

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.6210 OF 2020**

Shrikant s/o Vitthalrao Mundhe

Petitioner

Versus

The State of Maharashtra & others

Respondents

Mr.V.M.Maney, advocate for the petitioner.

Mrs.G.L.Deshpande, AGP for the Respondents.

**CORAM : S.V.GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 14th September, 2020.

PC :

1 The petitioner had challenged the order of suspension before the Maharashtra Administrative Tribunal, Bench at Aurangabad. The Original Application filed by the petitioner is disposed of in view of the fact that the petitioner had not availed alternate remedy.

2 Mr.Maney, learned Counsel for the petitioner, relying on the following judgments submits that availability of alternate remedy is not a bar for the Court to exercise its jurisdiction.

(i) **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & others**, AIR 1999 SC 22;

- (ii) **M.P. State Agro Industries Development Corporation Ltd. & another Vs. Jahan Khan,** (2007) 10 SCC 88;
- (iii) **State of Maharashtra Vs. Dr.Subhash Dhondiram Mane,** 2015(4) Mh.L.J. 791;

3 The learned Counsel for the petitioner further submits that the Collector is not the appointing authority. In view of that, he does not have power to suspend the petitioner. As the order of suspension is by an incompetent person, the Tribunal ought to have entertained the Original Application. According to the learned Counsel, this Court can exercise its jurisdiction under Article 226 of the Constitution and set aside the order of suspension passed by the incompetent person. It is only the appointing authority who could have suspended the petitioner and not the Collector.

4 There are no fetters on the powers of this Court under Article 226 of the Constitution. True that availability of an alternate remedy is not an embargo on the powers of this Court. It needs to be appreciated that the petitioner had challenged the order of suspension before the Maharashtra Administrative Tribunal. The Tribunal, on the ground that the petitioner has an alternate remedy available, refused to exercise its discretion. In its discretion, the Maharashtra Administrative Tribunal has

declined to entertain the Original Application. The petitioner has an alternate remedy available with him. The alternate remedy is provided by the Statute itself. Rule 17 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, provides remedy of appeal and the appellate authorities are provided under Rule 18 of the said Rules. As such, the discretion has been exercised by the Tribunal in not entertaining the Original Application. As the said exercise of discretion cannot be said to be arbitrary or entirely illegal, we refrain ourselves from entertaining the writ petition. The petitioner, certainly, has an alternate remedy available, which the petitioner may avail. In that regard, all contentions of the parties are kept open.

5 Writ Petition is disposed of. No costs.

SHRIKANT D. KULKARNI
JUDGE

S.V.GANGAPURWALA
JUDGE

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