

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

Writ Petition No. 6522 of 2011

* Babulal s/o Ganpatrao Rathod,
Age 54 years,
Occupation : Service,
R/o. Shirsala Tanda,
Taluka Sillod,
District Aurangabad. **.. Petitioner.**

Versus

- 1) The State of Maharashtra,
Gramvikas & Social Welfare
Department, Mantralaya,
Mumbai.
- 2) The Social Welfare Officer,
Zilla Parishad, Aurangabad.
- 3) The Divisional Social Welfare
Officer,
In front of CIDCO Bus stand,
Aurangabad.
- 4) Handicap Residential School,
Through its President/Secretary/
Head Master, Sillod,
Taluka Sillod, Dist. Aurangabad. **.. Respondents.**

Shri. Subhash V. Mundhe, Advocate, for petitioner.

Mrs. D.S. Jape, Assistant Government Pleader, for
respondent Nos.1 and 3.

Shri. P.R. Nangare, Advocate, for respondent No.2.

Shri. F.R. Tandale, Advocate for respondent No.4.

**Coram: T.V. NALAWADE &
K.L. WADANE, JJ.**

Date: 12 APRIL 2018

ORAL JUDGMENT (Per T.V. Nalawade, J.):

1) The petition is filed under Articles 226, 14, 16 and 19(1)(g) of Constitution of India for giving directions to the respondents to see that increments which were due are released in favour of the petitioner and pay is fixed accordingly and to pay arrears after drawing increments. Both the sides are heard.

2) The submissions made show that it is the case of the petitioner that he was appointed as a Peon by the respondent institution in the year 1997. He came to be orally terminated on 9-6-1998. He filed complaint of unfair labour practice before the Labour Court. The complaint was allowed and the order of reinstatement with back wages was made in favour of the present petitioner. This order was challenged in Industrial Court by the respondent and the Industrial Court set aside the order of the Labour Court and remanded the matter back to the

Labour Court and directed the Labour Court to decide the matter afresh. The parties were expected to appear before the Labour Court for taking decision on the complaint but on 1-7-2008 the Administrator of respondent - institution settled the dispute with the present petitioner in following terms:

- (i) The petitioner was to be appointed on the post of "*Molkari*" (Assistant) in the Handicap School of the respondent with effect from 1-7-2008 as such post was vacant in the school.
- (ii) The petitioner was to see that the litigation started by him was brought to an end.
- (iii) The petitioner was not entitled to claim back wages.
- (iv) The petitioner was to give bond on Rs.20 stamp paper to the employer.
- (v) The headmaster was to allow the petitioner to resume duty on the aforesaid post.

3) It appears that after the settlement of the dispute and issuing order of appointment on the aforesaid post, there were again some disputes. In the present proceeding the petitioner is claiming that he is entitled to get increments for the period when he had worked with the respondent prior to 1-7-2008. This submission as it is cannot be accepted as prior to 1-7-2008 he was appointed

as Peon. The submissions made show that as per the settlement he was given fresh appointment on different post. Further he had undertaken not to claim the back wages. When the term of back wages is mentioned, every amount which includes the amount which could have been paid after drawing increment also needs to be included in the said amount and so the petitioner was not entitled to get any amount towards payment of salary which was due prior to 1-7-2008.

4) The submissions made show that even after 1-7-2008 annual increment was not drawn. In this regard it can be said that when there is settlement the respondent management is bound to see that the increments for every completed year of service is drawn and the salary is paid in accordance with the pay fixed after increment drawn. If that is not done, then it will again amount to unfair labour practice. But for that there is no need to go to Labour Court as the institution had settled the dispute and there is agreement of aforesaid nature. This Court holds that under Article 226 of Constitution of India this Court can give direction to the respondent, the institution which is

receiving grant-in-aid, to see that the salary is paid to the petitioner from 1-7-2008 and for every completed year increment is drawn and the payment is made accordingly. To that extent, the petitioner will be entitled to recover arrears for the period starting from 1-7-2008. Accordingly the pay also needs to be fixed of the present petitioner after drawing the increment for every completed year of service. The annual increments are to be released and the arrears of the salary are to be paid to the petitioner within 4 months from today.

5) The petition is allowed accordingly. Rule is made absolute in those terms. No order as to cost.

Sd/-
(K.L. WADANE, J.)

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

rs1