

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 297 OF 2018

DISTRICT:-DHULE

Ajay S/o. Ramlal Umale,)
Age:46 years, Occ. Service,)
R/o. C/o. Nanasaheb Bachhav,)
A/p. Dahiwel, Tq. Sakri, Dist. Dhule.)

.. APPLICANT

V E R S U S

1] The State of Maharashtra,)
Through its Secretary,)
Higher & Technical Education)
Department, Mantralaya,)
Mumbai-32.)

2] The Director of Vocational)
Education and Training,)
Maharashtra State Mumbai.)
3, Mahapalika Marg,)
Dhobi Talao, C.S.T. Area,)
Fort, Mumbai – 400 001.)

3] Joint Director of Vocational)
Education & Training,)
Regional Office, Trimak Naka,)
Old Agra Road, Nasik-2.)

4] The Project Officer,)
Adiwashi Ashram Industrial)
Training Institute, Nawapada,)
Tq. Sakri, Dist. Dhule.)

.. RESPONDENTS

APPEARANCE : Shri Vijay V. Deshmukh, learned
counsel for the applicant.

: Shri S.K. Shirse, learned Presenting
Officer for the respondent authorities.

**CORAM :JUSTICE SHRI P.R.BORA,VICE CHAIRMAN
AND
SHRI BIJAY KUMAR, MEMBER (A)**

DATE : 05.09.2022

ORAL - ORDER

[Per : Justice P.R. Bora, Vice Chairman]

Heard Shri Vijay V. Deshmukh, learned counsel for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondent authorities.

2. In the present Original Application the applicant has challenged the order dated 4.5.2018 whereby respondent no. 3 has terminated the services of the applicant on the ground that the applicant while entering into the Government services submitted the forged character verification report.

3. The applicant was appointed as a Craft Instructor in the year 2011 after having successfully undergone the selection process. In the year 2014 the services of the applicant were regularized. On 23.2.2017 the applicant was served with a show cause notice requiring him to explain why his services shall not be terminated for submitting the forged character verification report at the time of entering into the Government service. The applicant gave reply to the said notice and denied the charge leveled against him. However, dissatisfied with the reply so submitted by the applicant the appointing authority constituted Committee of 3 persons to conduct the preliminary enquiry into the misconduct as alleged above allegedly committed by the applicant. The Committee accordingly conducted the preliminary enquiry and submitted the

report holding therein the applicant guilty for the alleged misconduct. Based on said report the services of the applicant have been terminated by respondent no. 3 vide the impugned order.

4. The learned counsel for the applicant submitted that in the year 2009 the father-in-law of the brother of the applicant filed a FIR against the brother of the applicant, as well as, the applicant and other family members. On the basis of the said FIR the crime was registered against the brother of the applicant for the offences punishable U/sec. 302, 498(A) r/w 34 of IPC. The applicant was arrayed as one of the accused in the said criminal case. The learned counsel for the applicant submitted that the name of the applicant was falsely implicated in the said crime. The learned counsel submitted that the applicant ultimately came to be acquitted from the said criminal case in the year 2016. The learned counsel submitted that in the year 2011 while entering into the Government services under some misconception the applicant did not disclose the fact that he was accused in the aforesaid Sessions Case, which was pending at the relevant time. The learned counsel submitted that at the relevant time in the police verification report also it was not mentioned that the aforesaid Sessions Case is pending against the applicant. The learned counsel further submitted that while filling in the

attestation form on bona-fide belief that he was not arrested in the aforesaid case the applicant did not mention about pendency of the aforesaid criminal case against him. The learned counsel submitted that it was not at all the intention of the applicant to suppress any information from the respondents. Pointing out the clause in the attestation form more particularly clause 11(a) & (b) the learned counsel submitted that there was confusion in the mind of the applicant whether information as sought about pendency of any matter against the applicant in the University Tribunal or Administrative Tribunal etc. and since no such matter was pending against the applicant before the said authorities or forums, the applicant recorded answer against the said clause in the attestation form as 'NO'. The learned counsel submitted that the applicant thereafter worked with the respondents with all efficiency and to the satisfaction of the respondents till the year 2017.

5. The learned counsel further submitted that in the year 2017 when the show cause notice as mentioned hereinabove was served upon the applicant, the applicant had already got clear acquittal from the Sessions Court. The learned counsel submitted that the applicant though brought the aforesaid fact to the notice of respondent no. 3, as well as, other higher authorities, the preliminary enquiry was directed against the applicant. The

learned counsel submitted that the only misconduct alleged against the applicant was that he forged the character verification report while entering into the Government services. The learned counsel submitted that in the preliminary enquiry one questionnaire was given to the applicant containing 9 questions therein and based on the replies given by the applicant to the said questions the Enquire Committee held the applicant guilty of the charge leveled against the applicant and on the basis of the said report the respondent no. 3 has terminated the services of the applicant.

