



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

**CIVIL APPLICATION NO. 14107 OF 2024
IN
WRIT PETITION NO. 10416 OF 2023**

Divisional Controller, M.S.R.T.C.,
Ahmednagar

.. Applicant

Versus

Shri Narayan Maruti Kanthale

.. Respondent

Mr. Atul Pawar, Advocate h/f Mr. B. S. Deshmukh, Advocate for the
Applicant.

Mr. I. K. Wagh, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 02nd JANUARY, 2025.

P. C. :-

. Heard the learned advocates for both sides.

2. This application is filed for restoration of the writ petition which came to be dismissed in default for want of prosecution by order dated 13.11.2024. It was observed in the order that, on few occasions last opportunity was granted to the applicant to work out the matter. Specific order was also passed i.e. in case the matter is not conducted, this Court would be constrained to dismiss the petition for want of prosecution and still the same was not worked out on 13.11.2024. It is stated in the application that, the learned advocate for the applicant

had filed a leave note on the ground of medical difficulty. He had instructed another learned advocate to inform this fact to the Court when the matter is called out. It is further stated that, however, the said learned advocate could not mention the matter when it was called out and thus, the matter came to be dismissed.

3. The learned advocate for the respondent vehemently opposes the application. He submits that, the respondent is out of service since 2007. Though there is an order passed by the Labour Court in his favour to reinstate him with continuity of service and full backwages, still the said order dated 11.01.2022 is not completely implemented. Execution is also filed. The Executing Court, however, is not proceeding only for the fact that the present petition is pending. He submits that the respondent is thus facing financial difficulty as he is not paid backwages though he is reinstated. He ultimately prays for cost of Rs. 50,000/- stating that the petition was deliberately kept pending to avoid the execution.

4. Considering the position that the respondent is praying for order of backwages in his favour, still the petitioner neither paid the amount of backwages, nor the petition is worked out which has resulted in depriving the respondent in getting the backwages.

5. Considering that, the learned advocate for the applicant could not attend the Court due to medical ground and it is reported that even for next 3-4 weeks he would not be able to come to Court, this Court is inclined to allow the application. In view of this fact, this Court also finds that prior to 13.11.2024 the petition is pending for long time without any effective order and therefore cost needs to be imposed. Hence, the following order is passed.

ORDER

- (a) The civil application stands allowed.
- (b) The Writ Petition No. 10416 of 2023 stands restored to its original position subject to deposit of cost of Rs. 10,000/- (Rs. Ten Thousand only) within a period of four (04) weeks from today. The cost imposed to be paid to the learned advocate for the respondent appearing in the High Court.
- (c) Place the writ petition on board dated 06.02.2025.
- (d) It is also made clear that, there is no stay granted to the execution before the Executing Court. This Court is free to proceed with the execution.

(KISHORE C. SANT, J.)

PS.B.