

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

**75 WRIT PETITION NO.2987 OF 2019**

**MANJUSHREE MAHESH DALIMBKAR  
VERSUS  
THE CHIEF EXECUTIVE OFFICER ZILLA PARISHAD  
AHMEDNAGAR AND OTHERS**

Mr. S. S. Jadhavar, Advocate for the petitioner  
Mr. S. G. Sangale, AGP for the respondents/State  
Mr. A. D. Aghav, Advocate for the respondent No.1

**CORAM : KISHORE C. SANT, J.**

**DATE : 14<sup>th</sup> JUNE, 2023**

**P. C.**

1. Heard the parties.
2. The matter is taken up for final hearing by consent of the parties.
3. A short point involved in this petition is that the petitioner who was working as Assistant Teacher in Zilla Parishad School, Latur was tried for the offences punishable under Sections 376, 341, 506 read with Section 34 of the Indian

Penal Code. After the trial she came to be convicted for the offence punishable under Section 342 read with Section 34 of the IPC. She was directed to suffer rigorous imprisonment for one year and to pay fine of Rs.500/-. She was acquitted from the offences under Section 376 and 506.

4. The petitioner approached this court by filing Criminal Appeal No.336/2016 and challenged the conviction also preferred an application seeking suspension of sentence as well as stay to the conviction. This court in criminal application No.2849/2016 by order dated 03-06-2016 was pleased to suspend the substantive sentence so also the conviction recorded for the offence under Section 342. This court while passing the order in para 8 has specifically considered the effect of conviction that if it is not stayed/suspended the petitioner would be dismissed from services on the basis of said conviction and on this the order was passed. It is clear from the wording that to avoid the dismissal of the petitioner from service this court had specifically suspended the conviction.

5. The respondent in spite of said order, issued show cause notice dated 15-10-2016 and called for explanation as to why services of the petitioner should not be terminated. This notice thus is clearly issued after order of suspension that was passed by this court. This petitioner on 02-11-2016 replied said notice pointing out that the conviction is suspended by this court in appeal, in spite of the same, respondent passed an order dated 30-11-2016 terminating the services of the petitioner solely on the ground that the petitioner is convicted for an offence and there is sentence imposed upon her. There is no separate enquiry held on any of the charges against the petitioner before passing the order of termination.

6. The petitioner thereafter filed an appeal in the court of Divisional Commissioner, Nashik Division, Nashik bearing Appeal No.12/2017. The learned Divisional Commissioner rejected the application by confirming the order of termination.

7. The petitioner thereafter approached the Hon'ble Minister Rural Development and Water Conservation Department, Mantralaya Mumabai by filing revision No. 108/2018. However, same also came to be rejected by judgment and order dated 30-11-2018.

8. The petitioner is thus before this court praying for quashing of the termination order passed by the respondent No.1.

9. Learned advocate for the petitioner submits that the order of termination is passed solely on the ground that there is a conviction recorded by the criminal court. He submits that once there was stay/suspension to the order of conviction, there was no question of terminating the petitioner on the ground of conviction. Technically on the day of passing of the order there was no conviction in existence and prayed for quashing of the order.

10. Learned advocate for the petitioner placed reliance on the judgment in the case of Rabindra Pandit and another Vs State of Bihar reported in 2012 Cri. L. J. 4363 of the Patna High Court and another judgment in the case of Lok Prahari, through its General Secretary S. N. Shukla Vs Election Commission of India and others reported in AIR 2018 SC 4675.

11. Learned advocate Mr. Aghav vehemently opposed the petition stating that merely an order of conviction is suspended is not a ground for not taking any action. He relies upon the rules of departmental enquiry and specifically rule No. 4.6 which requires that once employee is convicted he should be terminated even without holding an enquiry. It is even stated in the said rule that authority need not wait till the decision of the appeal. He also relied upon the judgment in the case of Senior Inspector of Police and others Vs Sudam Bhausaheb Bhalekar reported in 2005 (3) ALL MR 852. In the said case the accused was convicted under the Prevention of Corruption Act and his substantive sentence only was stayed. This court in para No. 17

specifically observed that the order of conviction despite order of suspension of its execution remains in existence, there was no stay to the conviction and in that view of the matter court has held that action can be still taken on the basis of conviction.

12. Considering the above position this court finds that in this case there is stay to the conviction granted by this court. This court while passing the order has specifically considered the effect of conviction and by considering that effect has specifically granted stay to avoid the consequences of the conviction. Thus what needs is to be seen is that on the date of passing of the order of termination whether there was conviction in existence. Patna High Court in the case of Ravindra Pandit (supra) has considered this aspect of stay to the conviction. In the judgment of Lok Prahari (supra) the Hon'ble Apex Court has specifically held that once there is stay to the conviction it will not affect the rights of the parties. This court thus finds that in this case also once conviction was suspended there was no question of taking any action against the petitioner

on the basis of said conviction. It is open to the Zilla Parishad to take action if the appeal is dismissed and conviction is confirmed on conclusion of the appeal. However, so long as stay to the conviction is in force order of termination is clearly against the order passed by this court.

13. Considering the above situation this court finds that the petitioner has made out a case to call for interference. This court finds that the petition deserves to be allowed.

14. For the reasons recorded, the petition stands allowed in terms of prayer clauses (B), (C) & (D).

15. Needless to say that the petitioner is at liberty to prosecute for other reliefs.

16. All the contentions are kept open.

**[KISHORE C. SANT, J.]**