

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.5169 OF 2018

The State of Maharashtra and others

PETITIONERS

VERSUS

Mohd. Abdul Ahad Khan Mohd. Abdul Hamid Khan

RESPONDENT

.....

Mrs. M.A. Deshpande , AG.P. for the petitioners/State

Mr. Amit A. Mukhedkar, Advocate for the respondent

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**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE : 26.09.2019

PER COURT :

1] The writ petitioners are responsible for the mess in which they find themselves.

2] The respondent was working as a Shop Inspector under the State of Maharashtra when he became an accused for the offences

punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 on 22nd January, 2003. The petitioners took no action to suspend the respondent. He was convicted on 7th September, 2006. The department did not take cognizance of his conviction and did not pass any order terminating respondent's service with reference to the evidence surfacing qua his conviction, a power which is vested in the petitioners.

3] The petitioners allowed the respondent to superannuate from service on 30th September, 2009. Pension was sanctioned and paid to the respondent till petitioners thought that action need to have been taken against the respondent. A show-cause notice was issued to him on 29th June, 2015 repeated by a second show-cause notice dated 10th August, 2015 proposing to withdraw the pension sanctioned to him. By the impugned order dated 29th June, 2016, the Maharashtra Administrative Tribunal directed the petitioners not to take any disciplinary decision/action against the respondent on the basis of show-cause notices dated 29th June, 2015 and 10th August, 2015 till decision of Criminal Appeal No.648/2006 pending before the High Court, on the ground that having not taken any action against the respondent pursuant to he being convicted on 7th

September, 2006 and having allowed the respondent to superannuate, the question of withdrawing pension does not arise.

4] Suffice it to state that as per law, if a Government servant suffers a conviction while in service, based on the conviction the competent Authority can consider and pass an order terminating the service of the Government servant. But law does not envisage that notwithstanding a Government servant being convicted and no action taken to terminate his service resulting in the Government servant superannuating from service and pension being sanctioned, the same to be withdrawn.

5] It is a case where the petitioners missed the bus when during service of the respondent based on his conviction on 7th September, 2006 no action was taken.

6] The Pension Rules do not contemplate withdrawal of pension if no disciplinary proceedings were initiated against a Government servant when he was in service and actions are initiated post retirement for a misdeed committed within four years prior thereto.

7] The Writ Petition is dismissed.

8] No costs.

(R.G. AVACHAT, J.)

CHIEF JUSTICE

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