

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 632 OF 2017
(Subject – Appointment)**

DISTRICT : AURANGABAD

Jayashri Annasaheb Markali,)
Age : 29 years, Occu. : Nil)
r/o Plot No. 16-A, Radhamohan Colony,))
Khokadpura, Aurangabad,))
Dist. Aurangabad.) .. **APPLICANT**

V E R S U S

1) **The State of Maharashtra,**)
Through its Secretary,)
Home (Transport) Department,)
Mantralaya, Mumbai.)

2) **The Commissioner for Transport,**)
Commissionerate of Transport)
Office, Bandra (E), Mumbai.) .. **RESPONDENTS**

APPEARANCE : Shri V.B. Wagh, Advocate for the Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for
the Respondents.

CORAM : **B.P. PATIL, ACTING CHAIRMAN.
AND
P.N. DIXIT, VICE CHARIMAN.**

RESERVED ON : **15.11.2019.**

PRONOUNCED ON : **16.11.2019.**

PER : **P.N. DIXIT, VICE CHARIMAN.**

O R D E R

1. Heard Shri V.B. Wagh, learned Advocate for the applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents.

2. The applicant was facing a criminal offence against her and hence, conscious decision is taken by the respondents after selecting her. Hence, this Original Application.

3. In response to the advertisement issued by the Maharashtra Public Service Commission (MPSC), the applicant participated in the selection process. Accordingly, on being successful, she was recommended by the MPSC for appointment for the post of Clerk-cum-Typist. She submitted her attestation form and mentioned that there was offence registered against her before the JMFC, Nevasa. On 15.07.2017, she was informed of her rejection. The relevant portion of the same is as under :-

“ सदरहू पत्रासोबत सादर करण्यात आलेल्या खाक्षांकन नमुन्यात आपल्या विरुद्ध पोलीस स्टेशन, नेवासा येथे गुन्हा नोंदविला असल्याचे आणि आपले विरुद्ध नेवासा कोर्टात खटला सुरु असल्याचे नमुद करण्यात आल्याने, संदर्भ क्र. ३ वरील शासन परिपत्रकातील तरतुदीनुसार आपले प्रकरण अप्पर मुख्य सचिव (गृह) यांच्या अध्यक्षतेखाली गठीत ‘समिती-अ’ समोर ठेवण्यात आले असता “सदर उमेदवारा विरुद्ध दाखल गुन्ह्याबाबत सर्वकष चर्चा करुन सदर उमेदवारास सेवेत सामावून घेण्यात येऊ नये अशी शिफारस केलेली आहे” आणि समितीच्या उपरोक्त शिफारशीस शासनाने मान्यता दिलेली असल्याने श्रीमती जयश्री अण्णासाहेब मारकळी यांना सेवेत सामावून घेण्यात येऊ नये, असे संदर्भ क्र. ४ वरील शासन पत्रान्वये आदेश देण्यात आलेले आहेत.”

(Quoted from page No. 90 of the paper book of O.A.)

4. Aggrieved by this impugned communication, the applicant has prayed for following relief:-

“(B) To quash and set aside the letter dated 15.07.2017 issued by the Deputy Commissioner for Transport (Administration) M.S., Mumbai cancelling her candidature for the post of Clerk cum Typist (English/Marathi).”

(Quoted from paper book page No. 9 of the O.A.)

5. In support of the same, the applicant submits that :

(i) The details of the offences registered against her have been correctly mentioned by her in the attestation form.

(ii) Though at the time of filling up the application form, the applicant had mentioned ‘No’ in respect of any offence registered against her, while filling up the attestation form, she had submitted details thereof and thus there was no suppression of any facts, as far as criminal offences registered against her.

(iii) The appointment for the post of Clerk for which the applicant was selected does not have any sensitive nature of duties and therefore, the decision may be taken in favour of her.

6. The respondent Nos. 1 and 2 have filed affidavit in reply and contested the claims made by the applicant. The relevant portions from the same, are as under :-

“7. With reference to Para No. VI (7) of the Original Application, it is submitted that the applicant has submitted the attestation form on 06.03.2016. In the said attestation form the applicant had stated that a case is pending against her in the Court of J.M.F.C., Nevasa

under Section 379, 511, 504 and 506 of the IPC. However, it is specifically submitted that at the time of submission of application form i.e. on 20.07.2015 to the MPSC, the applicant has stated that no prosecution is pending against her in any court of law. It is a very wrong and misleading statement made by the applicant.

8. With reference to Para No. VI (8) of the Original Application, it is submitted that the applicant has clearly mentioned in the application made to the MPSC that the offence is not registered against her in the column as per the advertisement. It is stated that had the applicant mentioned the details of criminal prosecution case in the advertisement form, she would not have been selected by the MPSC. Therefore, by submission of false and fabricated statement the applicant has obtained the recommendation of MPSC.

