

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1134 OF 2015

**DISTRICT: Mumbai
SUB :APPOINTMENT**

Shri Maruti Khiragi Gurusale,)
Age:- 33 yrs, Occ : NIL)
R/o Bargawadi, P. Khokarmoha, Tal.Shirur,)
(Ka), Dist. Beed.)... **Applicant**

Versus

1) The State of Maharashtra, through its)
Secretary, Home Department,)
Mantralaya, Mumbai 32.)
2) Superintendent of Police, Solapur (R),)
Solapur.)...**Respondents**

Shri C. T. Chandratre, learned Advocate for the Applicant.

Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)
Shri Bijay Kumar, Hon'ble Member (A)

DATE : 20.02.2023

PER : A.P. Kurhekar, Hon'ble Member (J)

ORDER

1. The Applicant has challenged communication dated 31.10.2013 issued by Respondent No.2 -Superintendent of Police, Solapur as well as communication issued by Respondent No.1 in June 2013 thereby holding the Applicant ineligible for appointment on the post of Police Constable.

2. Shortly stated facts giving rise to Original Application are as under:-

In pursuance of recruitment process conducted by Respondent No.2 - Superintendent of Police, Solapur, the Applicant participated in the process. At the end of process, the Respondent No.2 by communication dated 30.06.2012 informed to the Applicant about his selection and directed him to remain present on 02.07.2012 for submitting attestation form and for compliance of other formalities. Accordingly, the Applicant had submitted attestation form to the Respondent No.2 on 02.07.2012. In attestation form, he had disclosed that only one criminal case is pending against him before the Judicial Magistrate, 1st Class, Mazalgaon, Dist. Beed for offence under Section 420 of I.P.C. When the attestation form was sent for scrutiny and verification, it was transpired that Applicant is involved in two offences. There was offence registered against him vide crime No.56/2021 for offences under Section 420, 467, 468, 471, 409 r/w 34 of IPC with Dharur Police Station and one more offence was registered against him vide Crime No.50/2011 with Dindrud Police Station, Dist. Beed. Whereas in attestation form all that Applicant disclosed only one criminal case that too for offence under Section 420 only of IPC. It is on this background, the matter was referred by Superintendent of Police to Government in terms of Circular dated 28.07.2006 whereby the High Power Committee was headed by Principal Secretary (Appeal and Security), Home empowered to take the decision. The matter was accordingly placed before the Committee. Ultimately, the Committee observed that Applicant had suppressed material information about his antecedent. It is observed that the Applicant was absconding. The Committee, therefore, took the decision not to appoint him on the post of Police Constable which is accordingly communicated to the Applicant by impugned communication which are challenged in the present O.A.

3. Heard Shri C.T. Chandratere, learned Counsel for the Applicant and Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents.

4. The perusal of attestation form submitted by the Applicant clearly revealed that his discloser is restricted to only one offence in Crime No.50/2011 under Section 420 of IPC and pending before the Judicial Magistrate, 1st Class, Mazalgaon, Dist. Beed. As such, there is no denying that he has not disclosed pendency of other criminal case registered against him in Dharur Police Station. That apart while showing discloser in Crime No.50/2011, all that he stated that case is under Section 420 of I.P.C. only. Whereas, the case is registered for offence under Section 409, 420, 406, 465, 468, 471 and 34 of I.P.C. Thus, there is suppression of fact on two count. In 1st place, he has not disclosed all the details of Crime No.50/2011 though he was arrested for other serious offences along with Section 420 of I.P.C. Secondly, he did not make any kind of disclosure about offence registered against him at Dharur Police Station for offences under Section 420, 467, 468, 471, 409 and 34 of IPC. The FIR of these two offences are at Page Nos.21 and 28 of PB.

5. Now, the question comes whether in view of suppression of non-disclosure of one crime registered against the Applicant in Dharur Police Station, Dist. Beed, coupled with the fact that he was facing two criminal cases, he is ineligible for appointment in police force which is considered as disciplinary force and entrusted with duty to maintain law and order in the society and to curb crimes.

6. Shri C. T. Chandratre, learned Counsel for the Applicant sought to assail the legality of impugned order *inter-alia* contending that there is no objective assessment of the situation by High Power Committee and mere pendency of criminal cases would not bar the Applicant from appointment. As regard suppression of facts, he tried to canvass that Applicant forgot to mention about another crime/criminal case pending

against him. On this line of submission, he prayed to quash and set aside the impugned order.

7. Per contra, Ms S. P. Manchekar, learned Chief Presenting Officer has pointed out that in fact in terms of G.R. dated 28.07.2006, the matter was placed before the High Power Committee and the Committee found the Applicant ineligible for appointment in police force.

8. Now, let us see the decision of the Committee which is reproduced at Page No.62 of PB :-

"The Committee has recommended that "two criminal cases has filed against the applicant. But the Applicant has disclosed the information about only one criminal case in in the attestation form. The Applicant is absconding. The case is awaited for justice". Committee decided not to appoint the applicant on the post of Police Constable."

