

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 607/2018 (D.B.)

Shri Datta S/o Aatmaram Shinde,
Aged 28 years, Occ. Nil,
Resident of Dapuri, Tah. Risod, Dist. Washim.

Applicant.

Versus

- 1) State of Maharashtra,
through Secretary,
General Administration Department,
Mantralaya, Mumbai-32.
- 2) Superintendent of Police/ Member of Character
and History Verification Committee, Tah. Washim,
Dist. Washim.
- 3) Officiating Police Superintendent of Police
Tah. Washim, Dist. Washim.
- 4) Collector / President of Character and
History Verification Committee,
Tah. Washim, Dist. Washim.
- 5) Resident Deputy Collector,
Tah. Washim, Dist. Washim.

Respondents.

Shri A.R. Rishi, Advocate for the applicant.

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

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Justice M.G. Giratkar, Member (J).**

Date of Reserving for Judgment : 10th January, 2022.

Date of Pronouncement of Judgment : 20th January, 2022

JUDGMENT

Per : Vice-Chairman.

(Delivered on this 20th day of January, 2022)

Heard Shri A.R. Rishi, 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 28/09/2016 (A-1,P-12) issued by the respondent no.3, i.e., the Officiating Police Superintendent of Police Tah. Washim, Dist. Washim whereby without going into the details of the case pending against the applicant, rejected the appointment of the applicant and plainly passed the order **“as there is a case pending against the applicant, appointment cannot be done.”** The applicant is also claiming direction to the respondents to issue appointment order in his favour in view of letter dated 9/6/2013 (A-3,P-14) 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 applied for the post of Police Constable in the State of Maharashtra in the year 2013. He appeared for the written examination and physical fitness test. In the written examination the applicant scored 88 marks and in physical

test also he scored 88 marks. The applicant belongs to OBC and Project Affected person category. He secured total 176 marks in the written test as well as physical examination and stood at sr.no.6 in the merit list (Annex-A-2,P-13). These facts have been admitted by the respondents in reply (Para-4, Page-41).

3. As per letter dated 9/6/2013 (A-3,P-14) the applicant received initiation from respondent no.2 that he has been appointed on the post of Police Constable and he was directed to remain present at office of the Superintendent of Police, Washim on 10/06/2013 at 10.00 a.m. with all relevant documents. On the same day the applicant appeared before respondent no.2 along with all the relevant documents and he disclosed the fact of pendency of the litigation against him. Thereafter, the respondent no.2 told the applicant that his documents along with declaration form will be forwarded to higher authorities and they will take the decision regarding his appointment.

4. On 9/3/2015 a meeting was conducted regarding the appointment of the candidates against whom the cases are pending and forwarded the proposal to be put before the

competent government committee, for taking appropriate decision as per Annex-A-4 (Page no.15).

5. On 13/5/2015 the respondent no.2 issued a letter in which respondent no.2 requested higher authorities to take decision as per the G.R. dated 26/8/2014 (A-6,P-19). On 28/09/2016 the respondent no.3, i.e., the Officiating Police Superintendent of Police Tah. Washim, Dist. Washim without going into the details of the case pending against the applicant, rejected the appointment of the applicant and plainly passed the order **"as there is a case pending against the applicant, appointment cannot be done"** (Annex-A-1.P-12).

6. The applicant submits that the case filed against him is false and bogus. That on perusal of the complaint it reveals that the complaint is filed by one Radha Madhav Borkar against her husband namely Madhav Keshao Borkar under Sections 494,109 of the IPC. That complaint is for bigamy and not a single allegation is made against him. The applicant is made as accused no.8 in the said complaint. In the complaint the allegations are "applicant/accused distributed akshada to the relatives gathered for alleged marriage" and "applicant

greeted the bride and bridegroom with akshadas" as per Annex-A-7.

7. The applicant submits that on 9/12/2017 Radha Madhav Borkar who had filed a complaint, appeared in the said matter along with accused no.1 and filed an application for compounding of offence as per Annex-A-8 (page-36 to 37). On the same day i.e. on 9/12/2017 (Page-38), the Hon'ble Court allowed the application and passed the order as per Annex-A-9. The applicant submits that he was in no way involved in the alleged offence and hence the order dated 28/9/2016 (A-1,P-12) passed by the respondents without verifying the facts of the complaint, is not according to the law of natural justice and therefore by filing this O.A. he prayed that the said order be quashed and set aside.

8. In the reply-affidavit the respondent nos.2&3 it is mentioned that the final merit list was published on 24/5/2013 and in which the present applicant was selected at Sr.No.6 and therefore the character verification, attestation form was collected from him as per R-3 (i) (Page-56). Thereafter the said attestation form was forwarded for verification to the Inspector of the concerned Police Station, Shirpur. After

completing the verification on 21/7/2013 the Police Station, shirpur has submitted their report to the respondent no.3 as per Annex-R-3 (ii). After perusing this report, it shows that the applicant has past criminal record as there were offences registered against the applicant vide crime nos. 219/12 u/s 494,109 of IPC and it is pending in the JMFC Court, Risod. This fact was also mentioned in the applicant's attestation form. After verifying the attestation form, as per letter dated 31/12/2013 the respondent no.3 communicated to the respondent no.1 for taking final decision on the appointment of applicant as per Annex-R-3 (iii). Thereafter, as per letter dated 2/1/2015 (Annex-R-3(iv) the Spl. I.G.,Amravati Range has directed the respondent no.3 that matter be decided according to the Govt. G.R. dated 2/5/2015 (Annex-R-3 (v)). Thereafter the respondent no.3 vide letter dated 18/2/2015 (Annex-R-3 (vi)) the above said matter was sent to the respondent no.4 to constitute the committee at their level as per G.R. dated 26/8/2014. It is submitted that on 9/3/2015 the respondent no.4 held meeting for the discussion and taking decision on the appointment of candidates, who are prosecuted under any offence and cases are pending against them as per Annex-A-3 (vii). It is submitted that the opinion passed by the respondent

