

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.408 of 2016

Ab. Firoj Ab. Rahim Sheikh,
Aged about 29 years, Occ. Nil,
R/o Chand Nagar, Digras, Tq. Digras,
Dist. Yavatmal.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Department of Home, Mantralaya,
Mumbai-32.
- 2) The Collector,
Washim.
- 3) The Superintendent of Police,
Washim.

Respondents

Shri Acquib M. Haque, Advocate for the applicant.

Shri H.K. Pande, Id. P.O. for the respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)

Shri J.D Kulkarni (Vice-Chairman) (J)

JUDGEMENT

PER : Vice-Chairman (J).

(Delivered on this 11th day of August, 2017)

Heard Shri A.M. Haque, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. The applicant has challenged the impugned order dated 26/11/2015 issued by the Scrutiny Committee, Washim whereby the applicant has been refused for the appointment to the post of Police Constable on the ground that as per verification report it was noticed that he has concealed information regarding crime against him. The applicant is also claiming direction to the respondents to issue appointment order in his favour in view of his selection vide letter dated 20/6/2014 to the post of Police Constable and that the impugned order be quashed and set aside. From the admitted facts on the record it seems that the applicant participated in the selection process for the post of appointment of Police Constable in view of the advertisement dated 30/4/2014 issued by respondent no.3, i.e., the Superintendent of Police, Washim. The applicant belongs to Open and Project Affected person category. He secured 183 marks in the written test as well as physical examination and stood at sr.no.7 in the merit list.

3. It was necessary for the applicant to fill an attestation form and to furnish information. He submitted such form on 10/11/2008 along with copy of report of Investigation Officer and order of discharge passed by the JMFC, Digras. On 19/3/2015 the Collector, Washim constituted Scrutiny Committee for verification of character of the candidates against whom the criminal antecedents were found. The committee did not find any objection for the appointment of applicant. However, the case of the applicant was forwarded to respondent no.1 on 20/5/2016.

4. On 17/11/2015 the issue regarding appointment to the applicant was again considered by the same Scrutiny Committee and the Committee found that the applicant has suppressed the information and as such was not eligible for appointment. The applicant again filed a detailed representation on 8/6/2016, but no decision was taken on the representation and therefore the applicant has filed this O.A.

5. In the reply-affidavit the respondent no.3 submitted that the applicant has suppressed the material facts pertaining to the offences registered against him in the attestation form. A crime under sections 307,332,143,148,147 & 159 of the IPC

and Sections 4 & 25 of the Arms Act was registered against the applicant. As per Clause 11 of the Attestation form the applicant was duty bound to mention in the said form about the offences registered against him. Though the applicant was discharged vide order dated 10/11/2008 by the Id. JMFC, Digras, Dist. Yavatmal, he however, deliberately suppressed this fact. The respondents denied that the applicant submitted copy of the discharge order along with the attestation form.

6. According to the applicant the first decision taken by the Committee was not correct and therefore a fresh Committee was constituted and the case was re-considered. It is stated that all the Members of the Committee were not present when the first Committee took decision.

7. The applicant filed rejoinder and submitted that the Minutes of the second Meeting of the Committee nowhere states that the earlier Committee was not properly constituted and therefore it is after thought submission. It is reiterated that the applicant has filed copy of the discharge order along with his attestation form.

8. In view of the aforesaid facts on record it is necessary to see as to whether the applicant has concealed

some information as alleged by the respondents. In query no.11 (a),(b) & (c) in the attestation form it has been asked as under :-

(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 examinations/rusticated by any University or any other Educational Authority/ Institution?

(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 ?

(c) Whether he/she is facing any criminal prosecution in any court and if yes to state details thereof such as case number, in which court the case is pending under which section etc.

9. It seems that the applicant has kept blank all these queries or in other words did not answer these queries. The learned counsel for the applicant submits that the applicant was never arrested in any crime nor he faced any trial, but in fact he was discharged from the charges levelled against him and he was not even knowing this fact till he was discharged. It is pertinent to note that the applicant was discharged as per provisions of section 169 of Crpc from the crime registered

against him vide order dated 10/11/2008. So admittedly, the date on which the attestation form was filled in, no crime was registered against the applicant nor he was facing any trial. There is nothing on the record to show that the applicant was ever arrested by the order of Court as query no. 11 (a) seeks information whether the applicant was arrested by the Court. Admittedly no case was pending against the applicant when the attestation form was filled nor he was facing any prosecution on that date. The query no. 11 (a) therefore seems to be vague in nature and the possibility that the applicant might have been confused while replying that query. Since the applicant was already discharged from the offences long back in 2008 cannot be ruled out. There was no reason for applicant to conceal this fact from the respondents.

