

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15423 OF 2022

Ramesh Bajirao Patil ...Petitioner

Versus

Zilla Parishad, Kolhapur Through Chief
Executive Officer, Kolhapur And Ors. ...Respondents

Mr.Ashraf Ahmed Shaikh, for Petitioner.
Mr.Rahul S. Kadam, for Respondent Nos.3 & 4.
Mrs.M.S. Bane, for Respondent No.5.

CORAM : R.D. DHANUKA &
M.M. SATHAYE, JJ.

DATED : 15th FEBRUARY, 2023

P.C. :

1. Rule. Heard learned counsel for the Petitioner.
Respondents waive service. Rule is made returnable forthwith.
By consent of the parties, the matter is taken up for final
hearing.

2. By this petition, filed under Article 226 of the Constitution
of India, the Petitioner has prayed for a Writ of Certiorari for
quashing and setting aside the impugned Order dated
13.12.2021 issued by Respondent No.2 granting temporary

promotion to Respondent Nos.3 & 4 and seeks a Writ of Mandamus against Respondent Nos.1 & 2 to permit the Petitioner to work as Incharge Deputy Engineer (Works), Panchayat Samiti, Panhala as per the Order dated 15.02.2022 issued by the Respondent No.1.

3. In the alternative, the Petitioner seeks an order/direction against Respondent No.5 (Divisional Commissioner, Pune Division) to hear and decide the Appeal dated 04.10.2022 and subsequent reminders / representations / applications dated 02.11.2022 and 25.11.2022 filed by the Petitioner as per Rule 14 of Maharashtra Zilla Parishad & Panchayat Samitis (Discipline and Appeal) Rules, 1964.

4. It is not in dispute that the said Appeal filed by the Petitioner before the Respondent No.5 on 04.10.2022 is still pending. We have perused the stand taken by the Respondents in various proceedings filed by the Petitioner before filing this writ petition. In the proceedings before the Civil Court by the Petitioner impugning the same order, all the Respondents have taken a plea that the said Civil Suit was not maintainable on the ground that remedy of the Petitioner would be to file an appeal

as per Rule 14 Maharashtra Zilla Parishad and Panchayat Samitis (Discipline and Appeal) Rules, 1964.

5. The learned counsel for the the Petitioner produced a copy of the letter dated 28.12.2022 from the Divisional Commissioner addressed to the Chief Executive Officer asking for details about order which was to be passed Divisional Commissioner himself. It appears that Divisional Commissioner is not clear about his jurisdiction to pass order by exercising the power to hear the appeal and to pass an Order.

6. In view of this situation, we inquired whether the Appeal preferred by the Petitioner can be heard by the another Divisional Commissioner.

7. In view of the stand taken by the Divisional Commissioner, Pune Division, we direct the Divisional Commissioner, Kokan Division to hear the said Appeal preferred by the Petitioner in accordance with law.

8. Since the stand taken by the Respondents before various authorities including the Civil Court, was that remedy of the Petitioner would be to file an Appeal before the Divisional Commission, Kokan Division, the Divisional Commissioner,

Kokan Division is directed to hear the Petitioner's Appeal on its own merits without being influenced by the observations made by the Civil Court or any other Authority below, after hearing the parties and preferably within three months from date of the communication of this Order.

9. Both the parties are directed to remain present before the Divisional Commissioner, Kokan Division on **24th February, 2023 at 11 a.m.**

10. The learned AGP to communicate this Order to the learned Divisional Commissioner, Kokan Division for information and compliance.

11. An Order that would be passed by the Divisional Commissioner, Kokan Division, shall be communicated to both the parties within one week from the date of passing such Order.

12. If any of the party is aggrieved by the said Order, such party will have liberty to file appropriate proceedings permissible in law.

13. The writ petition is disposed off. Rule is made absolute in the aforesaid terms. No order as to costs.

14. Parties as well as Divisional Commissioner, Kokan Division
to act on an authenticated copy of this order.

(M.M. SATHAYE, J.)

(R.D. DHANUKA, J.)