

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

WRIT PETITION NO. 11300 OF 2014
WITH CA/13046/2017 IN WP/11300/2014

Umesh S/o. Baburao Thale .. Petitioner
Age-31 years, Occu-Nil,
R/o.N-11, B-28/2, HUDCO,
Aurangabad

Versus

1. The State of Maharashtra, .. Respondents
Through the Secretary,
Co-operative, Marketing
and Textile Department
Mantralaya, Mumbai-32
2. The Director of Marketing,
Maharashtra State, Pune
3. The District Deputy Registrar,
Co-operative Societies,
Aurangabad
4. Agricultural Produce Market Committee
Fulambri, Tq. Fulambri,
Dist. Aurangabad
through its Secretary

Mr.K.J.Suryawanshi, Advocate for the petitioner
Mrs.R.P.Gaur, AGP for the respondent/State
Mr.S.S.Thombre, Advocate for respondent No.4

**CORAM : S.V. GANGAPURWALA &
S.M. GAVHANE, JJ.
DATED : 28.11.2017**

ORAL JUDGMENT:

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final disposal.

. Mr.Suryawanshi, learned counsel submits that the petitioner was terminated in the year 2003. The petitioner has filed an appeal before the Director of Marketing. The appeal filed by the petitioner is allowed in the year 2009. The respondent No.4 filed further appeal before the State Government. The State Government dismissed the appeal. According to the learned counsel for the petitioner, the petitioner is entitled for the salary from the year 2003 alongwith continuity of service. Respondent No.3 is not allowing the petitioner to join. As per the order of this Court dated 17.11.2016 the petitioner has given calculation in respect of salary receivable between period of 2009 to 2014.

2. Mr.Thombre, learned counsel submits that the petitioner was not in service since 2003 onwards. Even the order of the Appellate authority does not state that the petitioner is entitled for backwages or continuity in service nor the order states that the petitioner is required to be reinstated. The order of the Appellate authority specifically gives liberty to respondent No.3 to take action afresh. Pursuant thereto respondent No.3

has conducted the enquiry, gave opportunity to the petitioner and has again on 10.03.2014 took a decision that services of the petitioner are no longer required. The petitioner has not worked even for a single day.

3. Learned Advocate further submits that the petitioner was employed on daily wages. The petitioner has not worked with the respondent No.4 from 2003 onwards. As such he is not entitled for any emoluments for the said period.

4. Learned Advocate further submits that the petitioner has alternate remedy under Section 52-B of the Maharashtra Agricultural Produce Marketing (Development & Regulation) Rules. The petition involves disputed question of fact which cannot be gone into in writ jurisdiction. Prayer made by the petitioner also cannot be granted.

5. The fact that the petitioner was class-IV employee of respondent No.3 is not disputed. The orders of the Appellate authority are self speaking. The petitioner was terminated in the year 2003. He had filed an appeal before the Director of Marketing. The appeal filed by the petitioner came to be allowed. The Appellate authority passed following order.

"1) Appeal is hereby disposed of.

2) Order of District Deputy Registrar, Cooperative Societies, Aurangabad dt.08.08.2003 and order of termination of appellant passed by Phulambri Agril. Produce Market Committee dt. 11.08.2003 are hereby set aside.

3) Liberty to respondents to take fresh decision after giving opportunities of submission to the appellant and hearing to the concerned parties.

This order is issued on 30th October, 2009 under my signature and seal."

6. The said order was assailed by respondent No.3 before the State Government. The State Government dismissed the appeal. The order passed by Director of Marketing, Maharashtra State Pune became final.

7. Perusal of the said order it is manifest that the petitioner is not given any backwages nor continuity in service. The order of termination issued by respondent No.3 dated 11.08.2003 is set aside. It is also matter of record that respondent No.4 did not allow the petitioner to join though the petitioner time and again approached respondent No.3 to allow him to join. The applications on record would testify said fact. As per liberty granted by the Director of Marketing the respondent No.4 conducted enquiry & under the order dated 10.03.2014 and took a

decision that service of the petitioner is not required and the same amounts to termination. The order of the respondent No.4-APMC terminating the services of the petitioner under order dated 10.03.2014 is not assailed by the petitioner and has become final.

8. Considering the fact that the petitioner was not given any backwages. The prayer of the petitioner for payment of backwages from 2003 onwards cannot be considered. The petitioner would only be entitled for the payment from the November-2009 till March-2014.

9. Pursuant to the order of this Court respondent No.2 it seems has deposited Rs.2,00,000/- as contended by respondent No.3. Respondent No.4 has not filed any chart showing an amount which the petitioner would be entitled to.

10. We would not have interfered in the matter had the respondent No.4 allowed the petitioner to join but the record shows that petitioner was consistently making request with respondent No.4 to allow him to resume the duties but it was respondent No.4 who was not allowing the petitioner to resume duties.

11. We hereby hold that the petitioner would be

entitled for emoluments from November-2009 till Feb-2014. The petitioner has given his calculation, same shall be given to the respondent No.3 District Deputy Registrar Cooperative Societies, Aurangabad. The respondent No.4 shall also give its calculation regarding the amount which the petitioner would be entitled to as per his service condition for the period from November-2009 till February-2014 within a period of 15 days from today. Respondent No.3 shall calculate an amount which the petitioner would entitle to for aforesaid period as salary/emolument within a period of one month thereafter. Respondent No.4 shall make the payment of the amount that would be arrived by respondent No.3 within a period of three months thereafter. Respondent No.4 has deposited an amount of Rs.2,00,000/- the petitioner is allowed to withdraw the same. The said amount shall be adjusted in the final payment to be made by respondent No.3. Rule is made absolute in above terms. No costs.

12. In view of the disposal of the writ petition, the civil application does not survive and disposed of.

[S.M. GAVHANE, J.]

[S.V. GANGAPURWALA, J.]