

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

38 WRIT PETITION NO. 10926 OF 2015

AMIT SHAMTARAM DUSANE AND ANOTHERS
VERSUS
EDUCATION OFFICER ZILLA PARISHAD DHULE AND ANOTHERS

...
Advocate for Petitioners : Deshmukh Mahesh S.
Advocate for Respondents : R S Pawar For R/1
...

**CORAM : S.V.GANGAPURWALA &
P.R. BORA, JJ.
DATED : 10.10.2016.**

P.C. :-

1. Mr. Deshmukh, the learned counsel for the petitioner states that, the petitioner was appointed on 14.06.2006 as a Junior Clerk by the petitioner no.2 after following due selection process, however, at the time when the petitioner was appointed he was minor. The learned counsel submits that, from May 2014 the salary of the petitioner was stopped. The proposal is also submitted to the respondent seeking correction in the date of appointment as 14.08.2006 instead of 14.06.2006. Learned counsel submits that, mere filing of a criminal case against the petitioner would not be an impediment for releasing the salary of the petitioner.

2. Mr. Pawar learned counsel for respondent no.1 submits that, the petitioner on 14.06.2006 could not have been appointed as Junior Clerk as on the said date petitioner was minor. A minor cannot be taken in employment. The petitioner at the relevant time was the son of the President of the institution, even a criminal case is filed against the petitioner for serious offence, as such, the petitioner is not entitled for any relief. The petitioner had submitted the proposal in the year 2012 for approval. The petitioner was behind the bars from 08.05.2014 till 18.05.2014, as such, is deemed to be suspended.

3. We have considered the submissions, as per the provisions of M.E.P.S. Act if a person is arrested and is behind the bars the period for which he is behind the bars is deemed to be under suspension, as such, the petitioner would be deemed to be under suspension from 08.05.2014 to 18.05.2014. The said criminal case is still pending, naturally, future course would depend upon the judgment delivered by the competent court in the said criminal case pending against the petitioner.

4. Only factum to be considered is that the petitioner on the date when he was appointed on 14.06.2006 had not completed age of 18 years and he completed the age of 18 years on 14.08.2006 and the

petitioner has been paid salary up to April 2014 and for the first time in May 2014 the salary has been stopped.

5. Considering the length of service that has been discharged by the petitioner and after a long slumber of ten years. it would be inappropriate to dislodge the petitioner on the ground on 14.06.2006 the petitioner was minor. The equities can be adjusted certainly the service of the petitioner cannot be considered from 14.06.2016 and petitioner would not be entitled to retain any benefit that he has got from 14.6.2006 to 14.08.2006. Considering the above and taking an equitable view in the matter we pass the following order.

6. The service of the petitioner shall be considered from 14.08.2006 instead of 14.06.2006 for all purposes. If the petitioner has received salary from the public exchequer, then, the petitioner shall return the said salary from 14.6.2006 to 14.8.2006. The said amount is already with the government treasury, the respondents can withdraw the said amount. The proposal for approval to the appointment of the petitioner as a Junior Clerk shall be considered from 14.08.2006. The salary of the petitioner shall not be withheld only on the ground that criminal case is pending against him and in case there is no other

impediment the same shall be disbursed expeditiously preferably within three months.

7. The respondents is at liberty to take further course of action in tune with the judgment that would be delivered in the criminal case. Writ petition accordingly disposed of. No costs.

[P.R.BORA, J.]

[S.V. GANGAPURWALA, J.]