

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO. 28 OF 2019
IN
WRIT PETITION NO. 4328 OF 2016**

Madhukar Anandrao Pahurkar .. Applicant

Versus

The State of Maharashtra and others .. Respondents

Shri C. K. Shinde, Advocate for the Applicant.

Shri S. P. Tiwari, A.G.P. for the Respondent No. 1.

Shri Y. R. Marlapalle, Advocate for Respondent Nos. 2 and 3.

**CORAM : S. V. GANGAPURWALA AND
R. G. AVACHAT, JJ.**

DATE : 26TH APRIL, 2019.

FINAL ORDER :

. The learned Assistant Government Pleader appears for the respondent No. 1. Time is sought on behalf of respondent Nos. 2 and 3 on the ground that, Mr. Marlapalle is not in a position to work out the matter.

2. One of the ground raised in the present review application is that after the employee has attained age of superannuation the departmental enquiry cannot be proceeded with.

3. Prima facie it appears that, the applicant/petitioner was terminated from service before he attained age of superannuation. It is only with a view to give an opportunity, we had directed issuance of show cause notice to the petitioner and to take further course. It is not case of continuation of departmental enquiry after superannuation. The petitioner was already terminated from service before attaining age of superannuation. However, it is only with a view to give an opportunity and the fact that second show cause notice was not issued to the petitioner, we had allowed the department to issue show cause notice to the petitioner.

4. The another contention is that earlier action was solely based on the fact that the petitioner faced criminal prosecution and the same was not basis of departmental enquiry. The departmental enquiry, it appears that, was concluded and enquiry report was submitted. It is in that context we had allowed the respondents to issue second show cause notice and take further action.

5. If it would have been a case that, the petitioner had attained age of superannuation and thereafter decision is taken in departmental enquiry, then the arguments of Mr. Shinde, the learned counsel for the applicant could have been appreciated.

6. We have allowed the respondents to issue show cause notice and we have also observed that, it is for the authority to consider nature of acquittal granted to the present petitioner, so also the evidence in the departmental enquiry and after applying his mind and giving a second show cause notice to the petitioner to arrive at a conclusion with regard to the punishment imposed upon the petitioner. The petitioner has a liberty to file reply to the show cause notice and put forth his stand, which naturally, is required to be considered by the authority. In para No. 14 of the order under review we have clearly observed this aspect.

7. In the light of the above, review application is dismissed. No costs.

[R. G. AVACHAT, J.]

[S. V. GANGAPURWALA, J.]

bsb/April 19