

**HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

WRIT APPEAL No. 64 OF 2015

-

-

JUDGMENT: (per the Hon'ble Sri Justice Dilip B. Bhosale)

This writ appeal is directed against the following order dated 31-12-2014, passed by the learned single Judge in Writ Petition No.39546 of 2014:

“Notice before admission.

The order of suspension shows that the breath analyzer found that the petitioner was in the influence of alcohol @ 17 mg/100ml, which is less than the prescribed quantity for initiating Disciplinary Proceedings. Therefore, there shall be interim suspension of the order, dated 13-10-2014, passed by the 3rd respondent against the petitioner.

Post after four weeks.”

After perusing the order, we asked learned counsel for the appellant as to why the appellant is challenging this order and his reply was that the learned Judge while granting stay of the suspension ought to have granted stay of the show cause notice issued by the 3rd respondent dated 16-12-2014 and since it was not granted, he was instructed to file this appeal.

We have perused the show cause notice dated 16-12-2014 calling upon the appellant to show cause as to why the proposed punishment of removal from service of the Corporation should not be imposed on him besides treating the suspension period as not on duty for the purpose of leave, increment and gratuity. He was also advised to appear before the disciplinary authority for personal hearing on any working day during the office hours, if he so desires to represent anything in his defence, within seven days from the date of receipt of the notice. Instead of replying to the notice and appearing before the

concerned authority, the appellant – petitioner has filed the writ petition challenging the order of suspension dated 13-10-2014 and also the show cause notice dated 16-12-2014. We have our reservation as to whether a writ petition against the order of suspension and show cause notice is maintainable. We, however, leave it to the learned Judge to decide the writ petition on merits expeditiously. It is open to learned counsel for the respondents to raise a contention before the learned Judge that a writ petition under Article 226 of the Constitution of India, against the show cause notice is not maintainable. We also make it clear that pendency of the writ petition shall not come in the way of the 3rd respondent to proceed with the action initiated against the appellant and decide the show cause notice in accordance with law. At the request of learned counsel for the appellant we grant a week's time from today to the appellant to file his reply to the show cause notice and also appear before the disciplinary authority for personal hearing, if he so desires, as stated in the show cause notice. All contentions on merits are kept open. It is also open to the appellant to raise all the grounds as raised in the present appeal and the writ petition, by way of reply to the show cause notice. We hope and trust that the disciplinary authority will deal with all the contentions of the appellant in proper perspective and in the light of the rules and regulations and circulars, if any.

With these observations, the writ appeal is dismissed. Miscellaneous petitions, if any, also stand disposed of. No costs.

DILIP B. BHOSALE, J

A. RAMALINGESWARA RAO, J

03-02-2015

ks

Note: Furnish copy by tomorrow.

B/O
ks