

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4856 OF 2018

(MOHD. NIYAZ ABDUL AZIZ...VS..STATE OF MAH. THR. LAW AND JUDICIARY DEPT. & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.A.Abhyankar, Advocate for Petitioner.
Shri A.S.Fulzele, Addl.G.P. for Respondent No.1.
Shri F.T.Mirza, Advocate for Respondent Nos.2 and 3.

CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED : SEPTEMBER 01, 2021.

1. After hearing the matter for some time, the learned counsel for the petitioner seeks leave of this Court to withdraw the petition with liberty to file appeal under Rule 18 read with Rule 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as "Rules of 1979"). He also submits that the representation, dated 11/11/2016, made by the petitioner to the High Court was not in accordance with Rule 18 read with Rule 17 of the Rules of 1979 and therefore, its rejection by the High Court may not be treated as debarring the petitioner from exercising his statutory right.

2. While we accept the contention that the rejection of the representation dated 11/11/2016 made by the petitioner, not being in the nature of exercise of his statutory right of appeal, must not be treated as any hurdle coming in the way of the petitioner in preferring

appeal under Rule 18 read with Rule 17 of the Rules of 1979, we would like to relegate the petitioner to the appeal remedy that is alternatively available to him and for this purpose leave is already sought by the petitioner.

3. While Shri Mirza, learned counsel for the respondent Nos.2 and 3 has no objection in granting leave simplicitor for withdrawal of the petition, he has strong objection in granting the same along with liberty.

4. We would have ordinarily upheld the objection taken by the learned counsel for the respondent Nos.2 and 3 had it been the case that representation dated 11/11/2016 made by the petitioner were to be in the nature of statutory appeal filed under Rule 18 read with Rule 17 of the Rules of 1979, but, that is not the case here. That being so, the law would require this Court to let the petitioner exercise his statutory right of appeal in accordance with law.

5. Accordingly, we grant leave with liberty as prayed for to the petitioner, while making it clear that rejection of the representation of the petitioner, dated 11/11/2016, by the High Court shall not come in his way in preferring the statutory appeal.

6. The writ petition is **disposed of** accordingly. No costs. All questions are kept open.

(ANIL S.KILOR,J)

(SUNIL B. SHUKRE,J)