

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 2218 OF 2014

RAMKRUSHNA MOHINIRAJ MAKONE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Kalyan V. Patil, Advocate i/b Mr. Barlinge S.R.
AGP for Respondents: Mr. K.G.Patil.
...

CORAM : **S. V. GANGAPURWALA and
V. L. ACHLIYA, JJ.**

DATE : 10th February, 2015.

P.C.:

. The learned counsel for the Petitioner submits that the Respondents granted the Petitioner the benefit of age relaxation and the age of retirement of the Petitioner was enhanced from 60 years to 62 years. The Petitioner attained the age of 60 years on 21st May, 2011. On 21st September, 2012, the orders were received from the Government that the benefit of extension of age of retirement has been given to the Petitioner. The Petitioner joined the services and thereafter, retired on 21st May, 2013. However, the Respondents have not paid the salary to the Petitioner from 21st May, 2011 to 21st May, 2013, on the ground that the Petitioner had received the pension. The learned counsel submits that the Petitioner is entitled for the salary for the said period.

2 The learned counsel relies on the judgment of the Apex Court in a case of **State of Uttar Pradesh Vs. Dayanand Chakrawarty and others**, reported in, **[(2013) 7 SCC 595]**.

3 The learned AGP submits that as the Petitioner had started receiving the pension, the Petitioner is not entitled for the salary during

the interregnum period. The controversy involved in the present writ petition is no longer *res-integra* in view of the judgment of the Apex Court in the case of *State of Uttar Pradesh (supra)*. If the orders are received late on account of the delay on the part of the Government, then the principle of "no work no pay" is not applied as per the judgment of the Apex Court in the case of *State of Uttar Pradesh (supra)*. The Petitioner can be paid salary for the said period i.e. 21st May, 2011 to 21st May, 2013, after deducting the amount of pension, which is received by the Petitioner.

4 In light of the above, we pass the following order:

- I. The Respondents shall pay the salary to the Petitioner during the extended age of retirement i.e. from 21st May, 2011 to 21st May, 2013, after adjusting the amount of pension already paid during the said period and for calculating the retiral benefits, the age of the Petitioner shall be calculated on on 21st May, 2013.
- II. The prayer for grant of interest stands rejected.
- III. Accordingly, the writ petition is disposed of. No costs.

[V. L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]

ndm