

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

935 WRIT PETITION NO. 5044 OF 2005

TUKARAM BABURAO CHAUDHARI

VERSUS

STATE OF MAH & ORS

...

Advocate for Petitioner : Mr. S K Shinde

AGP for Respondents State: Mr. M. B. Bharaswadkar

Advocate for Respondents 4 and 5 :Mr. R. K. Ashtekar h/for
Mr. Vijay Shelke & Mr. S. S. Shinde

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 29th September, 2016

ORDER:

1. Mr. Shinde the learned counsel for the petitioner submits that the petitioner was appointed as an accountant in the Family and Child Welfare Project under the scheme known as Maharashtra State Social welfare Advisory Board, Pandharpur, Dist. Solapur. The learned counsel submits that show cause notice was issued to the petitioner seeking explanation from him with regard to the alleged misconduct. The petitioner replied the same. Then respondent Nos. 4 and 5 informed that an amount of Rs.807.55 is recoverable from the petitioner and by way of punishment, increments of the petitioner were permanently stopped. The petitioner deposited the said amount. The respondents issued an order of stoppage of increments of the petitioner permanently from 01.11.1979. The

petitioner filed an appeal before the president of the Board. The President of the Board, vide its order dated 3rd of December, 2001 modified the punishment and passed an order that only 2 increments are permanently stopped and thereafter the petitioner would be entitled for increments. In spite of the said order being passed, the respondents illegally recovered the amount from the petitioner and so also the benefit of appellate order is not being extended to the petitioner.

2. Mr. Ashtekar, the learned counsel holding for Mr. V.G.Shelke, the learned Advocate for respondent No. 4 and 5 submits that the President was not the appellate authority. The order passed by the President is required to be approved and confirmed by the State Government. In absence thereof, the appellate order does not have any efficacy.

3. The learned AGP submits that the letter was given that as per Rules the matter should be looked into. An appeal was required to be filed within one month. The same is not filed and the parties have resorted to the provisions of the M.C.S.R. Rules which are not applicable.

4. We have considered the submissions.

5. In the present case the petitioner has produced the Service Rules for the employees of the respondent Board. As per Rule 34, an appeal is provided from the order passed by the Chairman of the Project Implementing Committee to the Chairman of the State Board and in the present case, the appellate order is passed by the Charmin of the State Board. It also nowhere states that approval is required for the order passed by the Appellate Authority.

6. In light of the above, the action of the respondents initiating recovery is bad in law and the order of the appellate authority dated 3rd October, 2001 needs to be implemented.

7. It is submitted that this Court had granted stay to the recovery still, some recovery is made. In contempt petition filed by the petitioner, the amount was deposited and the petitioner has withdrawn the amount. In light of that the Rule is made absolute in terms of prayer clauses (A) and (B). No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC