

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

Writ Petition No.11955 of 2016

* Tulshiram s/o Dudharam Jadhav,
Age 45 years,
Occupation: Service,
R/o Gangalwadi,
Taluka Aundha Nagnath,
District Hingoli. .. **Petitioner.**

Versus

- 1) The State of Maharashtra
Through its Secretary,
Social Justice and Special
Assistance Department,
Mantralaya, Mumbai - 32.
- 2) The Director,
V.J., N.T., O.B.C. and
S.B.C. Welfare,
Maharashtra State, Pune-1.
- 3) The Regional Deputy Commissioner,
Social Welfare Department, Latur.
- 4) The Assistant Commissioner,
Social Welfare Office, Hingoli.
- 5) The President/Secretary,
Sand Namdeo Shikshan Prasarak
Sanstha, Jambhrun Andh (Tanda)
Taluka Aundha Nagnath,
District Hingoli.
- 6) The Head Master,
Shri. Ratansingh Naik Post
Basic Ashram School,
Gangalwadi, Taluka Aundha Nagnath
District Hingoli. .. **Respondents.**

Shri. Vijay A. Dhakne, Advocate, for petitioner.

Smt. R.P. Gour, Assistant Government Pleader,
for respondent Nos.1 to 4.

Shri. A.R. Rathod, Advocate, for respondent Nos.5
and 6.

**Coram: T.V. NALAWADE &
SANGITRAO S. PATIL, JJ.**

Date: 15 February 2017

ORAL JUDGMENT :

1) Rule, rule made returnable forthwith. By consent, heard both sides for final disposal.

2) The petition is filed for giving direction to the respondents and particularly respondent Nos.5 and 6 employer, to make payment of salary to the petitioner. The submissions made and the record show that the petitioner came to be appointed on the establishment as Peon on a clear vacancy on 18-6-2001. He was granted pay scales as per 5th and 6th Pay Commission Reports. The petitioner was terminated by the employer on 9-2-2011 but the School Tribunal set aside

that order of termination and gave direction to make payment with back wages, give continuity and reinstatement to present petitioner. Accordingly the petitioner came to be reinstated on 4-11-2015. Though the decision of the School Tribunal is challenged by filing Writ Petition No.4238 of 2012, no stay is granted by this Court to the decision given by the School Tribunal. It is submitted that rule is granted in the said petition.

3) Learned counsel or the respondent No.5 produced copy of order made by learned Single Judge of this Court in Civil Application No.6830/2016 filed in Writ Petition No.4238/2012 and submitted that such relief was not granted in the said petition by this Court. The proceeding is filed by the respondent Nos.5 and 6 and the matter like entitlement of present petitioner to get back wages was considered by the learned Single Judge. There is procedure provided for execution of the order made by the School

Tribunal and so such order was made. In the present petition prayer is made against the respondents that they should have started making of payment of regular salary from 4-11-2015 but the payment of salary is not being made.

4) The learned counsel for respondent Nos.5 and 6 submitted that proposal is already made to the authority for giving approval for absorption of the present petitioner on the post which has fallen vacant due to voluntary retirement taken by one employee and also for making payment of arrears of salary as per the directions of the School Tribunal and the matter is pending. This circumstance cannot be considered in favour of respondent Nos.5 and 6. It is the responsibility of the respondent Nos.5 and 6 to see that the salary is paid. The petitioner cannot be expected to wait till approval is received and there may be circumstances due to which the authority may not grant approval as institution has created many complications in the matter.

5) In writ petition No.4238/2012 no stay is granted by this Court to the order made by the School Tribunal and so there is no other option before the respondent Nos.5 and 6 than to make payment of salary. This Court holds that direction needs to be given against respondent Nos.5 and 6 to make payment of salary for the period starting from 4-11-2015.

6) In the result, the petition is allowed. Respondent Nos.5 and 6 need to make payment of the salary to the petitioner which has become due from 4-11-2015. This amount is to be paid within three months from today and the salary from the current month is to be made as per rules every month. Rule is made absolute in those terms.

Sd/-
(SANGITRAO S. PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)

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