

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.3356 OF 2007**Jagan S/o Ramdas Patil Vs. The State of Maharashtra and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.N.B.Suryawanshi, advocate for the Petitioner.
Mr.N.B.Patil, Asstt. Govt. Pleader for the State.

**CORAM : S.V.GANGAPURWALA &
A.I.S.CHEEMA, JJ.**
Date : 18.04.2015.

PER COURT :

1. Heard.
2. Mr.Suryawanshi, learned counsel for the petitioner submits that the Tribunal allowed the application of the petitioner holding the termination order issued by the Respondents as illegal, directed reinstatement with continuity, however, denied the back wages. According to the learned counsel, the petitioner was appointed as clerk-cum-typist vide order dated 28.2.2005. The typing examination is required to be passed within four years as per the Rules governing the appointment. However, before completion of one year, the Respondents issued termination order on 21.3.2006.

The Tribunal considering provisions of Rule 3 of the Service Rules, held that a person appointed as clerk-cum-typist is required to pass typing examination within four years. As the termination order is illegal, against the Rules, the grant of back wages should follow. The concept of 'no work no pay' would not be applicable in such case. The petitioner has categorically stated that during the relevant period, the petitioner was not gainfully employed elsewhere. The said averment is not controverted by the Respondents. The learned counsel relies on the judgment of the Apex Court in a case of **“State of U.P. Vs. Dayanand Chakrawarty and Ors.”** reported in **AIR 2013 Supreme Court 3066.**

3. Mr.Patil, learned Asstt. Govt. Pleader submits that the concept of 'no work no pay' would be squarely applicable in the present case. As per terms of the appointment order, the petitioner was required to pass the typing examination in one year. Having failed to do so, is terminated. The action taken is bonafide.

4. We have considered the submissions canvassed by the learned counsel for respective parties. The order of termination passed by the Respondents terminating the services of the petitioner is held to be illegal by the Tribunal. The Respondent has not assailed the said order. The issue in the present Writ Petition is limited to the extent of back wages for a period of 11 months.

5. The payment of back wages has an element of discretion. It

is required to be dealt with having regard to the facts and circumstances of each case. There can not be any straight-jacket formula to be applied.

6. It is a fact that during the relevant period, the petitioner has not worked with the Respondents. Initially burden is upon the employee to prove his case of back wages. The petitioner has stated that he was not gainfully employed at the relevant time. After the judgment is passed by the Tribunal, the petitioner is immediately reinstated in service in the year 2007.

7. Considering the facts and circumstances of the case as culled out above, we feel it appropriate to award 50% back wages to the petitioner, keeping in view the recourse taken by the Apex Court in the case of **“Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and another”** reported in **2002 AIR SCW 3008**.

8. In the result, the Writ Petition is partly allowed. The Respondents shall pay 50% back wages to the petitioner from the date of termination till the date of reinstatement. Rule accordingly made partly absolute. No costs.

(A . I . S . CHEEMA , J .)

(S . V . GANGAPURWALA , J .)

Dt..18.04.2015.
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