

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 417 OF 2015

DIST. : AURANGABAD

Kalyan s/o Baburao Ghuge,)
Age. 40 years, Occ. Nil,)
R/o Plot no. 5, Galli No. 2,)
Hanuman Chowk, Chikalthana,)
Aurangabad.)-- **APPLICANT**

VERSUS

1. The Secretary,)
Home Department,)
Mantralaya, Mumbai – 32.)

2. The Superintendent of Police (Rural),)
T.V. Centre, N-10, HUDCO,)
Aurangabad – 431 001.)-- **RESPONDENTS**

APPEARANCE :- Shri S.D. Joshi, learned Advocate for the
applicant.

: Smt. Deepali S. Deshpande, learned
Presenting Officer for the respondents.

**CORAM : B.P. PATIL, ACTING CHAIRMAN
AND
P.N. DIXIT, VICE CHAIRMAN (A)**

RESERVED ON : 14th NOVEMBER, 2019

PRONOUNCED ON : 16th NOVEMBER, 2019

JUDGMENT

[Per : P.N. Dixit, Vice Chairman (A)]

1. Heard Shri S.D. Joshi, learned Advocate for the applicant
and Smt. Deepali S. Deshpande, learned Presenting Officer for the
respondents.

2. This is a case of termination of the applicant for suppressing the fact of criminal complaint in the attestation form filled in by him.

3. The applicant was appointed as a Trainee Police Constable on 1.8.2014 and accordingly he joined the service. On 19.7.2014 he submitted the attestation form and in col. nos. 11 (a) & 11(b) he mentioned as under :-

- “11(a) *Have you ever been arrested / prosecuted / kept under detention, or bound down / fined / convicted by a court of law for any offence or debarred / disqualified by any Public Service Commission from appearing at its examinations / selections or debarred from taking any examination / rusticated by any University or any other educational authority / Institution?* **NO (नाही)**
- 11(b) *Is any case pending against you in any court of law, University or any other educational authority / institution at the time of filling up this attestation form ?”* **NO (नाही)**

(quoted from paper book page 47 of the O.A.)

4. On 2.6.2014, a criminal case was registered against the applicant u/ss 325, 324, 323, 504, 506 r/w 34 of I.P.C. and on 3.6.2014 he was arrested in pursuance of the same. On 29.7.2014 the case was charge sheeted.

5. As the applicant did not disclose the details of the criminal case against him and as there was suppression of important information, the services of the applicant were terminated on 17.11.2014 (Annex. A.1 paper book page 15).

6. The applicant has prayed that the impugned order dtd. 17.11.2014 passed by the res. no. 2 should be quashed and set aside.

7. In support of prayer to quash and set aside the impugned order dated 17.11.2014, the applicant has mentioned following grounds :-

(i) He has filled in correct information in the attestation form as there was no complaint registered against him on the material date.

(ii) The complaint against him has been made by his cousin with an intention to spoil his chances as there exists agriculture land disputes.

(iii) The private complainant had informed the respondents about registration of the offence with mala-fide intention.

(iv) The Government Resolution dtd. 30.9.2008 mentioned by the respondents while terminating his services is not applicable in his case.

(v) There is no application of mind and it reflects indifference.

(vi) The applicant was not issued with any notice before terminating his service.

8. Learned Advocate for the applicant has relied on the judgment delivered by the Hon'ble Supreme Court in the case of **AVTAR SINGH VS. UNION OF INDIA AND OTHERS** reported at **(2016) 8 SCC 471**. The head notes (c) and (d) regarding the same read as under :-

“(c) Suppression of relevant information or submission of false information in verification form in regard to criminal prosecution, arrest or pendency of criminal case(s) against candidate/employee – Appointment in cases of – Discretionary power of employer to take decision to terminate or retain him/her – Exercise of – Principles regarding, summarized and laid down -

(d) Termination of Service – Grounds for termination – Furnishing wrong / incorrect information – Suppressing material information.”

9. In the aforesaid judgment the Hon'ble Supreme Court has quoted the case of **Daya Shankar Yadav Vs. Union of India** and the relevant portion of the same reads as under :-

“15. When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:

(a) -- -- -- -- --

(b) -- -- -- --

(c) *Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.”*

“16. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment:

(i) -- -- -- --

(ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence (even if he was ultimately acquitted in the criminal case). This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post.”

(quoted from page 496 & 497 of the judgment of the Hon’ble S.C.)

Hon’ble the Supreme Court further observed as under :-

“30. The employer is given ‘discretion’ to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an

incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.”

(quoted from page 505 of the judgment of the Hon’ble S.C.)

“35. Suppression of ‘material’ information presupposes that what is suppressed that ‘matters’ not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and

exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.”

(quoted from pages 506 & 507 of the judgment of the Hon'ble S.C.)

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

38.1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted :

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.”

(quoted from page 507 of the judgment of the Hon’ble S.C.)

10. During the final hearing the learned Advocate for the applicant has submitted that the learned J.M.F.C., who tried the case, has acquitted the applicant in the Regular Criminal Case no. 385/2014 vide judgment dtd. 10.10.2019. He has also placed on record copy of said judgment.

11. **Submissions for the Respondent no. 2 :-**

(i) I say and submit that, as per the appointment order dated 1.8.2014 applicant has appointed subject to 17 terms and conditions as per condition No. 3 if the applicant has furnish wrong or suppressed information in Attestation Form then his services are liable to be terminated without any notice or intimation.

(ii) I say and submit that, it is mandatory on the part of the applicant to mention correct information in Attestation Form but in the present case the applicant has suppressed correct information in Attestation Form in column No. 11 and same is remained blank since one crime was registered

against the applicant before filling the Attestation Form on 19.7.2014.

(iii) I say and submit that, the respondent No. 2 has rightly passed impugned order as the applicant has suppressed the correct information in Attestation Form in column No. 11 of the Attestation Form.

12. Hence the respondents have submitted that the present Original Application may be dismissed.

OBSERVATIONS AND FINDINGS

13. The applicant had submitted his attestation form and did not disclose the fact that he was arrested and criminal case against him was launched after he reported.

14. We have perused the judgment submitted by the learned Advocate for the applicant. It confirms that the complaint against the applicant resulting into offence is probably because of the dispute in the family of the applicant. Learned J.M.F.C. has given clear acquittal to the applicant. The applicant is a Ex-service personnel and submitted that he is in need of job for his livelihood. Though he has not disclosed the details at the time of filling in the attestation form, it would be appropriate and in the interest of justice that the respondents may take into consideration the special circumstances and reconsider the case of

the applicant in the light of the judgment of Hon'ble Supreme court in the case of **AVTAR SINGH VS. UNION OF INDIA AND OTHERS** (supra).

15. For the reasons mentioned above, we direct the respondents to reconsider their earlier decision on the basis of the facts presented before the respondents and take an appropriate decision in the matter afresh. The respondents should take appropriate decision in the matter within a period of four weeks from the date of this order and communicate the same to the applicant in writing within a period of one week thereafter.

16. The present Original Application is disposed of with the above directions. There shall be no order as to costs.

17. The Registrar of this Tribunal is hereby directed to send copy of this judgment along with copy of judgment of Hon'ble the Supreme Court in the case of **AVTAR SINGH VS. UNION OF INDIA AND OTHERS** reported at (2016) 8 SCC 471 to the Chief Secretary and request him to issue guidelines to all the Units accordingly for their information and necessary compliance.

(P.N. DIXIT)
VICE CHAIRMAN (A)

(B.P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 16th November, 2019