

FARAD CONTINUATION SHEET NO.

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

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

Court's or Judge's orders

WRIT PETITION NO.7352 OF 2016

SHRI BIBHISHAN RANGNATH BODHWAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr.S.B. Talekar
for Talekar And Associates

AGP for Respondents/State: Mr.P.N. Kutti.

Advocate for Respondent 6 : Mr.S.S.
Phatale.

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CORAM: S.S.SHINDE & V.K. JADHAV, JJ.

Dated: JULY 12, 2016

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This writ petition takes exception to the impugned order dated 18th June, 2016 passed by the Chief Executive Officer, Zilla Parishad, Beed.

2. The learned Counsel for respondent No.6, relying upon the provisions of Rule 14(1)(a) of the Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964 (for short, hereinafter referred to as 'the said Rules') submits that against the impugned order, the petitioner can approach

to the appellate authority.

3. The learned Counsel for the petitioner submits that the impugned order has been passed in utter disregard to the principles of natural justice and therefore, writ petition can be entertained though remedy of appeal is available. In support of the said contention, the learned Counsel for the petitioner placed reliance on the reported judgment of the Supreme Court in case of **Harbanslal Sahnia and another Vs. Indian Oil Corpn. Ltd. And others**¹ and in particular, paragraph 7 thereof. He submits that under the three exceptions which are stated in the said paragraph, writ jurisdiction can be exercised in spite of having alternate remedy. He also invited our attention to the unreported judgment delivered by this Court on 14th August, 2012 in case of **Dr.(Smt.) Shama w/o Hamid Khan Vs. The State of Maharashtra and others**² and in particular, paragraph 6 thereof and submits that though the remedy of appeal is available to assail the impugned order, petition can also be entertained. Therefore, he submits that the writ petition is maintainable.

4. We have heard the learned Counsel for the petitioner and learned Counsel for respondent No.6. Since, remedy of appeal has

1 (2003) 2 SCC 107;

2 Writ Petition No.6433/2012 (Aurangabad);

been made available by the legislature under Rule 14(1)(a) of the said Rules, in our opinion, for by-passing the said remedy, no case is made out to entertain the writ petition. The contention of the learned Counsel for the petitioner is that the impugned order has been passed in breach of principles of natural justice. This point can be agitated before the appellate authority and the appellate authority can consider the said aspect. The remedy of an appeal is available on facts as well as law, therefore, the petitioner would get an opportunity even to put forth his case on facts as well as law, and said forum can adjudicate even disputed questions of facts. Therefore, even though writ jurisdiction can be exercised by-passing the alternate remedy, in the facts of this case, we do not think it necessary to exercise the writ jurisdiction by-passing remedy of appeal made available by the legislature.

5. In that view of the matter, the petition is disposed of. In case, the petitioner is advised, he can avail the remedy of appeal made available under Rule 14(1)(a) of the said Rules.

6. At this juncture, the learned Counsel for the petitioner submits that the impugned order may be stayed for fifteen days. He

submits that the petitioner has not yet handed over charge. The learned Counsel for respondent No.6 submits that the respondent No.6 has already taken charge of the concerned post.

7. In the circumstances, we direct the parties to maintain *status quo* as available on today, for two weeks. This limited protection is granted so as to enable the petitioner to avail remedy of appeal. We make it clear that no further prayer for extension of the protection granted today will be entertained. It will be open for the parties to pray for ad interim / interim relief before the appellate authority.

(V.K. JADHAV, J) (S.S. SHINDE, J)