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

930 WRIT PETITION NO.10733 OF 2023

**DILIP AMBARSING RATHOD
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS
SECRETARY AND OTHERS**

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Mr V. A. Bagal, Advocate for Petitioner;
Mr V. M. Kagne, A.G.P. for Respondent No.1
Mr V. M. Vibhute, Advocate for Respondent Nos.2 to 4

**CORAM : RAVINDRA V. GHUGE
AND
Y. G. KHOBRAGADE, JJ.**

DATE : 30th August, 2023

PER COURT:

1. The Petitioner has put forth prayer clauses (B) and (C)
as under :-

“B) By issuing Writ of Mandamus or any other Writ or Direction in like nature that, impugned order/letter dated 22.08.2023 issued by Resp. No.2 may kindly be quashed and set aside.

C) Pending hearing and final disposal of this Writ Petition the impugned order/letter dated 22.08.2023 issued by Resp. No.2 may kindly be stayed.”

2. We have considered the submissions of the learned Advocates for the respective sides. The impugned order dated

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22/08/2023 has been passed by Respondent No.2/Chief Executive Officer, Zilla Parishad, Jalna. There are two aspects in the said order. One is as regards the purported corruption/misappropriation at the hands of the Petitioner. The second aspect is an allegation that, the Petitioner has two wives and four children.

3. The Petitioner has filed an affidavit before the Court, declaring that he has only one wife, namely, Meera Dilip Rathod and has two daughters, namely, Dipali and Durga. Their Adhar Cards are also annexed to the affidavit. The learned Advocate for the Petitioner submits that, if in any proceeding, it is established that the Petitioner has more than one wife and has more than two children, as is disclosed in the affidavit, he is liable to face criminal action for forgery, as well as a disciplinary action including termination of service.

4. In the above backdrop, we have perused Section 61 of the Maharashtra Village Panchayats Act, 1958 (for short 'the said Act'), which reads as under :-

“61. Appointment of servants -

(1) A Panchayat may appoint such servants as may be necessary for the proper discharge of its duties under this Act and pay their salaries from the village fund. A

(3)

Sarpanch may also, in cases of emergency, engage such temporary servants as he may deem necessary. A panchayat may, from time to time, by written order, fine, suspend or dismiss any servant appointed by it; but an appeal shall lie against any such order passed by the panchayat to the Block Development Officer, within one month from the date of communication of the order to the servant. An application for revision may be made to the Chief Executive Officer against the decision of the Block Development Officer in such appeal :

Provided further that, no such appeal or application shall be entertained if it is not made within a period of one month from the date of such decision :

Provided further that, no such appeal or application shall be decided unless the servant of the panchayat is given an opportunity of being heard.

(2) Without prejudice to the power of a panchayat under sub-section (1), the State Government may make rules to regulate recruitment and the terms and conditions of service of servants appointed under sub-section (1).”

5. It is obvious that the proceeding leading to disciplinary action cannot directly reach the doorsteps of the Chief Executive Officer of the Zilla Parishad. It is the Panchayat, which initially resorts to an action and the appeal against such action/order would lie before the Block Development Officer, and thereafter, before the Chief Executive Officer.

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6. A complaint was filed by Respondent No.5 directly to the Chief Executive Officer, Zilla Parishad, Jalna and the District Collector. The Chief Executive Officer dealt with the said complaint and after perusing the record, concluded that the present Petitioner has two wives and four children. This order is passed by the Chief Executive Officer, Zilla Parishad, Jalna on the basis of the report of the Block Development Officer, dated 22/08/2023, which indicates that the Chief Executive Officer passed an order on the same date, without even issuing notice of hearing to the Petitioner. The Chief Executive Officer concludes that the Petitioner deserves to be terminated from employment, and accordingly directed compliance of the said conclusion.

7. The learned Advocate representing the Zilla Parishad submits that, the Zilla Parishad does not have the record to indicate that the Petitioner was served with a notice of hearing scheduled on 22/08/2023. The Zilla Parishad does not have the record to indicate that the report of the Block Development Officer, dated 22/08/2023 was served on the Petitioner for calling upon his explanation. The Block Development Officer's report is placed before the Chief Executive Officer and the impugned order is also passed on the same date, without hearing the Petitioner.

8. It is in the light of the admitted position as above that, **this petition is partly allowed.** The impugned order dated 22/08/2023 is quashed and set aside.

9. We grant liberty to the Grampanchayat to initiate appropriate action, as is prescribed under Section 61 of the said Act, and appropriate steps be taken by granting a reasonable opportunity of hearing to all the stakeholders. The complainant would also be granted the opportunity of hearing. After the Panchayat passes an order, the Petitioner would take recourse to the remedy, as is prescribed under Section 61 of the said Act, for assailing the said order.

(Y. G. KHOBRADE, J.)

(RAVINDRA V. GHUGE, J.)

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