

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 1115/2015.

Shri Rajendra Himmatrao Bhagat

-VERSUS-

Chief Executive Officer, Zilla Parishad, Buldhana and another.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

**CORAM : B.P.DHARMADHIKARI &
S.B.SHUKRE, JJ.**

DATE : APRIL 20, 2015.

Heard Shri D.T. Patil, learned Counsel for the petitioner and Mrs. S. Jachak, learned Counsel for respondents.

2. Petitioner - a Sectional Engineer has been suspended on 21.02.2015. Shri Patil, learned Counsel appearing on his behalf submits that the said suspension appears to be interim one and has been ordered for alleged excess payment in 2010 and in the light of the audit objection. He contends that there is no excess payment, but, only some arithmetical error

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and petitioner cannot be held responsible for it. According to him, work of petitioner is supervised by his superiors on technical side and by staff of accounts section on administrative side. He contends that in present situation, when the work of construction of concrete road at Mouza Dhotra Bhangoji was completed in the year 2010 itself, the order is nothing but, harassment and punishment.

3. Mrs. Jachak, learned counsel appearing for respondents submits that a preliminary enquiry was conducted after receipt of the audit objection, and as petitioner has accepted the arithmetical error committed by him, he has been suspended. She submits that no criminal prosecution has been filed and though decision to initiate departmental enquiry has been taken, no enquiry so far has been initiated. She is relying on a Government Resolution issued by the State Government in March, 2006 to submit that the State Government has noted that in such matters, generally the Secretary of Gram Panchayat and Gram Sewak is held responsible, while the technical staff like petitioner are left free. Government therefore advised to proceed against such persons also and hence, action

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has been taken against the petitioner.

4. Suspension pending enquiry is ordered in certain contingencies. Here as yet no charge sheet has been prepared and there is also no criminal prosecution. If the petitioner has admitted the misconduct and according to respondents he is therefore guilty, he could have been punished and in that event suspension pending enquiry would not have been necessary. The suspension for misconduct allegedly committed about 5 years prior appears to be persecution. As suspension appears to be without justification, it is quashed and set aside. We direct the respondents to reinstate the petitioner back in employment with continuity and back wages.

5. However, it will be open to respondents to proceed further in the matter in accordance with law.

6. It appears that on the very same day i.e. the day on which the order of suspension came to be passed, a final show cause notice is also served upon the petitioner by which the petitioner has been called upon to deposit an amount of Rs. 2,84,405/-. The said document holds petitioner prima facie guilty and gives him time of seven days to submit his explanation.

Thus, it is not a document by which recovery can be effected from the petitioner without extending him an opportunity. Petitioner is at liberty to file suitable reply to it, and to approach again, if cause of action arises.

7. In view of above observations and liberty to the parties, Writ Petition is partly allowed and disposed of. No costs.

JUDGE

JUDGE

Rgd.