

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

WRIT PETITION NO. 14306 OF 2021

Santosh s/o Narayan Rajapure

...Petitioner

Versus

The Additional Divisional Commissioner,
Nashik Division, Nashik & Anr.

...Respondents

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Mr. P. A. Bharat h/f Mr. D. A. Mane, Advocate for the petitioner
Mr. K. B. Jadhavar, AGP for respondent/State
Mr. Ameya Sabnis, Advocate for respondent no. 2

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CORAM : BHARATI H. DANGRE, J.

DATE : JANUARY 25TH, 2022

PER COURT : -

1. Heard the learned Counsel for the petitioner and learned AGP for respondent no. 1.

2. The petitioner working as Civil Engineering Assistant with Panchayat Samitee, Ahmednagar, came to be terminated on conducting a departmental enquiry by an order on 20.06.2019. Being aggrieved, he invoked the remedy of appeal as per Rule 13 of the Maharashtra Zilla Parishads District Services (Discipline & Appeal) Rules, before Additional Divisional Commissioner, Nashik. The appeal was numbered as Appeal No. 119/2019.

3. The present petition is filed being aggrieved by the decision of the respondent no.1, dismissing his appeal in default and his action of refusal to restore the same.

. On hearing the learned Counsel for the petitioner and on perusal of the record of the writ petition, it can be seen that on 21.03.2021, the respondent no. 1 dismissed the appeal of the appellant by recording that for last 12 dates, the appellant had consistently remained absent and it appears that he is not interested in prosecuting the appeal, which deserves its dismissal.

4. The learned Counsel for the petitioner has placed on record the *Roznama* of the appeal, which reflect that on 18.10.2019 when the appeal was listed for the first time, the Presiding Officer himself was busy and he granted a future date. On all other dates till the dismissal of the appeal i.e. 22.11.2019, 03.01.2020, 17.01.2020, 14.02.2020, 03.04.2020, 29.05.2020 and 10.07.2020 either for administrative reason or on account of the pandemic, the proceedings came to be adjourned. Even on the further dates 31.08.2020 and 23.10.2020, the administrative reason is recorded for adjourning the proceedings. On 22.01.2021, both the parties remained absent. On 26.03.2021, the appeal is dismissed. Perusal of the *Roznama* would reveal that barring the two dates on which the appellant did not

remain present, the proceedings came to be adjourned either on account of administrative reason or by recording that in the wake of the covid pandemic, the future date is accorded.

. The reasoning given by the respondent no. 1 that on all dates the appellant was not present and therefore a conclusion which is drawn to the effect that he is not interested in prosecuting the appeal do not appear to be correct on perusal of the record of the proceedings. In the wake of the above, the impugned order deserves to be set aside and the respondent no. 1 shall afford an opportunity to the appellant to produce his case on merits. Needless to state that hereinafter on two consecutive dates if the appellant fail to remain present, the respondent no. 1 would be justified in dismissing the appeal in default. Necessarily by setting aside the impugned order dated 31.03.2021, the appeal filed by the appellant vide Appeal No.119/2019 is restored to the file of the respondent no. 1, who shall deal with the same on its own merits.

[BHARATI H. DANGRE]
JUDGE