

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 7125 OF 2015

Vishaka Vinod Vyawhare

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri Paresh B. Patil, Advocate for the Petitioner.

Shri R. P. Phatake, A.G.P. for Respondent Nos. 1 to 3.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 16TH JULY, 2015.

PER COURT :

. The petitioner seeks continuation in service till the age of 62 years and all other benefits of extended age of retirement as per Government Resolution dated 5th March, 2011.

2. The learned counsel for the petitioner states that as per the earlier Government Resolution, the petitioner was due to retirement on 28.02.2013. In view of the Government Resolution dated 5th March, 2011, age of retirement is extended to 62 years and the petitioner is deemed to be continued in service up to 30th September, 2013.

3. Learned counsel submits that it is only on 10.05.2013, the

petitioner received order continuing her in service. The petitioner joined service on 11.05.2013. Salary for the period from 01.03.2013 to 31.05.2013 is not paid on the ground that the petitioner has not worked. The learned counsel for the petitioner submits that it is not fault of the petitioner for not having worked during the said period as the respondent has issued continuation letter late. Learned counsel for the respondent relies on the judgment of the Apex Court in the case of **State of Uttar Pradesh Vs. Dayanand Chakrawarty & others** reported in ***(2013) 7 SCC 595***.

4. Learned counsel for the respondents submits that in view principles of “no work, no pay, the petitioner cannot be paid arrears from 01.03.2013 to 31.05.2013. The petitioner is already issued order extending her age of superannuation and continuing her in service till she attains the age of 62 years.

5. We have heard the learned counsel for the respective parties.

6. In view of the fact the order is already issued allowing the petitioner to work up to extended age of retirement, the said prayer of allowing her to work till the age of 62 years has become redundant. The only question remains is about the salary from 01.03.2013 to 31.05.2013. It was only on 10.05.2013, the order

was issued allowing the petitioner to continue in service till the age of 62 years.

7. The Apex Court, in the case of **State of Uttar Pradesh Vs. Dayanand Chakrawarty & others** (referred supra), has observed that 'no work, no pay' principle is applicable only to those employees who are not guided of by any specific rule regarding absence from duty. Where an employee is prevented by the employer from performing his duty, the said principle is inapplicable and the employees who had moved the Court of law were given the said benefit. Here also the petitioner had moved the Court prior to her date of retirement and her proposal was pending consideration with the authorities. The judgment in the case of **State of Uttar Pradesh Vs. Dayanand Chakrawarty & others** referred supra would squarely apply.

8. In the light of above, we pass the following order.

9. The respondent authorities shall pay salary as admissible to the petitioner for the period from 01.03.2013 to 31.05.2013, if, not already paid. The writ petition accordingly is disposed of. No costs.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]