

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

WRIT PETITION NO. 7836 OF 2018

Vilas Vishwnath Bavaskar,
Age : 35 years, Occu. At present Nil,
R/o Hiwarkheda Road, Kannad,
Tq. Kannad, Dist. Aurangabad. ...Petitioner

Versus

1. The State of Maharashtra,
2. The Additional Divisional
Commissioner, Division, Aurangabad.
3. Chief Executive Officer,
Z.P. Jalna
4. Medical Officer,
Public Health Centre, Wadigodri,
Tq. Ambad, Dist. Jalna. ...Respondents

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Mr. D.R.Irale Patil, Advocate for Petitioner
Mr. P.G.Borade, A.G.P. for Respondent Nos. 1, 2 and 4
Mr. Vaibhav Deshmukh, Advocate holding for Mr. S.S.Tope,
Advocate for Respondent No. 3

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CORAM : MANGESH S. PATIL, J.
DATE : 22-09-2021.

ORAL JUDGMENT :

01. Heard.

02. Rule. Rule is made returnable forthwith. With the consent of the parties matter is heard finally at the stage of the admission.

03. Since the deceased employee who has been dismissed from the employment under the provisions of Maharashtra Zilla Parishad and District Services (Discipline and Appeal) Rules, 1964 his sons are impugning the order passed by the Divisional Commissioner, thereby dismissing their appeal preferred under Section 13 of the Rules.

04. It appears that, the employee himself had challenged the order of dismissal by preferring appeal No. 53/2006. By the order dated 25.09.2008 it was dismissed. In spite of being aware of such dismissal the petitioners preferred a separate appeal on which the impugned order has been passed dismissing their appeal by observing that it was the employees' statutory right to prefer the appeal and the petitioner being the son could not have preferred any appeal.

05. True it is that in the impugned order there is no reference to the dismissal of the appeal preferred by the employee himself and that is not the main ground for dismissal of the appeal.

06. However, the fact remains that the appeal preferred by the employee himself which is a statutory appeal has been dismissed. The petitioner never sought to prosecute the self-same appeal and never sought to get it resorted and instead preferred a separate appeal.

07. In any case the order of dismissal of appeal preferred by the employee has already reached finality. Consequently, the petitioner's appeal even otherwise could not have been decided independently on merits.

08. In view of such particular set of facts, the Writ Petition is dismissed. The rule is discharged.

[MANGESH S. PATIL]

JUDGE

Dahibhate/-