

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 539 OF 2017

Dr. Madhav B. Punekar

... Petitioner

Vs.

**1. The Registrar,
Shreemati Nathibai Damodar
Thackersey Women's University
1, Nathibai Thackersey Road,
Mumbai – 400 020.**

**2. The Commissioner for Handicapped
Welfare, Social Welfare Office Campus,
Pune – 411 001.**

**3. The Commissioner,
Social Welfare Department,
Social Welfare Office Campus,
Pune – 412 001.**

**4. The Jt. Director
Higher & Technical Education,
Mumbai, Mumbai Region,
Elphinstone Technical School
Premises, Mahapalika Marg,
Mumbai – 400 001.**

**5. The State of Maharashtra
Thru the Principal Secretary,
Department of Higher Education,
Mantralaya, Mumbai 400 032.**

... Respondents

Mr. Sanjeev A. Sawant for the Petitioner.
Mr. R.A. Rodrigues, for Respondent No.1.
Mr. V.N. Sagare, AGP for State.

**CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.**

DATE : 3 JULY 2017.

J U D G M E N T :- (Per Riyaz I. Chagla J.)

1. Rule. Rule made returnable forthwith. Taken up for hearing by consent of the parties.

2. The Petitioner who is a 70% handicap person has filed the present Petition before this Court as the Respondents are not releasing payments of the Petitioner for the period from 1st June 2013 to 1st May 2014 i.e. for 11 months. It is the case of the Petitioner that the Petitioner was appointed as Associate Professor and thereafter to the post of lecturer in Education (Marathi and History) under the reserved category in SNDT College, Pune in 1988. The Petitioner was confirmed to the post of lecturer in Education at the Post Graduate department of Education (Reserved for SC) in February 1997. The Petitioner was confirmed as lecturer in the college by the Respondent No.1 and was paid on the scale of a lecturer plus admissible allowances. Respondent No.1 further confirmed the Petitioner to the post of lecturer in Education and issued a letter of confirmation issued to the Petitioner confirming to the post of lecturer, Education PG Department of SNDT Women's University from 1st March 1999. The State Government had issued a GR dated 23rd February 2011 thereby

continuing the services of Associate Professor up to the age of 62 years and giving benefit to those Professors who are in services. The superannuation age was accordingly increased up to the age of 62 years of the Professors and they were entitled for payment of salary for the intervening period. It is the Petitioner's case that the benefit of the GR issued by the State Government and an order passed by the Court extending the age of superannuation from 60 years to 62 years was not given to the Petitioner. The Petitioner was compelled to file a Petition before this Court bearing Writ Petition No. 643 of 2013. The Petitioner had in that Writ Petition sought the benefit of the superannuation age and extension of retirement age of the Petitioner from 60 years to 62 years pursuant to GR dated 25th February 2011, 23rd November 2011 and 23rd February 2012 and the order of this Court. An order came to be passed by the Division Bench of this Court on 21st February 2014, permitting the Petitioner to file a fresh representation within two weeks to Respondent No.2 – Registrar / Committee, SNDT Women's University. Respondent No.2 was directed to consider the same afresh as early as possible preferably within three months from the date of receipt of representation. After considering afresh, the decision / recommendation to be forwarded to Respondent

No.1 by Respondent No.2 and Respondent No.1 consider the same as early as possible preferably within four weeks. The Writ Petition was disposed of on those terms.

3. The Petitioner made a fresh representation to Respondent No.1 and Respondent No.1 forwarded the same to the State Government. On 6th June 2014, the State Government extended the age of superannuation of the Petitioner from 1st June 2013 to 31st May 2015 giving extension of complete two years to the Petitioner from the date of his retirement. The Petitioner had accordingly on the very next date approached Respondent No.1 making a request to forthwith allow the Petitioner to discharge his duties as Associate Professor pursuant to the order passed by the State Government. After joining the services with Respondent No.1, on 4th July 2016, the Petitioner addressed a communication to Respondent No.1 requesting Respondent No.1 to release the salary arrears which were due from June 2013 to May 2014, i.e. intervening period as the Petitioner was out of employment. In spite of this letter, till date there was no compliance on the part of Respondents. Thereafter the Petitioner issued various communications to Respondent No.1 and the State

Government and request was made for sanctioning the salary of the Petitioner for the intervening period but there was no response on the part of Respondents. The Petitioner was not given payment of salary for the period from June 2013 to May 2015. The Petitioner, therefore, filed the present Petition challenging the impugned inaction on the part of Respondents.

4. The counsel for the Petitioner has submitted that the issue involved in this Petition is no longer *res integra* in view of the judgment of this Court (Bench at Aurangabad) in the case of ***Snehal Arun Borse Vs. the State of Maharashtra & Ors.***¹. The said judgment had followed the judgment of the Apex Court in the case of ***State of Uttar Pradesh Vs. Dayanand Chakrawarti & Ors.***² and held that the Petitioners are entitled for the salary for the period for which he was not allowed to work and that the Respondent in that case was directed to pay salary to the Petitioners for the extended period of service for which he was not allowed to work, expeditiously and preferably within a period of six months from the date of the order. The Respondents were also directed to calculate pensionary benefits

1 WP No. 9544 of 2014 decided on 19th December 2014.

2 (2013) 7 SCC 595.

considering the Petitioners to be in continuous services till the extended date of retirement including arrears for which the Petitioner may be entitled due to extended date of the retirement. The Writ Petition was accordingly disposed of.

5. We are of the considered view that the judgment of this Court at Aurangabad Bench referred above squarely applies and the present Petition will have to be allowed on the following terms:-

ORDER

1. The Respondent – Director to release the payment of the Petitioner for a period i.e. 1st June 2013 to 31st May 2014 within four weeks from the date of the order.
2. The Respondents are directed to pay additional amount as and by way of interest @ 18% p.a. on the amount of salary for the period i.e. from 1st June 2013 to 31st May 2014.
3. No order as to costs.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)