no.4 on 19/3/2015 in pursuance of the above said meeting as per Annex-R-3 (viii). It is submitted after perusing the opinion passed by the respondent no.4 in the above said meeting. It reveals that this committee has not passed any final order on the appointment of the said candidate and it was held in that meeting that the further decision was to be taken by the government authority and therefore the respondent no.3 by letter dated 20/5/2015 has forwarded the above said opinion of the committee to the respondent no.1 for taking final decision on the appointments of the candidates as per Annex-R-3 (ix) (Page no.72). Thereafter as per letter dated 12/6/2015 the respondent no.1 communicated their opinion to the respondent no.3 regarding conduct of competent committee under the Chairmanship of District Collector as per Annex-R-3(x). The fresh meeting was held on 17/11/2015 by respondent no.4 for taking final decision regarding appointment of applicant. After going through the details it is found that case is pending against the applicant and therefore appointment cannot be given to him and the applicant also disclosed the same fact in the attestation form. Therefore, the impugned order dated 28/09/2016 (A-1,P-12) passed by the respondent no.3, i.e., the Officiating Police Superintendent of Police Tah.

Washim, Dist. Washim after following the due procedure and therefore the O.A. is liable to be dismissed. But it is needless to say that at this stage document at Annex-A-9,Page-38 was not considered.

9. 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. 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. Admittedly no case was pending against the applicant when the attestation form was filled nor he was facing any prosecution on that date. 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 Annex-A-7. As regards the applicant, the opinion found by the Committee is as under :-

- ^1- menokj kusl k{kadu uel; ke/; suen d; ki æk.ksR; k; koj fo- U; k; nMkf/kdkjh]
 i EkeJskh] fj l kM ; Eksxhgk l u 2012 e/; snk[ky gkrk-
 2- l nj menokj kph i syhl f'ki kbzi nkph i jh{k fnukad 31@12@2013 jkst h >kyh-
 3- l nj menokj kusl k{kadu uel; ke/; sekfgrh yi foyh ukgh-
 4- l ?kLFkrhph ekfgrh?kou i syhl foHkxkyk i u'p i Lrko l knj dj.; kps
 i Lrkfor dj.; kr vkys**

11. It seems that instead of deciding the case of the applicant for appointment, his case was forwarded to the Government for appropriate decision as per letter dated 13/5/2015. As per letter dated 2/6/2016 the Desk Officer, Home Department, Govt. of Maharashtra approved the recommendation of committee dated 17/11/2015.

12. In view of the aforesaid letter, the Scrutiny Committee again met on 17/11/2015 and opined "l nj menokj kojhy xhgk v?kkih iyfcr vl Y; keGsfu; Drih nrk ; skkj ukgh-" It seems that the said decision has been taken in view of the recommendation of the Committee dated 17/11/2015.

*13. However on perusal of the record, it appears that as per admitted facts by the respondent no.4, i.e., the Collector / Chairman of Character and History Verification Committee, Tah. Washim, Dist. Washim in the letter dated 19/3/2015 (Annex-R-3 (viii),P-70) against the name of applicant who appears at Sr.No.2 and in point no.1 it is mentioned as below –

^ ¼1½ menokjkus I k{kakdu ueh; ke/; suen dY; ki ek.k.s R; kR; koj fo-U; k; nbf/kdkjh] i Fke Jskh] fj I kM ; Fksxhjk I u 2012 e/; sxhjk nk[ky gkrk**

*14. In view of above fact, it is clear that the applicant has not concealed about case pending against him in the Court which is also mentioned at Annex-R-3 (vi). Hence, it is crystal clear that that the respondents have not followed the provisions of G.R. dated 26/8/2014 (Annex-R-3 (v),P-59).

15. 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."

16. The learned counsel for the applicant has filed the copy of Judgment of this Tribunal in O.A. 600/2016 delivered on 03/09/2018 in which similar issue is involved. In the said Judgment this Tribunal relied on guidelines issued by Hon'ble Apex Court in case of **Avtar Singh Vs. Union of India & Ors.,**

as mentioned above and the O.A. was partly allowed with direction to the respondents.

17. The learned counsel for the applicant has also filed the copy of Judgment of this Tribunal in O.A.No.408/2016, delivered on 11/8/2017 in which also similar issue is involved. In the said Judgment this Tribunal relied on guidelines issued by Hon'ble Apex Court in case of **Avtar Singh Vs. Union of India & Ors.**, as mentioned above and the O.A. was partly allowed with direction to the respondents.

18. 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 along with document at Annex-A-9,Page no.38. We, therefore, pass the following order :-

ORDER

- (i) The application is partly allowed.
- (ii) The decision taken by the respondent no.3 in respect of applicant on 28/09/2016 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 document at Annex-A-9, Page no.38 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.

(Justice M.G. Giratkar)
Member(J).

(Shree Bhagwan)
Vice-Chairman.

Dated :- 20/01/2022.

*dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble V.C. and Member (J).

Judgment signed on : 20 /01/2022.

Uploaded on : 20 /01/2022.