6. The learned counsel further submitted that in the preliminary enquiry in question nos. 6 & 7 though there was a reference of the letters dated 9.7.2011, as well as, 19.1.2009 it was alleged that the contents of these letters are different and it was further stated that the letter dated 9.7.2022 was a concocted letter, the copies of the said letters were not provided to the applicant nor the aforesaid letters were brought to the notice of the applicant during the course of the alleged preliminary enquiry. The learned counsel submitted that the applicant had submitted before the enquiry Committee that he is not aware of the concerned letters since it was the confidential correspondence. The learned counsel submitted that without showing the aforesaid documents to the applicant and without obtaining his explanation as regard to the

allegation against him that the letter dated 9.7.2011 was forged by the applicant the aforesaid evidence could not have been relied upon by the respondents and consequently order of dismissal also could not have been passed. The learned counsel submitted that the respondents did not give due opportunity of hearing to the applicant before terminating the services of the applicant. The learned counsel further submitted that without supplying the documents on which reliance has been placed by the respondents for terminating the services of the applicant has to be held as the violation of principles of natural justice, as well as, arbitrary exercise of the power by the respondents. The learned counsel, in the circumstances, prayed for setting aside the impugned order and sought the further directions for reinstatement of the applicant with all consequential benefits.

7. The contentions raised in the O.A. are resisted by the respondents. A common affidavit in reply has been filed on behalf of respondent nos. 1 to 4. The learned Presenting Officer reiterated the contentions raised in the affidavit in reply filed by the respondents. The learned PO submitted that it has been undoubtedly proved that while entering into the Government service the applicant suppressed the material fact that the Sessions Case bearing No. 81/2009 was pending against him at that time. The learned PO submitted that in the order of

appointment it has been clearly mentioned that submission of any false information will lead to the dismissal of the services of the applicant on that sole ground. The learned PO submitted that ample documentary evidence is available against the applicant evidencing that the character verification report by Superintendent of Police, Akola dated 9.7.2011 was forged by the applicant. The learned PO submitted that it is a serious misconduct, which has been proved against the applicant for which the order of dismissal was the only appropriate punishment. The learned PO in the circumstances prayed for dismissal of the O.A.

8. We have carefully considered the submissions advanced on behalf of the applicant, as well as, the respondents. We have perused the documents filed on record. In the instant matter the applicant had sought the quashment of the order dated 4.5.2018 whereby respondent no. 3 has terminated the services of the applicant. Perusal of the aforesaid order reveals that the services of the applicant have been terminated on the basis of the report submitted on 22.3.2018 by 3 Members Committee appointed for the purpose of conducting the preliminary enquiry into the character verification report pertaining to the applicant.

9. The documents on record reveal that on 19.3.2018 the said 3 Members Committee had conducted the preliminary enquiry. The documents on record further reveal that the said Committee had

formulated 9 questions to be put to the applicant and accordingly the applicant was required to answer the said questions by the said Committee. First 3 questions were formal wherein applicant was required to state name, designation and the date of joining the services. Vide question no. 4, applicant was asked to explain the discrepancy in the information submitted by him that there was no case pending against him as against the information confidentially received from the Superintendent of Police, Akola that Crime was registered against him on 19.1.2009 and it was pending. The applicant is shown to have answered the said question as 'he has nothing to say about it'. Vide question no. 5, applicant was required to give his explanation why it shall not be held that he cheated the Government by giving false information that no case was pending against him when one such case was pending. The applicant is shown to have answered the said question initially by saying 'nothing to say about it' and immediately below the said answer he is shown to have submitted that in the answer to question no. 9 he has provided his necessary explanation. In question nos. 6 & 7 there appear reference of 2 letters from the office of Superintendent of Police, Akola, first dated 9.7.2011 and second dated 19.1.2009 and in that context the applicant was required to state as to what he has to say about the contention in the letter dated 19.1.2009 wherein it is alleged that the letter dated 9.7.20211 was concocted. Even to aforesaid question the

applicant has given the same answer as was given to question no. 5. In question no. 8 the applicant was called upon to say as to why his services shall not be terminated on the ground that he submitted false information that no offence was pending against him when it was pending against him. In reply to the said question the applicant has noted that in the said criminal case the learned Sessions Court, Akola has acquitted him and as such his case shall be sympathetically considered. Vide question no. 9 the applicant was given an opportunity to submit or explain in respect of the allegation made against him. In reply to the said question, the applicant is shown to have stated that the issues referred in the previous questions were in respect of confidential information with which he is not aware. It is further stated that out of some domestic dispute a false case was registered against him but he has been acquitted from the said offence. The applicant has reported that he has been never punished and as such his case shall be considered sympathetically.

10. Shri Deshmukh, learned counsel appearing for the applicant submitted that letters which have referred by the Enquiry Committee in question nos. 6 & 7 respectively of dated 9.7.2011 and 19.1.2009 were not shown to the applicant during the course of the preliminary enquiry. The learned counsel further submitted that the applicant has honestly stated before the said Committee

that since the letters allegedly received from the office of the Superintendent of Police, Akola were confidential, he does not have any knowledge about that. According to the learned counsel the aforesaid letters on the basis of which certain conclusions are drawn by the Enquiry Committee, must have been shown to the applicant and he must have been given an opportunity to submit his say in that regard.

