

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

**REVIEW APPLICATION STAMP NO. 6568 OF 2016
IN
WRIT PETITION NO. 9095 OF 2012**

Hanumant Madhavrao Lakade .. Applicant

Versus

The State of Maharashtra and others .. Respondents

Shri S. B. Talekar, Advocate for the Applicant.

Mrs. M. A. Deshpande, Addl.G.P. for Respondent Nos. 1 to 3.

Shri V. S. Kodale, Advocate h/f Shri V. D. Gunale, Advocate for the Respondent No. 6.

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

DATE : 10TH FEBRUARY, 2017.

PER COURT :

. Mr Talekar, the learned counsel for the review applicant states that, the present review is filed to the extent of non grant of arrears of salary/backwages. The learned counsel submits that, the order of absorption was passed in January 2012. The petitioner was not absorbed at the place where the directions of absorption were issued. On 05th September, 2012, the said directions of absorption were cancelled and applicant was directed to join at his parent institution. In fact, there was no vacancy available. Already there was a surplus candidate in the

parent institution. Even if petitioner would have joined, no purpose would have been served. No work load was available. The learned counsel further submits that, no work no pay would not be a general rule. An exception is to be carved out. The applicant was not in gainful employment at the relevant time. The applicant was prosecuting his cause bonafidely. The learned counsel relies on the judgment of the Apex Court in a case of Fisheries Department, State of Uttar Pradesh Vs. Charan Singh reported in (2015) 8 SCC 150 and another judgment in a case of Shiv Nandan Mahto Vs. State of Bihar and others reported in (2013) 11 SCC 626.

2. There cannot be any dispute with the proposition that the concept of no work no pay does not have a universal application. No straitjacket formula can be laid down about grant of arrears of salary and backwages. The element of discretion exists.

3. While passing the order in the writ petition we had considered the conduct of the applicant after the order dated 05th September, 2012 was cancelled and the applicant was directed to join at his parent institution, the applicant did not join the parent institution. There was no impediment for the applicant to join the parent institution. If at all there was a surplus candidate in the parent institution, it was for the authority to consider the said aspect, but the applicant on his own volition

willfully did not join parent institution to discharge his duties. The applicant failed to adhere to the order passed by the authorities and did not join the parent institution as per the order dated 05th September, 2012. Considering the conduct of the applicant, we had refrained from granting any backwages/arrears of salary to the applicant.

4. Considering the above, there is no error apparent on the face of record, as such review application is dismissed. No costs.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]