9. With reference to Para No. VI (9) of the Original Application, it is submitted that respondent No. 1 with reference to the letter dated 11.12.2016 of respondent No. 2 and the Circular dated 26.08.2014 of General Administration Department (GAD) and vide the decision of the Committee-A constituted under the chair of Addl. Chief Secretary (Home) the respondent No. 1 has not recommended the name of the applicant for the post of clerk cum typist after the comprehensive discussion related to the offences registered against the applicant. The letter dated 03.06.2017 of respondent No. 1 is annexed herewith and marked as Exhibit R-1.

10. *With reference to Para No. VI (10) of this Original Application, it is submitted that the GAD has issued the guidelines on 26.08.2014 in respect of verification of the character at the time of giving the appointment to the candidates. It is clearly stated that no appointment is to be given to the candidate against whom the criminal cases are pending in the courts. The G.R. dated 26.08.2014 is annexed by the applicant himself. In this case the Committee-A constituted by Government has recommended that no appointment is to be given to the candidate vide letter dated 03.06.2017 of resp. No. 1.*

11. *With reference to Para No. VI(11) of the Original Application, it is submitted that it is mandatory and obligatory on the part of the applicant to submit the details of the pending criminal cases against her at the time of the application form submitted to MPSC with reference to the advertisement for the post of clerk cum typist. The applicant has miserably failed to submit the details and therefore vide the government letter dated 03.06.2017 the applicant has not been given the appointment for the post of clerk cum typist. Submission of the details related to pending criminal case in the attestation form submitted by the applicant is an afterthought of the applicant.*

12. *With reference to Para No. VI(12) of this Original Application, the applicant has deliberately and intentionally suppressed and concealed the material facts before the respondents. The applicant was having*

full knowledge of the consequences of such concealment of the details of criminal case against her.”

(Quoted from page Nos. 163 to 165 of paper book of O.A.)

7. The respondents have therefore, submitted that the O.A. filed by the applicant deserves to be dismissed.

Observations and Findings

8. It is an admitted fact that the applicant did not mention about the criminal offences registered against her in the application form submitted to the MPSC. As there was no mention about the criminal offences, the MPSC recommended her name for appointment to the post of Clerk. However, while filling in the attestation form. The applicant submitted that there were two offences registered against her in the Court of JMFC, Nevasa vide FIR No. I240/2011 IPC of Sections 379, 511, 504, 506 and OMA No. 201/2011 IPC of Sections 323, 324, 307, 143, 144, 147, 148, 504 & 506. She has further submitted that in both the offences, the Police Officers have sent a report for 'B' Summery.

9. We have also perused the Government Resolution dated 26.08.2014 referred to by the applicant. The G.R. is categorical in stating no appointment order should be given to

the persons, who are involved in the criminal offences. It is true that this is a case of suppression of facts for obtaining the Government employment. However, this suppression of facts cannot be termed as deliberate and intentional, since the applicant herself has disclosed the registration of offences against her at the time of filling in the attestation form. Though the Police Officers have submitted 'B' Summery report in the year 2014 and 2017, the Magistrate is yet to arrive at a conclusion and has not accepted the summary so far.

10. In this connection, it would be relevant to refer to the judgment of 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.”

11. 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.)

12. In the present case, in view of the peculiar facts that the applicant has disclosed the details of the criminal offences

registered against her at the time of filling in the attestation form, but not mentioned the same in the application form and investigation of those offences indicates that 'B' Summary has been recommended. The present case cannot be considered straightway, as the case of suppressing the material facts deliberately and intentionally. The nature of job, for which she has been recommended also does not involve any sensitivity as such.

13. For the above reasons, it would be proper in the interest of justice that the respondents may revisit the present case in the light of the judgment of the Hon'ble Supreme Court (Supra) and arrive at conscious decision regarding suitability of the applicant on merit.

14. The respondents are therefore directed as under :-

- (i) They may examine the progress of the Criminal Cases.
- (ii) Call for the report from the Police authorities, if required.
- (iii) Take the decision regarding suitability of the applicant on merit.
- (iv) The decision in this regard should be taken within a period of three months from the date of this order.
- (v) The said decision should be communicated to the applicant in writing within a period of two weeks thereafter.

15. With the above directions, the Original Application is disposed of. There shall be no order as to costs.

(P.N. DIXIT)
VICE CHAIRMAN

(B.P. PATIL)
ACTING CHAIRMAN

PLACE : AURANGABAD.

DATE : 16.11.2019.

KPB D.B. O.A. No. 632 of 2017 BPP 2019 Appointment