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

WRIT PETITION NO. 162 OF 2014

Shri. Madhusudan Hira Sadafule
R/at 132A, Bhavani Peth, Solapur
City Solapur- 413 002

.....Petitioner

V/s.

1. State of Maharashtra
2. The Secretary, Law and Judicial Department,
Government of Maharashtra, Mantralay, Mumbai
3. The Deputy Secretary, Law and Judicial
Department, Government of Maharashtra,
Mantralay, Mumbai
4. The District Magistrate, Solapur.
5. Smt. Sadhana Patil, Ex. District Government
Pleader and the Public Prosecutor, Dist. Solapur
6. Dr. Jayanti Adake, Medical Officer, Solapur
Municipal Corporation, Solapur.

.....Respondents

Mr. Sugandh Deshmukh for the petitioner
Mr. A. B. Vagyani Government Pleader a/w Mrs. M. P. Thakar AGP
for the State
Mr. A. B. Sheth i/b Mr. M. V. Thorat for respondent no. 5

**CORAM : R. M. SAVANT &
NITIN W SAMBRE, JJ.**

DATE : 5th OCTOBER, 2018.

ORAL JUDGMENT:

Rule, having regard to the nature of the directions we propose
to issue, made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 07/08/2012 Exhibit 'I' to the petition by which order, petitioner's tenure as the Additional Public Prosecutor in the District Court at Solapur has been terminated. The said order discloses that in passing the said order, recourse to Rule 30 (5) of the Maharashtra Law Officers Rules, 1984 has been taken. The petitioner herein was appointed as the Additional Public Prosecutor in the District Court at Solapur and was at the relevant time, assigned with matters under Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (Hereinafter referred to as 'PCPNDT Act' for the sake of brevity). The gravamen of the allegation against the petitioner is that the petitioner did not appear in one such matter under the said Act resulting in an adverse order being passed against the Competent Authority. It seems that a PIL came to be filed in this Court on the subject of actions being taken under PCPNDT Act. In view of the allegation made against the petitioner, an inquiry was held against the petitioner, in which inquiry, the petitioner participated. The Inquiry Officer submitted a report to the State Government in the

Law and Judiciary Department which ultimately has culminated in the passing of the impugned order dated 07/08/2012. The principal ground on which the said order has been assailed is the ground that the petitioner was not given a show cause notice prior to passing of the said order terminating his tenure as Additional Public Prosecutor.

3 In response to the said ground, the learned Government Pleader Mr. A. B. Vaganyi would contend that petitioner's appointment was for a fixed tenure and that the petitioner's appointment was at the pleasure of the Government and therefore, the submission of the learned counsel for the petitioner, founded on the violation of principles of natural justice, cannot be accepted.

4 In so far as the said aspect is concerned, the Apex Court in the Judgment of **Shrilekha Vidyarthi etc Vs. State of U.P. and others [AIR 1991 SC Page 537]** has settled the issue viz-a-viz the relation between the persons who are appointed as Government Advocates and the State Government. The Apex Court in the said Judgment

has held that the services of such appointees cannot be terminated arbitrarily as though their appointment is not to be equated with the appointment to a post under the Government in the strict sense, they can be said to be holders of public office as their appointment flows from the Statutory provisions as contained in Code of Criminal Procedure, 1973. No doubt, in the instant case, an inquiry was held and the petitioner also participated in the same. However, what is of concern is the fact that if the findings in the inquiry were against the petitioner, then the petitioner was required to be given a show cause notice based on the said findings and thereafter the order was required to be passed. Such a course of action has not been followed by the Authorities. The said course of action was required to be followed, especially having regard to the manner in which sub Rule 5 of Rule 30 of the Maharashtra Law Officers Rules, 1984 is couched. We also find that the subjective satisfaction in terms of sub Rule 5 of Rule 30 of the Maharashtra Law Officers Rules, 1984 is also conspicuously absent.

5 In our view, therefore, the impugned order dated 07/08/2012

is required to be quashed and set aside and is accordingly quashed and set aside and the matter is relegated back to the Competent Authority in the Law and Judiciary Department of the State Government for taking a decision afresh.

6 It would also be open for the petitioner to tender his resignation as on the date when the departmental inquiry commenced against the petitioner and it is for the Competent Authority to consider whether the said resignation could be accepted. We express no opinion in that regard.

7 Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms. Parties to bear their own costs.

[NITIN W. SAMBRE, J.]

[R. M. SAVANT, J.]