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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6147 OF 2014

Maya d/o Raghunath Sapkal
Age – 32 years, Occ – Service as
Health Worker (Women)
R/o Nagad, Taluka – Kannad,
District - Aurangabad

PETITIONER

VERSUS

1. Zilla Parishad
Aurangabad District, Aurangabad
Through its Chief Executive Officer
2. Medical Officer,
Primary Health Center,
Nagad, Taluka – Kannad,
District – Aurangabad

RESPONDENTS

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Mr. Mahesh Deshmukh, Advocate for the petitioner
Mr. S. M. Ganachari, Advocat for respondents No.1 and 2

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[CORAM : SUNIL P. DESHMUKH AND
B. U. DEBADWAR, JJ.]

DATE : 10th FEBRUARY, 2020

ORAL JUDGMENT (PER SUNIL P. DESHMUKH, J.):

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
2. Learned advocates are not in dispute over the situation that factual position in present matter is almost the same, as involved in writ petition No. 5324 of 2014.

3. It is the case of the petitioner that two health workers, including the petitioner, were alleged to have committed offence referable to section 304-A of the Indian Penal Code and they were convicted.

4. So far as other employee namely, Ramchandra Tukaram Nikam, petitioner in writ petition No. 5324 of 2014 is concerned, division bench of this court, taking into account that employee had served for almost twenty five years and the accident had occurred imputing negligence and recklessness, has set aside the show cause notice issued seeking explanation as to why not to retire employee compulsorily based on the conviction by the criminal court.

5. After hearing learned advocates, it transpires that in both these cases i.e. present writ petition and writ petition No.5324 of 2014, matters are pending in appeal before sessions court and further that sentence as well as convictions have been stayed. The employees have stated that it was purely an accident and not a case of negligence or reckless service and that they have worked for twenty five years.

6. It is being submitted on behalf of the petitioner that show cause notice in respect of other employee has been set aside,

leaving it open to take further steps pursuant to judgment of the sessions court in appeal against conviction, similar treatment be meted out to petitioner.

7. Learned advocates for respondent Zilla Parishad submits that having regard to judgment of the Apex Court in case of “*Deputy Director of Collegiate Education (Administration) V/s S. Nagoor Meera*”, reported in *AIR 1995 SC 1364*, it may not be necessary to grant relief as prayed for in the writ petition.

8. However, division bench of this court, under its judgment dated 10th June, 2015 in writ petition No. 5324 of 2014, has observed, thus,

“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) V/s 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 reiterate 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.”

9. In the circumstances, we deem it appropriate to treat

present petitioner similarly, as the judgment relied upon on behalf of the respondent – Zilla Parishad has been distinguished and that while the conviction has been stayed by the appellate court, it would be in the fitness of things to pass similar order in the writ petition.

10. In view of the same, impugned show cause notice dated 28th May, 2014 is set aside, making it clear that further steps can be taken by parties pursuant to judgment of the sessions court in appeal against conviction.

11. Rule is made absolute in aforesaid terms. Writ petition stands disposed of with no order as to costs.

[B. U. DEBADWAR]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE