

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

81 WRIT PETITION NO.1826 OF 2019

**GAJANAN BALAJI DAMKONDWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for Petitioner : Shri Chandrakant K. Shinde
AGP for Respondents / State : Shri S.B. Narwade
...

**CORAM : S V GANGAPURWALA & AVINASH G. GHAROTE, JJ.
Dated: November 05, 2019**

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PER COURT :-

1. Mr Shinde, the learned Advocate for the petitioner submits that, though subsequently approval is granted to the petitioner from initial date of the appointment as per directions of this Court, the petitioner is not paid the arrears nor is granted the increments. Considering the service from the initial date of appointment, the same is illegal.

2. The learned AGP supports the order passed by the authority and submits that, the approval has been granted as per the orders passed by this Court. The petitioner was not in service from 01.05.2012 to 18.09.2016. In view of that, the salary cannot be paid to the petitioner of the said period. It is for the management to pay the salary for the said period.

3. It appears that, in Writ Petition No.2174 of 2015 under order dated.19.09.2016, this Court had observed that, the petitioner was appointed in the year 2008 by following proper procedure, however as against the seat reserved for ST category. For five years

advertisement was given, but the candidate was not available. The petitioner was continuously officiating from the year 2008. The post was a sanctioned post. In view of that, we have directed the respondent to consider the case of the petitioner for approval and shall not reject it on the ground that, the post was reserved for ST category. Subsequently, the approval was granted to the petitioner from the year 2016. The petitioner filed Writ Petition bearing No.13661 of 2017. This court under order dated 22.02.2018 allowed the writ petition and directed the respondents to grant approval to the petitioner from the initial date of appointment. The petitioner has been granted approval from the initial date of appointment. The petitioner aggrieved by the non-grant of increments and the arrears of salary.

4. It appears that, when the petitioner is already granted the approval from the initial date of appointment, then for the purpose of pay fixation the service of the petitioner shall be considered from the initial date of appointment. The petitioner would be entitled for notional increment for fixation of the pay. Considering the time lapsed, we are not inclined to grant the petitioner benefit of arrears of salary, however for the purpose of fixation of pay scale and further salary, the service of the petitioner shall be considered as continuous from the initial date of appointment and the increments notionally shall be granted. The actual benefits shall be granted to the petitioner from 18.09.2016.

5. Writ Petition is accordingly disposed of. No costs.

[AVINASH G. GHAROTE]
JUDGE

[S. V. GANGAPURWALA]
JUDGE