10. The learned counsel for the applicant has invited our attention to the decision taken by the same Committee in its meeting dated 19/3/2015. The copy of which is placed on record at Exh-A-7 (P.B. page nos. 36 & 37). As regards the applicant the opinion found by the Committee is as under :-

^1- I nj menokjkph i ksyhl f'ki kbzi nkph i jh{kknukad 2014 jksth >kyh-

2- I ?kLFkrhuu kj menokjkyk ek- U; k; nMkf/kdkjh fmxl ft- ; orekG ; kauh fnukad 10@11@2008 jksth nkskeDr dsys

3- nkskeDrh fnukad 10@11@2008 e/; s>kyh o i jh{kfnukad 22@8@2014 jksth >kyh- xtlgk nk[ky ul Y; keGsl nj menokjkuspkih=; i MrkG.kh vgoikykr nkskeDr >kyY; k xtlg; kph ukm dsyh ul koh- Eg.kuu R; kusekgrh yi foyh vl sEg.krk ; skkj ukgh- R; kl fu; Drh ns; kl gjdr ukgh- rFkkih jkT; Lrjh; cBdhr varhe fu.kz; ?ks; kr ; kok-**

11. It seems that instead of deciding the case of the applicant for appointment, his case was forwarded to the Government and guidance was sought as per letter dated 20/5/2015. In view of the said letter the Desk Officer on behalf of Govt. informed the applicant as under :-

^^ mijkDr I nHkZ/ku i= di; k igkos mijkDr fo"k; o I nHkZ/ku i=kUo; svki .k vki Y; k vkLFkki uoj i kyhl f'ki kbZ i noj fuoM >kyY; k i j r w x t l g s n k [k y v l y Y ; k menokj k P ; k I nHkZr ftYgkf/kdkjh] okf'ke ; kauh fnukad 9@3@2015 jksth >kyY; k cBdhr ?kr-yY; k f'kQkj'kph i r 'kkl ukl I knj dsyh vkgs I nj f'kQkj'kph svoykdu dsysvl rk vl sfnl u ; rsdh] I nj I ferhusmenokj I oZh I fuy vkunjko oku [kMg Jh-vCngy fQjst vCngy jfge 'ks[k ; kR; k I nHkZr fu; Drhns; kl gjdr ulgh- rFkkih jkT; Lrjh; cBdhr varhe fu.kz; ?ks; kr ; lok v'kh f'kQkj I dsyh vkgso menokj Jh- exsk ekf.kdjko xakko.ls ; kR; k I nHkZr ^^I cc menokjkl vkt jkt fu; Drh nsk ; skkj ulgh- rFkkih jkT; Lrjh; cBdhy varhe fu.kz; ?ks; kr ; lok v'kh f'kQkj I dsyh vkgs ; kckcr dGfo.; kr ; r s dh] mijkDr menokj k R ; k I nHkZr varhe fu.kz; ?ks; kckcr jkT; Lrjkoj cBd vk; ksthr dj.; kph rjrm I keU; i z kkl u foHkxkP; k fnukad 26 vHkLV]2014 P; k 'kkl u fu.kz kr dj.; kr vkysyh ukgh- ; kckcr varhe fu.kz; ?ks; kpk vf/kdkj ftYgkf/kdkjh ; kR; k v/; {krs[kkyhy I ferhykp vkgs I cc

mi jkDr menokjkl; k l nHkkz varhe fu.kz ?kou R; k f'kQkj'khd g iLrko foukfoyc
 QjI knj dj.; kr ; kok-**

12. In view of the aforesaid letter, the Scrutiny Committee again met on 17/11/2015 and opined " pkfj=; i MrkG.kh vgokeye/; sl nj xlg; kl c/kh elfgrh yi foY; keGsl nj menokjkl fu; Qrh nrk ; skkj ukgh-"
 It seems that the said decision has been taken in view of the guidance given by the Govt. vide letter dated 12/6/2015. This clearly shows that the Committee while taking impugned decision not to appoint the applicant must have been influenced by the opinion given by the Govt. and therefore the same Committee again came to the conclusion that the applicant was not entitled to appointment.

13. The issue as regards the fact as to whether the candidate deliberately concealed the information in the attestation form and if he has what will be its effect has been before consideration of the Hon'ble Apex Court in Special Leave Petition (c) no. 20525 /2011 in the case of **Avtar Singh Vs. Union of India & Ors.**, with SLP (c) no.4757 of 2014 and 24320 of 2014 and in the said case the Hon'ble Apex Court has delivered the Judgment on 21/7/2016. In para-30 of the said Judgment the Hon'ble Apex Court has observed as under:-

"30. 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:

(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.

(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.

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

(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 : -

(a) 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.

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

(c) 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.

(5) *In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.*

(6) *In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.*

(7) *In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.*

(8) *If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.*

(9) *In case the employee is confirmed in service, Holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.*

(10) *For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.*

(11) *Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.*

We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits."

14. We are of the opinion that the Scrutiny Committee ought to have considered the aforesaid factors before taking any decision or before revising its own decision as regards appointment of the applicant. The reason for the revision of the decision that in the earlier Committee one of the Members was absent cannot be accepted as genuine as the said reason has not been recorded in the subsequent decision taken by the Committee. We feel that the Committee was influenced because of the communication dated 12/6/2015 issued by respondent no.1, the Superintendent of Police, Washim. The said decision therefore cannot be said to be genuine. We, therefore, pass the following order :-

ORDER

The application is partly allowed. The decision taken by the Scrutiny Committee, Washim in respect of applicant on 26/11/2015 not to issue appointment order in favour of the applicant is quashed and set aside. We direct the Scrutiny Committee, Washim to re-consider the case of the applicant in view of the guidelines issued by the Hon'ble Apex Court in the case of **Avtarsingh Vs. Union of India & Ors.**, as cited supra

and to take decision on the appointment of the applicant in view of those guidelines without being influenced by any of the observations made by us in this order. The decision by the Scrutiny Committee shall be taken within two months from the date of this order and shall be communicated to the applicant in writing. No order as to costs.

(J.D Kulkarni)
Vice-Chairman (J)

(Rajiv Agarwal)
Vice-Chairman (A)

dnk.