

CASE NO.:
Appeal (civil) 18 of 2008

PETITIONER:
STATE OF MAHARASHTRA & ORS

RESPONDENT:
SHUBHADA ANANT KARVE & ORS.

DATE OF JUDGMENT: 03/01/2008

BENCH:
P.P. NAOLEKAR & LOKESHWAR SINGH PANTA

JUDGMENT:
JUDGMENT

O R D E R
(Arising out of SLP(C) No. 2635/05)

Leave granted.

Respondent No.1 was appointed as Assistant Teacher in Paranjape-Motiwale High School on 15.6.1970 where she continued upto 8.5.1984. Thereafter, the respondent was on leave till 8.6.1986. She resigned from her post on 9.6.1986 and joined respondent No.3, Maharashtra Mitra Mandal Madhyamik Shala on 10.6.1990 which is after four years. After rejoining service with Respondent No.3, she continued on the post upto her superannuation on 31st December, 2003. Thus the total length of service rendered on the post by respondent No.1 was 13 years, 6 months and 20 days. The service was pensionable. If the break period is added, then she would have been entitled to additional pensionary benefits, and keeping this in view respondent moved an application on 26.12.2003 for condonation of break in service. The application was rejected on 24.3.2004 by the authorised officer. This decision of the officer refusing condonation of break in service, was challenged by respondent No.1 by filing Writ Petition No.4404 of 2004 before the High Court. The High Court has directed the State of Maharashtra to condone the break in service to respondent from 9.6.1986 to 10.6.1990 and to refix the pension by taking into consideration her total service from 15.6.1970 to 31.12.2003, and thereafter pay the pensionary benefits to her accordingly. For giving the aforesaid direction, the High Court has relied upon State Government Resolution dated 12th November, 1976 as well as Government Notification dated 10.5.1989.

Learned counsel for the appellant-State has brought to our notice Government Resolution, Education and Social Welfare Department dated 4th November, 1968 whereunder for condoning the break in service, the period of each break should not exceed six months and the total period of permissible 6 breaks should not exceed 2 years; and Circular dated 10.5.1989 whereunder total duration of breaks must not be more than 2 years. The High Court has failed to notice this part of the GR and was impressed by the fact that the power to condone the break in service, which vests with the authority, should have been exercised in favour of respondent No.1. On the face of the Circular, wherunder the power to condone the break in service exceeding the period of two years does not vest with the Government, the High Court has committed an error in issuing the aforesaid direction. That being the case, the appeal is allowed and the order passed by the High Court is set aside.