed on record at P.B., Pg. No. 25 to 33 (a)(both inclusive).

9. The Id. counsel for the applicant invited my attention to one full bench Judgment of this Tribunal in O.A.No.240/2009 and concerned matters in case of **Shri Dr.R.A.Gaikwad and many other applicants Vs. State of Maharashtra and Ors.** delivered on 30/03/2010. In this Judgment the point referred to by the larger bench which is relevant in this case was :-

"Can an Ad hoc employee seek condonation in technical breaks of two or three days in between two such spells of ad hoc appointment and also seek release of yearly increments after completion of one year service, and go on seeking release of increments for successive years and for grant of consequential benefits including leave benefits?"

10. The Hon'ble Tribunal was pleased to conclude the aforesaid question of law in negative. The detailed reasons are in Para no 25 of the Judgment. Admittedly in this case the earlier service of the applicant was for four months on each occasion with technical breaks of one or two days and the said technical breaks have not been condoned in this case and, therefore, the question of continuing the service or appointment of annual increment will come into picture only if such, breaks are condoned and if it is declared that the services of the applicant are continued.

11. Now coming to the directions given by the Hon'ble High Court while remanding the matter, it is clear that the matter was remanded back only because the Tribunal did not consider the provisions of Rule 48 (1) (b) of the Maharashtra Civil Services (Pension) Rules, 1982. It is therefore, necessary to see as to whether the impugned communication dated 03/05/2003 where by the applicant's claim for condonation of breaks is rejected, is legal and proper.

12. The impugned communication dated 03/05/2003 is as under :-

"vki Y; k l mHAKZAnu i =RP; k vuqAekusvI sdGfo.; kr ; rsdh] MKWI at; uk- ijhth ; kps i dj .An egkjk"V<sup>a</sup> ukxjh l ok ¼fuoRrh oru½ fu; e 1982 e/My fu; e da 48¼1¼oh½ ; fAhy rjrnph i qrk gkr ukgh- R; keGsfo"A; kchh i Lrko 'Akl ukl eku; djrk ; r ukgh- rjhrl sl cZhr v/; ki dkl dGfo.; kr ; kos"

13. The plain reading of the aforesaid communication makes it crystal clear that the applicant's claim was not considered because it does not come under the ambit of the provisions of Rule 48 (1) (b) of the Maharashtra Civil Services (Pension) Rules, 1982.

14. The relevant Rule 48(1)(b) of the Maharashtra Civil Services (Pension) Rules, 1982 reads as under :-

(a) The Interruptions have been caused by reasons beyond the control of the Government servant;

(b) The total service pensionary benefit in respect of which will lost, is not less than five years duration, excluding one or two interruptions, if any; and

(C) The interruption including two or more interruptions, if any, does not exceed one year.

15. The aforesaid rule clearly shows that it is a discretion of the Government as whether the interruption be condoned or not, since the word "may" has been used in Rule 48 (1) (b) of the M.C.S. (Pension) Rules, 1982.

16. Such condonation is further subject to the proviso at Rule. In my opinion proviso b and c are not at all applicable in this case, Proviso b and c cannot be separated and they are to be read together. If these two proviso i.e. b and c are read together, it will be clear that the total service of pensionary benefit lost by the employee shall not be less than five

years duration excluding one or two interruptions and if the interruptions are more than two, such interruptions shall not exceed one year. In the present case the applicant was initially appointed on temporary basis for a period of four months for the first time vide order dated 19/08/1981 and his appointment was for a maximum period of four months. Thereafter he was being continuously appointed from time to time, but subject to technical breaks. The applicant has placed on records a certificate issued by Dean, Government Medical College, Nagpur whereby the period for which the applicant has served on temporary basis, is mentioned and the said period is under :-

Period From	Period To
19/08/1981	19/12/1981
21/12/1981	19/04/1982
21/04/1982	18/08/1982
20/08/1982	17/12/1982
20/12/1982	18/04/1983
22/04/1983	19/08/1983
20/08/1983	19/12/1983
20/12/1983	17/04/1984



19/04/1984	16/08/1984
18/08/1984	Till to-date

The applicant himself admitted in his application itself that he was given artificial breaks on 20/12/1981, 20/04/1982, 19/08/1982, 18 & 19/12/1982, 19/04/1983 to 21/04/1983, 18/04/1984 to 17/04/1984. Even for argument sake it is accepted that the applicant's technical breaks are condoned, the applicant's temporary services prior to his regular appointment was from 19/08/1981 to 14/05/1985 including technical breaks which is less than five years. As per the provisions of Rule 48 (1)(b) of the M.C.S. (Pension) Rules, 1982, the total services of pensionary benefits in respect of which will lost shall not be less than five years duration excluding one or two interruptions. So even if one or two interruptions are considered only or even if no interruption is considered, the applicant's services lost prior to his regular appointment was less than for the period for five years and, therefore, the State has rightly rejected the applicant's claim on the ground that his case does not fall within the ambit of Rule 48 (1) (b) of the M.C.S. (Pension) Rules, 1982.

17. As already stated the full bench of this Tribunal has already decided the issue regarding condonation of technical breaks in between

two spells of ad-hoc appointment and releasing of early appointment in O.A.240/2009 and other connected matters. On these count also the applicant is not entitled to any relief as claimed by him in this O.A. It is not the case of applicant that he was absorbed in regular service by condoning his temporary service prior to regular appointment.

18. In view of the discussion in the foregoing paras, I, therefore, pass the following order :-

**ORDER**

The O.A. stands dismissed, with no order as to costs.

**(J.D. Kulkarni)**  
**Vice-Chairman (J).**

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