11. According to the applicant, the principles of natural justice thus have not been followed and without giving an opportunity to the applicant the allegations are held to have been proved against him. The learned counsel further submitted that in fact a regular departmental enquiry must have been conducted against the applicant and without conducting such enquiry the services of the applicant could not have been terminated. The learned counsel further argued that while filling in the attestation form out of confusion some incorrect answers have been recorded by the applicant. The learned counsel further submitted that since the applicant was never arrested in the crime concerned and was granted anticipatory bail in the said matter, he bona-fide believed that no such information is to be furnished. The learned counsel further submitted that even otherwise the services of the applicant have not been terminated on the said ground, and as such, the

respondents have unnecessarily in the written statement have taken such averments.

12. The learned counsel submitted that the termination of the applicant is based on an allegation that the applicant forged the letter from the office of the Superintendent of Police, Akola in regard to his character verification. The learned counsel submitted that the said allegation has not at all been proved against the applicant by conducting due enquiry against the applicant and by giving due opportunity to the applicant.

13. When we perused the report of the 3 Members Enquiry Committee it is revealed that in regard to the character verification report of the applicant from the office of the Superintendent of Police, Akole, 2 letters were received one on 24.6.2015 received to (प्रकल्प अधिकारी, शासकीय आदिवासी (आश्रमशाळा), औद्योगिक प्रशिक्षण संस्था, नवापाडा, जि. धुळे) and other on 1.3.2017 received to (सहसंचालक, व्यवसाय शिक्षण व प्रशिक्षण, प्रादेशिक कार्यालय, नाशिक), wherein it was informed by the office of the Superintendent of Police, Akola that the character verification report bearing No. (जिविशा/९/चाप/११३३/२०११) dated 9.7.2011 was not in the format. In the letter dated 1.3.2017 it was also informed by the Superintendent of Police, Akola that the criminal case for the offences punishable U/sec. 302, 498(A) r/w 34 of IPC was registered against the applicant on 16.1.2009 in Police Station, June Shahar, Akola. On the basis of the aforesaid 2 letters

received, the conclusion seems to have been drawn by the said 3 Members Committee that the letter dated 9.7.2011 allegedly submitted by the applicant at the time of his entering into service was concocted and the applicant has thus committed the breach of condition no. 8 in the order dated 26.9.2014 whereby the services of the applicant were regularized.

14. There is nothing on record showing that the aforesaid letters dated 24.6.2015 and 1.3.2017 were brought to the notice of the applicant. In the questionnaire which was given to the applicant at the time of conducting the preliminary enquiry there is no reference of these 2 letters. On the contrary, the letters which are referred are dated 9.7.2011 and 19.1.2009. The copy of the letter dated 1.3.2017 is placed on record by the respondents. Copy of the letter dated 24.6.2015 and 19.1.2009 are however not placed on record. In the letter dated 1.3.2017 the office of the Superintendent of Police, Akola has informed to the respondents that the character verification report dated 9.7.2011 allegedly submitted by the applicant was not in the format, which was being followed by the said office. From the contents of the aforesaid letter it seems that the character verification report dated 9.7.2011 was forwarded to the office of the Superintendent of Police, Akola for verification and in reply to the said letter the Superintendent of Police, Akola seems to have provided the information that the letter

dated 9.7.2011 issued by the said office and the character verification report which was received for verification were different. In the said letter it has also been informed that in Sessions Case NO. 81/2009 the applicant was one of the accused and it was filed on 19.1.2009. It was also informed that the Sessions Court vide its judgment and order passed on 2.5.2016 has acquitted the applicant.

15. In view of the facts and circumstances as above it appears to us that without giving due opportunity of hearing to the applicant and without bringing to the notice of the applicant the entire said correspondence, the respondents should not have jumped to the conclusion that the applicant had submitted a concocted character verification report from the office of Superintendent of Police, Akola and had thus played fraud on the Government. The applicant was a permanent Government servant. Article 311(2) of the Constitution of India mandates that no person in civil services shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

16. After having considered the facts and circumstances involved in the present matter, in our opinion, the respondents have failed in observing the mandate under Article 311(2) of the Constitution

of India. It was quite possible for the respondents to conduct a regular departmental enquiry against the applicant and to give him an opportunity of being heard in respect of those charges. The respondents have admittedly not followed the said procedure. In the circumstances, the impugned order cannot be sustained and deserves to be set aside and it is accordingly set aside. The respondents are directed to reinstate the applicant in service within 4 weeks from the date of this order, however, in view of the discussion made by us hereinabove, it would be open to the respondents to initiate a regular departmental enquiry against the present applicant, if they so desire. Payment of back wages shall abide by result of such enquiry. Such enquiry, if any, must be initiated as early as possible and not later than 8 weeks from the date of communication of this order and if such enquiry is initiated within the given period, it should be completed within 12 weeks after its commencement.

17. The present Original Application is allowed in the aforesaid terms, however, without any order as to costs.

MEMBER (A)

VICE CHAIRMAN