

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH AT NAGPUR.
ORIGINAL APPLICATION NO. 770 of 2010 with C.A.
No.508/2016

Avinash Ashok Mise,
Aged about 25 Yrs.,
R/o At post Dhansal, Tah. Pusad,
Distt. Yavatmal.

-----**Applicant.**

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of Home ,
Mantralaya, Mumbai-32.

2. The Superintendent of Police,
Yavatmal, Distt. Yavatmal.

-----**Respondents.**

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1. Shri R.N. Ghuge, Advocate for the Applicant
2. Shri A.M. Ghogare, Presenting Officer for Respondents

CORAM: S.S. Hingne : Vice Chairman

DATE : 2nd December, 2016

ORDER

The C.A. is moved for early hearing of the matter.

It is also contended that the O.A. can be decided on the basis

of the judgment rendered by the Tribunal of the Mumbai Bench. The Id. P.O. submits that since the matter is covered by the judgment he expressed the willingness to decide the matter by the Single Bench.

2. Heard Shri R.N. Ghuge, Id. Counsel for the applicant and Shri A.M. Ghogare, Id. P.O. for the respondents.

3. The applicant was selected for the post of Police Constable by the Superintendent of Police, Yavatmal consequent to the advertisement dtd. 4/2/2010 (Annx.A-2, page-20). After the process, the S.P., Yavatmal issued the communication dtd. 24/1/2003 (page-36) to the effect that the applicant is selected for the post of Police Constable but the crime No.59 of 2005 under Sections 147, 148, 149, 395, 452, 427,323,337, 294 and 506 r/w Sections 4/25 and 135 of the Mumbai Police Act is subjudice hence no appointment order can be issued. This communication is impugned by the applicant.

4. The respondents' stand is that the communication is issued as per the provisions of the G.Rs. dtd. 24/1/2003 (Annex-R-2, page-44) and 28/7/2006 (Annex.R-2, page-47), in which it is mentioned that the matter is to be considered as per the instructions in Appendix- A to both these G.Rs. The criteria are also mentioned in these Annexures.

5. The factual aspects are no longer in dispute. The short question is whether pendency of the criminal prosecution debars the applicant seeking the employment. The Id. Counsel for the applicant heavily relied on the judgment of this Tribunal in O.A. No.362/2014 decided on 4/10/2016 by the Division Bench of the Maharashtra Administrative Tribunal Bench at Mumbai. In the said case, the offence was registered against the applicant vide Crime No. 84/2009 under Sections 307, 295, 436, 353, 153(A0, 427, 109, 2143, 147, 148 and 149 r/w some other provisions of the Police Act. The applicant was selected but was not given appointment due to the fact that the crime was registered against him. The recruitment process was conducted in 2014 . In the said

case reliance was placed on the decision of the unreported judgment of the Division Bench of the Hon'ble High Court in W.P. No.912/2010 (**Mahadev L. Pund-vs. State of Maharashtra and one another , dtd. 9th March, 2010**). So also on the observations made by the Hon'ble Apex Court of the Land in **SLP (C) No.20525 of 2011 (Avtar Singh vs- Union of India, dtd. 21st July, 2016**. Ultimately it is held by the Tribunal that the applicant cannot be denied the appointment on the sole ground that the crime was registered against him for 7 years back and yet no charge-sheet was filed. The applicant had disclosed this fact in the attestation form. Consequently the O.A. was allowed and direction was given to appoint the applicant subject to the outcome of the prosecution.

6. The facts of the case in hand are identical except the fact that charge sheet was not filed in cited case . In case in hand the applicant is facing the prosecution and the matter is subjudice. The incident took place somewhere in 2005 and yet the criminal prosecution is pending.

7. It is observed in the cited case that it is to be seen that the applicant has not suppressed the facts. In the case in hand the applicant has filed the copy of the attestation form (Annex.A-23,page-28) in which column No. 11-A, is whether he was arrested and the criminal case is pending. His answer is 'yes' and it is mentioned that in the Court 9 persons are prosecuted . Thus, the applicant has not suppressed any fact.

8. In the G.Rs. dtd. 24/1/2003 and 28/7/2006, it is mentioned that it is to be seen whether the incumbent has suppressed any information and if the suppression is deliberate, such person should not be given appointment. What is the nature of the offence is also to be considered and if there is a decision in the matter, it is to be seen whether the acquittal is clean. Even as per Clause 'D' if it is admitted that wrong information was given that aspect also can be considered. However, it is specifically mentioned that if the criminal case is pending, such employee should not be given appointment.

9. The Id. Counsel for the applicant vehemently submitted that both the G.Rs. are applicable to the cases wherein the incumbents suppressed the information of pending case or prosecution. From the explicit language in the G.Rs. the submission holds the field. In the case in hand the applicant has not suppressed any information but has mentioned in the attestation form about the pending case. As such these G.Rs. do not come in the way of the applicant.

10. Thus, the facts of the cited case and in the present are nearing same. The observations of the Tribunal are that pending the prosecution the appointment cannot be denied and it can be subject to the decision of the criminal case. There is no other reason to take the different view.

11. Consequently, the O.A. is allowed. The respondents to give the appointment to the applicant within a month from the date of receipt of this order and the appointment shall be subject to the ultimate decision in the criminal case pending in the Court consequent to the Crime

No.59/2005, P.S. Pusand, Rural. It is also made clear that on the decision in said Criminal case, the respondents are at liberty to pass the order, according to law. Consequently the O.A. is allowed in the above terms.

(S.S. Hingne)
Vice-Chairman.

Skt