

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 7775 OF 2014

Vijay Pandurang Somkunwar,
Age 67 yers, Occu. Pensioner,
R/o. Uday Colony,
Near Ganesh Colony, Jalgaon.

... **PETITIONER**

VERSUS

1] The State of Maharashtra,
Through General Administration
Department, Mantralaya, Mumbai.
(Copy will be served to learned AGP,
Bombay High Court,
Bench at Aurangabad.

2] The Chief Executive Officer,
Zilla Parishad, Jalgaon.

3] The District Health Officer,
Zilla Parishad, Jalgaon.

... **RESPONDENTS**

Mr. S.G.Shinde, Advocate with Mr.P.S.Shinde, Advocate for the Petitioner.
Mr. P.N.Mule, AGP for Respondent No.1
Mr. Nitin S. Choudhary, Advocate for Respondent Nos.2 and 3.

CORAM : **S. V. GANGAPURWALA and
V. L. ACHLIYA, JJ.**

DATE : 04th February, 2015.

ORAL JUDGMENT: (Per S. V. Gangapurwala, J.)

1 Rule. Rule made returnable forthwith. With the consent of
the learned counsel appearing for the parties, the petition is taken up for

final hearing.

2 Mr. Shinde, learned counsel submits that the order dated 2nd January, 2014, is passed without hearing the Petitioner. The learned counsel submits that even the Inquiry Officer has exonerated the Petitioner. The Government has revoked/ cancelled the Departmental Enquiry, which was initiated against the Petitioner and the directions were also issued to give regular pension to the Petitioner. Subsequently, the Respondent has passed an order dated 2nd July, 2014, claiming recovery from the Petitioner on the basis of the report of the handwriting expert. No such occasion could have arisen when the Departmental Enquiry was dropped and cancelled. The learned counsel submits that the said order also suffers from the vice of violation of the principles of natural justice.

3 Mr.Choudhry, learned counsel for the Respondents submits that the Additional Divisional Commissioner had passed an order in an appeal filed by one Mr.Jadhav wherein it was observed by the Additional Divisional Commissioner that after receiving the report of the handwriting expert, final decision would be taken in respect of the receipt given by the present Petitioner and after receiving the report of the handwriting expert, the order is passed. No illegality has been

committed in the same.

4 We have considered the submissions canvassed by the learned counsel for respective parties. There is nothing on record to substantiate that before passing the impugned order, the Petitioner was given opportunity of hearing. The record shows that the State Government has dropped the enquiry against the Petitioner. Without initiating any inquiry proceedings, the impugned order could not have been passed.

5 The order impugned deserves to be set aside, even solely on the ground of non-observance of the principles of natural justice.

6 In light of the above, the impugned order is quashed and set aside.

7 Rule is accordingly made absolute in above terms. No costs.

[V. L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]

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