

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1415 OF 2014

SANTOSH MANIKRAO JOSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Smt. Kulkarni M.A. h/f Shri Kulkarni A.M
AGP for Respondents 1 & 2 : Smt. Shelke S.D.
Advocate for Respondent 3 : Shri Tandale P.R.

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: August 01, 2015
...

PER COURT :-

1. The petitioner is aggrieved by the order dated 2.8.2013 passed by the third respondent - Zilla Parishad, thereby, dispensing with the services of the petitioner as a Parichar in the Veterinary Hospital, Nitur, Tq. Nilanga in the light of the conviction suffered by the petitioner under Section 294, 248(2) of the Criminal Procedure Code for the offences punishable under Section 324, 323, 504, 506(2) read with 34 of the Indian Penal Code, by the judgment of the learned Judicial Magistrate F.C. in RCC No. 336 of 2008.
2. The petitioner frankly states that her Criminal Appeal No. 3 of 2013 is pending before the learned Additional Sessions Judge, Nilanga. Substantive sentence is suspended, however, the conviction has not been stayed.
3. She further submits that the circular dated 29.12.1992 requires the respondent No.3 authority to issue a notice before passing an order of dispensing with the services of an employee on the basis of conviction by the competent Court.
4. The petitioner submits that he should have been heard before issuance of the said order.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

2
WRIT PETITION NO. 1415 OF 2014

5. It is noteworthy that a show cause notice is contemplated in order to enable the concerned employee to canvass reasons on the basis of which order of termination should not be passed. In the instant case, it is not in dispute that the petitioner had been convicted and his appeal is pending. Smt. Kulkarni, learned Advocate submits that she has every hope that the Criminal Appeal would be allowed and the judgment of the learned Judicial Magistrate F.C. Nilanga, dated 2.7.2013, would be set aside and the petitioner would be acquitted.

6. Shri Tandale, learned Advocate on behalf of respondent No.3 and the learned AGP submit that this petition is prematurely filed. Since the appeal is pending, the petitioner may choose to file a petition only if the appeal is allowed. As on date, the petitioner has been convicted, which has not been stayed and therefore, the termination of the petitioner is squarely within the prescription of law.

7. Considering the fact situation as above, I find that this petition has been preferred prematurely. The same is, therefore, disposed off by granting liberty to the petitioner to avail of a legal remedy in the event the Criminal Appeal No.3 of 2013 is allowed and the conviction is set aside.

8. Needless to state, this Court has not dealt with the merits of the rival contentions of the parties and hence, all issues are kept open.

(RAVINDRA V. GHUGE, J.)

...