

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

WRIT PETITION NO.2499 OF 2023

Shankar Bhausahab Gaikwad

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Rural Development and
Panchayat Raj Department,
Mantralaya, Mumbai-32

...RESPONDENTS

2. Chief Executive Officer,
Zilla Parishad, Ahmednagar,
Ahmednagar

Mr. Rahul A. Tambe, Advocate for the petitioner

Mr. S. B. Pulkundwar, AGP for the respondents/State

Mr. V. V. Gujar, Advocate for respondent No.2

CORAM : KISHORE C. SANT, J.

DATE : 18th JULY, 2023

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1. Heard the parties for sometime.
2. The petitioner by way of this petition has challenged the order dated 24-02-2023 placing him under suspension passed by the learned Chief Executive Officer, Zilla Parishad,

Ahmednagar. The action is taken apparently on receipt of letter from the Block Development Officer, Panchayat Samiti, Rahata on the same date.

3. Learned advocate for the petitioner invites attention to Rule 3 of the Maharashtra Zilla Parishad Services (Discipline and Appeal) Rules, 1964 which requires that suspension order can be passed by the Chief Executive Officer where the disciplinary proceeding against him is contemplated or is pending or where a case against him in respect of any criminal offence is under investigation, inquiry or trial; provided that where the order of suspension is made by the authorities lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made. He submits that neither of the contingency in the order passed by the learned Chief Executive Officer and submits that order is totally illegal. He submits that this court had granted stay to the impugned order by order dated 03-03-2023 while issuing notice. He was required to file

contempt petition for not obeying the order. The Chief Executive Officer was directed to remain present and it is only thereafter now a farce is made of appointing enquiry officer. As on today no enquiry officer is appointed till today.

4. As regards maintainability of the petition before the Single Bench he places reliance upon the judgment in the case of Jyoti Anil Ganeshpure Vs State of Maharashtra and others reported in 2006 (2) MHLJ 173 wherein this court specifically by considering Rule 18 (3) of the Chapter-XVII with explanation that the matter would come before the Single Bench where even the show cause notice is issued by the Commissioner under Section 16(1)(i) of the 1961 Act. He further relies upon the full bench judgment in the case of Prakash Securities Pvt. Ltd. Vs Life Insurance Corporation of India and another reported in 2012 (5) MHLJ 312 wherein full Bench has held that Chapter XVIII Rule 18 clause (3) is wide enough to include the orders passed passed by any quasi-judicial authority under any enactment, even if such explanation is not covered by

clauses 1,2 and 4 to 43 of Rule 18.

5. Learned advocate for the respondent submits that learned Chief Executive Officer is within his power to pass the order and no illegality is found and this court need not entertain the petition. He submits that by passing order of suspension there is no punishment inflicted. It is only an administrative order that is passed by the authority. He relies upon the judgment in the case of Mayuranathan Vs State of Kerala and Anr reported in (1961) ILLJ 260 and in the case of Union of India and another Vs Ashok Kumar Aggrawal in Civil Appeal No. 9454 of 2023.

6. Considering the submissions, this court finds that suspension order could have been passed only in the contingency mentioned in Rule 3 of the Maharashtra Zilla Parishad Services (Discipline and Appeal) Rules, 1964. The petitioner has also rightly relied upon the order in writ petition No. 6372/2011 wherein this court has specifically considered

the rule 3 and in that case this court has specifically held that employee can be suspended even if disciplinary proceedings are contemplated against him or pending against him or criminal case against him is under investigation or trial. Advocate for the petitioner has rightly placed reliance on this judgment.

7. Since the impugned order is already stayed, this court finds that this petition deserves to be allowed. The petition is therefore allowed in terms of prayer clause-B. It is made clear that the authorities are free to take action as permissible under law.

8. No order as to costs.

[KISHORE C. SANT, J.]

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