

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5324 OF 2014

Ramchandra Tukaram Nikam
Age 42 years, Occ. Service
R/o. Mhasoba Nagar, Harsool,
Aurangabad, District Aurangabad

...Petitioner

versus

1. The State of Maharashtra

(Copy to be served with G.P.
High Court of Bombay, Bench
at Aurangabad, for Secretary
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai – 32.)

2. The Chief Executive Officer,
Zilla Parishad, Aurangabad

3. The District Health Officer,
Zilla Parishad, Aurangabad

...Respondents

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Mr. D.R. Irle Patil, advocate for the petitioners

Mr. B.L. Dhas, AGP for respondent No.1

Mr. M.C. Swami, advocate for respondent Nos. 2 and 3.

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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 10th JUNE, 2015

JUDGMENT (PER S.V. GANGAPURWALA, J.):-

1. Rule. Rule returnable forthwith. By consent of parties, heard finally.

2. The show cause notice dated 28.5.2014, by virtue of which the respondents purported to take action of compulsory retiring the petitioner, is assailed in the present writ petition.

3. Mr. Irale Patil, learned counsel for the petitioner submits that after the petitioner was convicted for offence punishable under Section 304-A of I.P.C. the petitioner filed appeal. Initially, sentence was suspended and by virtue of order dated 6.5.2015 the conviction is also suspended. Learned counsel for the petitioner submits that the petitioner has also completed 25 years of service and the accident that has occurred was not on account of negligent act of the petitioner. The learned counsel submits that the show cause notice as such be quashed and set aside.

4. Mr. Swami, learned counsel for the respondents submits that once the petitioner suffered conviction then the respondent has to take action against the petitioner. In case the conviction is set aside in appeal then after judgment in appeal further steps can be taken. Learned counsel relied on the judgment of the Apex Court in the case of ***Deputy Director of Collegiate Education (Administration) vs. S. Nagoor Meera, reported in AIR 1995 SC 1364.***

5 We have considered the submissions canvassed by the learned counsel for the respective parties. The petitioner was prosecuted and tried for the offence punishable under Section 304-A of I.P.C. i.e. causing death by negligent and rash act. The petitioner was serving as Multi Purpose Health Worker. The alleged negligent act was done in the course of official duty.

6. We would have considered the submissions canvassed by Mr. Swami, the learned counsel for the respondent, in the light of the judgment of the Apex Court in the case of ***Deputy Director of Collegiate Education (Administration) vs. S. Nagoor Meera supra*** however, the distinguishing factor is in the case before the Apex Court the conviction was in force and the same was not suspended by the appellate court. The show cause notice issued expressly reiterates that the sentence is only suspended and conviction is still in force.

6. In the present case the Sessions Court has also suspended the conviction by giving reasons. Two increments of the petitioner are already stopped.

7. As the conviction of the petitioner is stayed by the appellate court, the judgment relied upon by the learned counsel for the

respondent would not apply.

8. In the light of above, impugned show cause notice dated 28.5.2014 is quashed and set aside. However, it is made clear that further steps can be taken by the parties pursuant to the judgment of the Sessions Court in appeal against conviction.

9. Writ petition accordingly disposed. No costs. Rule is made absolute accordingly.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

rlj/