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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4189 OF 2014

Kamlakar Bankatrao Gokhane

PETITIONER

VERSUS

The State of Maharashtra & others

RESPONDENTS

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Mr. V. R. Jain, Advocate for the petitioner

Mr. K. G. Patil, AGP for respondent State

Mr. U. B. Bondar, Advocate for respondents No. 2 to 4

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[CORAM : S. V. GANGAPURWALA AND
V. L. ACHLIYA, J.J.]

DATE : 8th JANUARY, 2015

PER COURT:

1. The petitioner has filed present writ petition against an order of suspension issued by the Education Officer on 6th March, 2014. Mr. Jain, learned advocate for the petitioner submits that the petitioner had preferred an appeal against said order, under Rule 12 of the Maharashtra Zilla Parishad and Panchayat Samitis (Discipline and Appeal) Rules, however order has been passed by the Education Officer, instead of Chief Executive Officer. According to learned advocate for the petitioner, the order is *per se* illegal.

2. Mr. Bondar, learned advocate for respondents No. 2 to 4 submits that the order passed by the Education Officer, suspending the petitioner is legal and proper and is based on facts and material on record. The education officer has powers delegated to him under Rules.

3. If an order of suspension is passed by any authority other than the Chief Executive Officer, then Rule 12 of the Discipline and Appeal Rules provides a remedy of appeal to the Chief Executive Officer. In the present case, it appears that the petitioner had filed an appeal in the nature of representation and the Education Officer has dealt with the same. In fact, the Education Officer did not have jurisdiction to pass any orders in the appeal. It is only the Chief Executive Officer, who could have dealt with the same.

4. Mr. Jain, learned advocate submits that subsistence allowance is not paid to the petitioner during the period of suspension. The petitioner would be entitled for subsistence allowance as per rules. In case the subsistence allowance is not paid, the authorities shall consider case of the petitioner and if found eligible, shall make payment of the subsistence allowance.

5. Considering the above, the order dated 6th March, 2014 passed by the Education Officer, dismissing the appeal, stands quashed and set aside. However, as the appeal, which was filed on 3rd April, 2014 was not in proper format, liberty is given to the petitioner to file fresh appeal before the Chief Executive Officer. The Chief Executive Officer shall decide the appeal, if filed by the petitioner, on its own merits, as per law, expeditiously, preferably within a period of six months of the receipt of the appeal. In case fresh appeal is filed by the petitioner, the appeal filed earlier dated 3rd April, 2014 shall stand withdrawn. Writ petition, as such, stands disposed of. No costs.

[V. L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]