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

PUBLIC INTEREST LITIGATION NO. 90 OF 2018

Prashant s/o Ashokrao Popsethwar,
Age: 41 years, Occ: Social worker,
R/o. Gandhi Chowk, Bhokar,
Tq. Bhokar, Dist. Nanded. ..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Chief Secretary,
General Administration,
Mantralay, Mumbai-32.
2. The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralay, Mumbai-32.
3. The State of Maharashtra,
Through its Principal Secretary,
Department of Social Justice
& Special Assistant, Mantralay,
Mumbai-32.
4. The State of Maharashtra,
Through its Principal Secretary,
Industry, Energy and Labour
Department, Mantralay, Mumbai-32.
5. The Municipal Commissioner,
Nanded Waghala Municipal
Corporation, Nanded,
Dist. Nanded. ..RESPONDENTS

Mr Shrikant Kulkarni, Advocate for petitioner;
Mrs A.V. Gondhalekar, A.G.P. for respondent/State;

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**CORAM : PRASANNA B. VARALE &
MANISH PITALE, JJ.**

DATE : 24th SEPTEMBER, 2018

ORAL ORDER :

Heard learned Counsel appearing for the petitioner.

2. The petitioner before this Court is claiming to be a social worker. The prayers made in the petition are prayer clauses (B) and (C). Insofar as prayer clause (B) is concerned, it is purely under the domain of the service jurisprudence and for entitlement of such claim and for redressal of grievances the competent forum is available, and the petitioner prays for termination of service of the employees who are appointed as per recommendations of Lad Page committee and he further prays to seek recovery of excess amount paid to the workers and claims that they are holding these posts illegally. The prayer clause (C) is of seeking inquiry on the ground that these are illegal appointments and authorities committed

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crime.

3. Insofar as prayer clause (B) is concerned, we are of the clear opinion that by such prayer, the petitioner is expanding the scope of public interest litigation and the issue which can be dealt with under service jurisprudence by another forum is tried to be brought under the cause of public. We cannot permit such expansion of scope of public interest litigation only on the assumptions and presumptions of the petitioner.

4. Insofar as second prayer is concerned, firstly it is the allegation of the petitioner that certain criminal act is committed by the respondents. If the petitioner is of the opinion that a criminal act which covers under the scope of penal code is committed by a person, the petitioner is not prevented to avail other remedies open for him namely setting criminal law in motion by approaching appropriate forum including police authorities. Secondly, learned Counsel appearing

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for the petitioner placed heavy reliance on the document placed on record at Exhibit-E page-44 and submitted that there is a conclusion arrived in the form of opinion by the authorities that the illegality is committed.

5. Perusal of the communication shows that the authority only opined *prima facie* and his opinion is preliminary opinion and with caution, the authority states that this could be his opinion subject to guidance from the State Government and in clear and unambiguous terms, the authority states in the words " शासनाकडून मार्गदर्शन प्राप्त झाल्यावरच अंतिम निष्कर्षाप्रत पोहचता येईल. वरील प्रमाणे अहवाल सादर." This communication is dated 17th February, 2018. At the cost of repetition, we state that the authority was awaiting guidance from the State Government and as the communication is dated 17th February, 2018 and the State Government can certainly forward necessary guidance to the authority. The State Government is yet to arrive at final decision. To hold that the authority arrived at a conclusion

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that illegality is committed and criminal action be initiated against the respondent authorities would be an exercise in haste and we are not inclined to undertake such exercise.

6. Learned Counsel appearing for the petitioner also submitted that the communication is only forwarded but in reality, no such guidance is sought for from the State Government. Now, this is purely disputed questions of facts namely whether such communication is really forwarded or not. This being the disputed questions of fact, we are certainly not inclined to entertain even the disputed questions of fact in a public interest litigation.

7. Considering all these above referred facts, we are of the clear opinion that the petition cannot be entertained as a public interest litigation and accordingly the petition is dismissed and disposed of.

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8. We further make it clear that if the petitioner is having any other civil remedies available, he is at liberty to avail such remedies, if so advised.

9. Learned Counsel appearing for the petitioner makes a statement that the petitioner had deposited amount of Rs.50,000/- (Rs. Fifty thousand only) under the orders of this Court to show his *bona fides*. As we declined to entertain the petition, we permit the petitioner to withdraw the amount deposited in this Court.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

Tupe

S.U.
Tupe

Digitally signed
by S.U. Tupe
Date: 2018.09.26
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