

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6568 OF 2021

Smt. Hemlata Prakash Choudhary (Talele) ... Petitioner
residing at 434, Ganpati Apartment,
Ambernath – 421 501, District Thane

Versus

1. The President / Secretary ... Respondents
Mumbra Shikshan Prasarak Mandal,
having office at
C/o. B. S. Jondhale Vidya Mandir,
Hindi Primary School, Mumbra,
Behind Police Station, District Thane.
2. The Head Mistress,
B. S. Jondhale Vidya Mandir,
Hindi Primary School, Mumbra,
Behind Police Station, District Thane.
3. The Education Officer,
Thane Municipal Corporation,
New Administrative Building,
Chandanwadi, Thane.
4. The Education Officer,
Zilla Parishad (Primary), Thane.
5. The Deputy Director of Education,
Nehru Bal Bhavan, Charni Road,
Mumbai.
6. The Director of Education,
Maharashtra State, Pune.
7. The State of Maharashtra,
(Writ to be served upon the Secretary,
Govt. of Maharashtra, School Education
Department, Mantralaya,
Mumbai-400032.

WITH
WRIT PETITION NO. 6569 OF 2021

Smt. Jayshree Dharma Patil
residing at Kalyan Dipti Society,
1st Floor, A/2, Near Birla College,
Kalyan(W), District Thane.

... Petitioner

Versus

1. The President / Secretary
Mumbra Shikshan Prasarak Mandal,
having office at
C/o. B. S. Jondhale Vidya Mandir,
Hindi Primary School, Mumbra,
Behind Police Station, District Thane.
2. The Head Mistress,
B. S. Jondhale Vidya Mandir,
Hindi Primary School, Mumbra,
Behind Police Station, District Thane.
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Thane Municipal Corporation,
New Administrative Building,
Chandanwadi, Thane.
4. The Education Officer,
Zilla Parishad (Primary), Thane.
5. The Deputy Director of Education,
Nehru Bal Bhavan, Charni Road,
Mumbai.
6. The Director of Education,
Maharashtra State, Pune.
7. The State of Maharashtra,
(Writ to be served upon the Secretary,
Govt. of Maharashtra, School Education
Department, Mantralaya,
Mumbai-400032.

... Respondents

Ms. Kumud A. Bhatia for the Petitioners.

Ms. Chaitrali A. Deshmukh for the Respondent No.3.

Mr. Shrishail Sakhare for the Respondent No.4.

Mr. B. V. Samant, Addl. Govt. Pleader a/w Mr. S. B. Kalel, AGP for the Respondent Nos.5, 6 and 7.

**CORAM : NITIN JAMDAR AND
 M.M. SATHAYE , JJ.**

DATE : 31 JANUARY 2024.

ORAL JUDGMENT (Per NITIN JAMDAR, J) :

1. Rule. Rule made returnable forthwith. Taken up for disposal.
2. Petitioners have filed these Writ Petitions challenging the orders passed by Respondent No.3 – Education Officer, Thane Municipal Corporation dated 27 July 2021 refusing to condone break in service of the Petitioners.
3. Petitioners were working with Respondent No.1 - Education Institution who supports the cause of the Petitioners. From the record, it would appear that the proposals were sent by the Education Institution to the Education Officer, Thane Municipal Corporation (“TMC”) in respect of condoning break in service of the Petitioners. The Education Officer, TMC by communications dated 11 January 2005 and 18 January 2005 placed the matters before the Divisional Deputy Director of Education, Mumbai who by communications dated 25 May 2021 and dated 7 June 2021 returned it to the Education Officer, TMC to take a decision and thereafter the

Education Officer, TMC have passed the impugned orders.

4. We have heard Ms. Kumud A. Bhatia, learned counsel for the Petitioners, Ms. Chaitrali A. Deshmukh, learned counsel for Respondent No.3, Mr. Shrishail Sakhare, learned counsel for the Respondent No.4, Mr. B. V. Samant, learned Additional Government Pleader a/w Mr. S. B. Kalel, learned Additional Government Pleader for Respondent Nos.5, 6 and 7.

5. Learned counsel for the Petitioners has drawn our attention to the Government Resolution dated 10 May 1989 wherein the procedure and contingencies in which the break in service can be condoned have been specified. After specifying the conditions, it is stated therein that the power to condone break in service is given to the Divisional Deputy Director of Education. There is no reference to delegate the power to the Education Officer. Instead of exercising the power vested in him, the Divisional Deputy Director has sent the proposal back to the Education Officer, TMC. Even Government Resolution dated 10 May 1989 does not refer to the Education Officer.

6. The Divisional Deputy Director of Education is a superior officer to the Education Officer and considering that such condonation of break in service has consequences on grant of pensionary benefits which may have substantial financial implications, the power to condone break in service is vested with

the Divisional Deputy Director of Education. Even under the Government Resolution dated 28 April 2008 though there is reference to the Education Officer / Education Inspector, it is only for the purpose of scrutinizing the proposal. We have not been shown the power to take a decision is conferred on the Education Officer. In fact, this Government Resolution refers to the earlier Government Resolutions of the year 1968 and 1972 indicating that the power is vested with the superior officer.

7. We had adjourned the Petitions raising a query as to whether the Education Officer would have power to condone break in service. However, no satisfactory answer is coming forth. In light thereof, the impugned orders dated 27 July 2021 are quashed and set aside.

8. The Education Officer, TMC would forward the proposals which are returned by the Divisional Deputy Director of Education back to the Divisional Deputy Director of Education, Mumbai as early as possible, who will take a decision on its own merits and as per law within eight weeks on receipt of the proposals subject to earlier time bound matters and pressing public duties.

9. Rule is made absolute in the above terms. Writ Petitions are disposed of.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)