

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

60 WRIT PETITION NO.223 OF 2020

RAJENDRA NARENDRA SHELKE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioner : Mr. Joshi Sujeet D
AGP for Respondent No. 1 : Mrs. A.V. Gondhalekar.
Advocate for Respondent No. 2 : Mr. U.B. Bondar.

**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 07/01/2020

PER COURT :

Mr. Joshi, the learned advocate for the petitioner submits that the Maharashtra Administrative Tribunal (for short 'Tribunal') erroneously held that it has no jurisdiction. The petitioner is a government servant. The petitioner was sent on deputation to the Zilla Parishad Latur. Rule 14 of the Maharashtra Civil Services (Discipline and Appeal) Rules prescribes the procedure to be followed while taking action against the government employee on deputation to the Local Authority. The learned counsel submits that the petitioner remains a government servant though has been deputed to the services of the Local Authority. In view of that the learned Tribunal ought to have entertained the petition. The learned counsel further submits

that the alternate remedy as is observed by the Tribunal referring to Rule 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules is misplaced. The order of suspension is explicitly illegal. The show cause notices issued to the petitioner were replied satisfactorily. The only allegation was that the petitioner did not file an affidavit in the Writ Petition challenging the recovery. The law is settled on this issue, in view of the judgment of the Apex Court in a case of ***State of Punjab Vs. Rafiq Masih, reported in A.I.R. 2015 (S.C.) 696.***

2. Mr. Bondar the learned counsel submits that, it is not only the charge of not filing an affidavit in the Writ Petition, but also allegations of misappropriation are against the petitioner.

3. We have considered the submissions. It would appear that the petitioner does not lose his character of a Government Servant though he is sent on deputation to the Local Authority. He retains his character as that of a Government Servant.

4. We are not entering into the merits of the matter, so also, the question about the jurisdiction of the Tribunal in view of alternate remedy available to the petitioner by way of substantive appeal under Rule 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979.

5. It is made clear that not entertaining the petition would not tantamount confirming the finding of Tribunal on jurisdiction of the Tribunal as is held in the impugned order. We have not considered the aspect of jurisdiction of the Tribunal vis a vis the facts of the case in the present matter.

6. The petitioner may avail the remedy of appeal as provided under Rule 17 of Maharashtra Civil Services (Discipline and Appeal) Rules 1979. In that case all contentions of the parties are kept open.

7. The Writ Petition is disposed of. No costs.

(MANGESH S. PATIL, J.)

(S. V. GANGAPURWALA, J.)

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