

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

912 WRIT PETITION NO. 2605 OF 2018

BALASAHEB SOPANRAO DHAKANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Mohit R. Deshmukh.
AGP for Respondent: Mr. V. S. Badakh.
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CORAM : **V. L. ACHLIYA, J.**
DATE : 11th April, 2018.

ORDER:

. The Petitioner has preferred this petition challenging the order dated 20th December, 2017 passed by the Divisional Commissioner, Aurangabad dismissing the appeal preferred by the Petitioner challenging the order dated 5th August, 2016 passed by Respondent No.3. By the impugned order dated 5th August, 2016, Respondent No.3 has dismissed the Petitioner from the service on account conviction of Petitioner under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The Petitioner was sentenced to suffer imprisonment for three years and fine of Rs.5,000/-. Being aggrieved by order dated 5th August, 2016, the Petitioner preferred appeal before the Additional Commissioner, Aurangabad Division, Aurangabad. By the interim order passed on

24th March, 2017, the then Additional Commissioner, Aurangabad Division, Aurangabad stayed the order dated 5th August, 2016. The appeal was finally heard by Additional Commissioner and dismissed the appeal. Being aggrieved, the Petitioner has preferred this writ petition.

2 The learned counsel for the Petitioner submits that the Petitioner has challenged the judgment and order of conviction by filing Criminal Appeal No.811 of 2015 before this Court. The appeal has been admitted and the substantive sentence has been suspended vide order dated 29th October, 2015 passed by this Court (Coram: M. T. Joshi, J.). It is contended that while dismissing the Petitioner from service, Respondent No.3 has not conducted departmental enquiry. He further submits that in the even the criminal appeal is allowed and conviction is set aside, the Petitioner will be deprived of service benefits.

3 On due consideration of the submissions advanced, I am of the view that the petition filed is devoid of merits and substance therein. No case is made out to call for exercise of powers under Article 227 of the Constitution of India. It is an admitted fact that the Petitioner is held guilty and convicted for committing offence under

Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 in Special (ACB) Case No.1 of 2011 and vide judgment and order dated 20th October, 2015 (Exhibit 'E') passed by Special Judge, (ACB), Nanded. Petitioner has been sentenced to suffer imprisonment for 1 year and fine of Rs.2,000/- for committing the offence under Sections 7 of the Prevention of Corruption Act, 1988. He is also sentenced to suffer impediment for 2 years and fine of Rs.3,000/- for committing the offence punishable under Section 13(1) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The fact is also not in dispute that the Petitioner has challenged the conviction before this Court and the conviction is not stayed by this Court. In this background, the Petitioner has no case to claim continuation in service on account of pendency of appeal. In view of the conviction awarded, the order of dismissal from service is automatically attracted under the provisions of the Maharashtra Zilla Parishad District Services (Punishment and Appeal) Rules, 1964. In this view, the order passed by Respondent No.3 to dismiss the Petitioner from service calls for no interference by the Appellate Authority. It is rather surprising that the then Additional Divisional Commissioner (Govind Bodke), Aurangabad has stayed the order without considering the provisions under which the Respondent No.3

has passed the order.

4 In this view, there is no merit in the petition. The petition is dismissed.

[V. L. ACHLIYA, J.]

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