

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

927 WRIT PETITION NO. 3869 OF 2019

Himmat Sukhdeo Pawar,
Age 55 Years, Occu. Service
R/o. Parola, Plot No.14,
Taluka Parola,
District Jalgaon.

.. PETITIONER

VERSUS

1] The State of Maharashtra
Through Principal Secretary,
School Education & Sports Department,
Mantralaya, Mumbai.

2] The Divisional Commissioner,
Nashik Division, Nashik.

3] The Chief Executive Officer,
Zilla Parishad, Jalgaon
Taluka and District Jalgaon.

.. RESPONDENTS

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Mr.Amol S. Sawant, Advocate for the petitioner.
Mr.S.P.Tiwari, AGP for the respondent-State
Mr.M.S.Sonwane, Advocate for the respondent no.3.

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CORAM : ARUN R. PEDNEKER, J.

DATE : 02.02.2023

P.C. :

1] The petitioner is challenging the judgment and
order dated 29.01.2013 passed by the Chief Executive

Officer, Zilla Parishad, Jalgaon – the respondent no.3, the judgment and order dated 29.03.2017 passed by the Additional Commissioner, Nashik Division, Nashik in Appeal No.241/2015 and the judgment and order dated 18.12.2017 passed by the Additional Commissioner, Nashik Division, Nashik in Review Application No.86/2017.

2] The parties submit that the order passed by this Court in Writ Petition No.11403 of 2019 along with Writ Petition No.11404 of 2019, dated 19.09.2019, squarely covers the issue involved in the present Writ Petition and the said order would squarely be applicable to the present petitioner as well. Therefore, the same order be passed in the present Writ Petition. The order dated 19.09.2019 passed in Writ Petition No.11403 of 2019, is as under:

“1. These petitioners have directly approached this Court in the backdrop of more than 250 writ petitions have been entertained by this Court arising out of the disciplinary action and after the said petitioner-workers had approached the Zilla Parishad and the Divisional Commissioner.

2. *Learned counsel for respondents No.3 & 4 and the learned AGP appearing on behalf of respondent No.1 and 2 submit that, since these petitioners are identically placed and it would be a tiresome exercise to direct them to approach the Zilla Parishad and then come to this Court in the backdrop of more than 250 cases decided by this Court, this Court could entertain the petitions and pass identical orders.*

3. *I have heard the learned Advocates for the litigating sides and the learned AGP.*

4. *It is pointed out that in identical set of facts, this Court has dealt with Writ Petition No.7871/2017 (Jayprakash Sahabrao Suryawanshi vs. The State of Maharashtra and others) and a group of 184 writ petitions decided on 26.07.2018. It is, therefore, submitted that as all these cases are identical to the cases referred to in paragraphs 15 and 16 of the order dated 26.07.2018, same observations can be made applicable to these petitions and the Petitioners are agreeable to suffer the punishment of stoppage of one increment for one year, simplicitor.*

5. *The learned Advocate for the Petitioners then submits that all these petitioners are in service today. The amounts have been deducted from the salary of all these Petitioners by treating the punishment to be stoppage of one increment with cumulative effect for one year. In identical set of facts, this Court has then*

passed the order on 09.08.2018 in Civil Application No.9896/2018 (Panchashila Tarachand Wagh vs. The State of Maharashtra and others) along with other Civil Applications, thereby, directing the Zilla Parishad to return the excess amounts within six weeks.

6. The learned Advocate for the Respondent / Zilla Parishad submits that he would not make any submission against the order of this Court dated 26.07.2018, which covers these petitions in view of the observations set out in paragraphs 15 and 16. However, he is instructed to oppose any request for refunding of amounts since these Petitioners had given an undertaking that they would not approach any court for challenging the punishment imposed on them.

7. I do not find that the said submission of the learned Advocate for the Zilla Parishad could be accepted as no citizen of this country can be precluded, on the strength of an undertaking, which is invariably tendered under duress and coercion, from approaching any court. As such, the directions issued by this Court vide order dated 09.08.2018 would squarely be applicable to these Petitioners as well.

8. In view of the above, these Writ Petitions are partly allowed as under:

- (a) The impugned orders are converted into the order of punishment in the nature of*

stoppage of one increment for one year, simplicitor.

(b) Consequentially, the Respondent / Zilla Parishad shall calculate the amounts, which are to be recovered towards the fulfillment of the above stated modified punishment and shall refund the excess amounts to each of these petitioners, within eight weeks from today.”

3] In view of the above, the present Writ Petition is partly allowed as under :

(a) The impugned orders are converted into the order of punishment in the nature of stoppage of one increment for one year, simplicitor.

(b) Consequentially, the Respondent / Zilla Parishad shall calculate the amounts, which are to be recovered towards the fulfillment of the above stated modified punishment and shall refund the excess amounts to the petitioner, within eight weeks from today.

(c) Accordingly, the Writ Petition is disposed of.

**[ARUN R. PEDNEKER]
JUDGE**