

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.11614 OF 2014

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.A.S.Deshmukh, advocate for the petitioner.

Mr.K.G.Patil, Addl. Govt. Pleader for the State.

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

Date : 20.01.2015.

PER COURT :

1. Heard.

2. Mr.Deshmukh, learned counsel submits that the Original Application was filed challenging the order dated 31.7.2014, issued by the Respondent No.2, whereby penalty was imposed upon the petitioner, pursuant to the Departmental Inquiry. The recovery was also directed to be effectuated as if it is arrears of land revenue. Learned counsel submits that initially the Tribunal entertained Original Application, even granted interim orders and subsequently upheld the preliminary objection about the availability of the alternate remedy and on the ground of alternate remedy disposed of the Original Application with liberty to prefer appeal against the order. The learned counsel submits that the recovery as arrears of

land revenue was certainly not an order which is contemplated under Rule 27 of the Maharashtra Civil Services (Pension) Rules. The learned counsel submits that the appeal under the Discipline and Appeal Rules, more particularly, Rule 21 as is stated in the impugned order was not maintainable. According to the learned counsel, the order is issued in the name of the Governor and the appeal certainly would not be maintainable before the Hon'ble Governor. The learned counsel submits that even otherwise there is no bar for the Tribunal to entertain the Original Application.

3. Mr.Patil, learned Addl. Govt. Pleader submits that all executive acts of the Government have to be done either directly by the Governor or in the name of Governor by the subordinate authority as per Article 154 of the Constitution of India. The learned Addl. Govt. Pleader submits that considering the aforesaid aspect, the order has been passed. The remedy of appeal is not precluded.

4. We have considered the submissions canvassed by the learned counsel for respective parties. It is trite that Rule of alternate remedy is a Rule of self-constraint. Availability of alternate remedy is not absolute bar for the Tribunal or this Court to invoke its jurisdiction.

5. In the present case the order is passed in the name of

Hon'ble Governor. Whether the same is misnomer or not is altogether different aspect. Initially the Tribunal did entertain Original Application, even passed interim orders. Application was given by the present petitioner to entertain the Original Application, pursuant to which the same was entertained and interim orders were passed. Naturally, while passing the impugned orders, the Tribunal applied the mind and took cognizance of the matter.

6. It appears that the Tribunal has commented about the orders passed about the recovery of arrears of land revenue and had observed that there is appellate remedy available. In fact, when recovery is directed as arrears of land revenue by the authority under the order impugned, the Revenue Authorities would be bound to execute the said order and remedy of appeal before Revenue Authority would be of no avail.

7. It would not be fruitful to enter into the debate as to whether the impugned order was passed by the authority concerned under the delegated powers to him or otherwise. Considering the age of the petitioner i.e. petitioner is aged 74 years, it would not be appropriate to drag the petitioner to the alternate remedy.

8. In light of the above, the order passed by the Tribunal is quashed and set aside. The parties are relegated before the Tribunal. The Tribunal shall decide the Original Application bearing No.534/2014 on its own merits expeditiously. The

contentions of the respective parties on merits are kept open.

9. The interim relief which is continued by this Court is further continued for a period of three (3) weeks from today, so as to enable the applicant to make necessary request before the Tribunal for interim relief.

10. The Writ Petition is accordingly disposed of. No costs.

(V . L . ACHLIYA, J .)

(S . V . GANGAPURWALA, J .)

Dt..20.01.2015.
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