

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO. 1242 OF 2018

Shashikant Vithal Patil

..... Petitioner

Vs.

The Collector and District Election
Officer, Nashik & Ors.

..... Respondents

Mr. Sugandh B. Deshmukh a/w. Mr. Irvin D'Souza for the Petitioner
Mr. B. V. Samant, AGP for the State
Mr. Akshay S. Pansare I/b. Mr. Sachindra B. Shetye for Respondent
No.2

**CORAM: S.V.GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

DATED : MARCH 21, 2023

P.C.

1. It is submitted that the Petitioner is an Agricultural Supervisor. Respondent No.3 issued order directing the Petitioner to officiate as an Election Returning Officer of the election of Grampanchayat, Shingave, Tq. Niphad, Dist. Nashik.

2. Respondent No.3 submitted report to Respondent No.1 that the Petitioner is guilty of negligence. Respondent No.1 on 11th October 2017 suspended the Petitioner invoking Section 23 of the Maharashtra Village Panchayat Act 1958 and Section 134 of the Representation of People Act, 1951. The Petitioner has challenged the said order.

3. We heard the learned Counsel for the Petitioner and the learned Counsel for the Respondents.
4. The Petitioner has already retired on attaining the age of superannuation.
5. We have gone through Section 134 of the Representation of People Act. Said section 134 does not give power of suspension. The only penalty is, imposition of fine of Rs.500/-. So also, Section 23 of the Maharashtra Village Panchayat Act, 1958 does not give powers of suspension.
6. This Court on 22nd February 2018 while granting interim order, observed as under:

“3. The Petitioner is an Agricultural Supervisor. He was appointed as a Returning Officer for the purpose of election of Shingve Gram Panchayat. The allegations against the Petitioner were that due to his negligence a candidate from ward No.2 was wrongly declared as elected. He was therefore suspended under the impugned order passed under Section 23 of the Maharashtra Village Panchayat Act, 1958 and under Section 134 of Representation of People Act, 1951. Both these sections deal with breach of official duty in connection with election and prescribe penalty, on conviction, when any person, to whom the section applies, is without reasonable cause found to be guilty of any act or omission in breach of his official duty. These provisions do not confer power of suspension. Thus, prima facie these provisions could not have been invoked to suspend the Petitioner. Furthermore, the Collector not being an appointing authority of the Petitioner, could not have ordered his suspension. The impugned order is therefore, stayed till the next date.”

7. No such provision under which Respondent No.3 could have suspended the Petitioner is pointed out. It is contended that Respondent No.1 is not the employer of the Petitioner.
8. In light of that, the impugned order is quashed and set aside.
9. Rule is made absolute accordingly.
10. The Writ Petition is disposed of. No costs.

(SANDEEP V. MARNE, J)

(ACTING CHIEF JUSTICE)