

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

5 WRIT PETITION NO. 9177 OF 2015

PRALHAD SARANDHAR GHOGARE
VERSUS
THE STATE OF MAHARASTHRA AND OTHERS

...

Advocate for Petitioners : Mr. Patil Paresh B.
AGP for Respondents State: Mr. M. B. Bharaswadkar

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 2nd September, 2016

ORDER:

1. 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 31.11.2011. 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 30.11.2013.

3. Learned counsel submits that it is only on 07.08.2012, the petitioner received order continuing him in service. The petitioner joined service on 07.08.2012. Salary for the period from 01.12.2011 to 06.08.2012 is not paid on the ground that the applicant 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 01.12.2011 to 06.08.2012. The petitioner is already issued order extending his age of superannuation and continuing him in service till he 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 him to work till the age of 62 years has become redundant. The only question remains is about the salary from 01.12.2011 to 06.08.2012. It was only on 07.08.2012, the order was received allowing the petitioner to continue in service till the age of 62 years.

7. The Apex Court, in the case of State of U.P.

(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 his date of retirement and his proposal was pending consideration with the authorities. The judgment in the case of State of UP(supra) would squarely apply.

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

The respondents authority shall pay salary as admissible to the petitioner for the period from 01.12.2011 to 06.08.2012.

9. Writ petition accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

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