9. Shri C.T. Chandratre, learned Counsel for the Applicant sought to contend that the observation made by the Committee that Applicant was absconding is incorrect since he was granted bail by the Hon'ble High Court. In this behalf, perusal of bail order dated 29.01.2013 reveals that Applicant had applied for anticipatory bail. In both offences, interim bail was granted on 20.12.2013, the Hon'ble High Court by order dated 29.01.2013 confirmed anticipatory.

10. Significantly, the Applicant has submitted attestation form on 02.07.2012. Thus, apparently, he was absconding from the date of arrest till he was granted ad-interim anticipatory bail on 20.12.2013. The offences were registered against him on 29.06.2011 and 30.06.2011 respectively. Suffice to say, the submission advanced by learned Counsel for the Applicant that Committee has recorded incorrect facts of the matter holds no water.

11. In terms of Circular dated 28.07.2006 issued by the Home Department, Government of Maharashtra, it is clarified that where criminal prosecution against the candidate is subjudice, he should not be taken in service. In this behalf, annexure 'A' attached to G.R. dated

28.07.2006 shows that the High Power Committee has to take decision in following terms.

" प्रपत्र अ

पोलीस दलातील नियुक्तीनंतर पुर्वचारित्रय पडताळणी साठीच्या साक्षांकन नमुन्यात सामान्य प्रशासन विभाग शासन परिपत्रक क्र.बीसीए.१०६९/डी-१/दिनांक १०. १९६८ सोबतच्या साक्षांकन नमुन्यातील कलम ११(अ)(ब) चुकीची माहिती दिल्यामुळे सेवेतून कमी करण्यात आलेल्या तीस कर्मचा-यांकडून शासनास प्राप्त झालेल्या पुन्हा सेवेत घेण्याच्या विनंती अर्जावर खाली निकषानुसार निर्णय घेण्यात यावा.

अ) अर्जदाराविरुद्ध दाखल गुन्ह्याचे स्वरूप काय होते.

ब) अर्जदाराविरुद्ध दाखल न्यायालयीन खटल्यामधून त्यांची स्वच्छ/निर्दोष मुक्तता झाली आहे अथवा कसे ? सदर आदेशाविरुद्ध वरिष्ठ न्यायालयात अपिल दाख करण्याचा निर्णय घेण्यात आला किंवा कसे ?

क) अर्जदाराने साक्षांकन नमुन्यात जाणीवपूर्वक खोटी माहिती दिलेली होती किंवा कसे ? साक्षांकन नमुन्यात जाणीवपूर्वक चुकीची माहिती दिलेली असल्यास अर्जदारास सेवेत घेण्यात येऊ नये.

ड) अर्जदाराने पुन्हा सेवेत घेण्याच्या शासनास केलेल्या विनंती अर्जात साक्षांकन नमुन्यात त्यांच्याकडून चुकीची माहिती देण्यात आली आहे ही बाब त्याने मान्य केलेली आहे अथवा कसे ?

इ) अर्जदाराविरुद्ध दाखल न्यायालयीन खटला नैतिक अधःपतन महिलांवरील अत्याचार, देशविरोधी करवाया संबंधातील नसेल व त्यामध्ये तडजोड झालेली असेल त्या प्रकरणात फौजदारी प्रक्रिया संहिता कलम ३२०(८) प्रमाणे आरोपीस दोषमुक्त ठरविण्यात येते हे लक्षात घेऊन अशाप्रकरणी अर्जदारास परत सेवेत घेण्याबाबत विचार व्हावा.

ई) अर्जदाराविरुद्धच्या खटला न्यायप्रविष्ट असल्यास त्यास सेवेत घेण्यात येऊ नये.

12. Thus, mere pendency of criminal case itself is the disqualification and Government can refuse appointment. Admittedly, both the criminal cases are still subjudice and not yet decided. Needless to mention, it is for employer to consider all relevant facts and circumstances and antecedent of the candidates keeping in view the relevant services rules and suitability of the candidate for appointment in Government service.

13. At this juncture, it would be apposite to refer the decision of the Hon'ble Supreme Court in ***Aironline 2022 SC (625) (Pavan Kumar V/s Union of India)*** in which the Hon'ble Supreme Court summarized the law in Para No.38 onward are as under:

" 38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise 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 recourses 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. 38.5. 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.

38.6. 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.

38.7. 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.

38.8. 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.

38.9. 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.

38.10. 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.

38.11. Before a person is held guilty of suppression veri or suggestio falsi, knowledge of the fact must be attributable to him."

13. What emerges from the exposition as laid down by this Court is that by mere suppression of material/false information regardless of the fact whether there is a conviction or acquittal has been recorded, the employee/recruit is not to be discharged/terminated axiomatically from service just by a stroke of pen. At the same time, the effect of suppression of material/false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service rules into consideration, while taking appropriate decision regarding continuance/suitability of the employee into service. What being noticed by this Court is that mere suppression of material/false information in a given case does not mean that the employer can arbitrarily discharge/terminate the employee from service."

14. Thus, in present case, Para Nos.38.7 and 38.8 are squarely attracted. In present case, there is deliberate suppression of facts, as regard second criminal offence/criminal case pending against the Applicant and withholding of such information assumes significance which empowers competent authority to reject the candidature particularly when there are multiple criminal cases. In Para No.38.8 again it is made clear that even if criminal case was not in the knowledge of candidate till filling of form, still it may have adverse impact and appointing authority would take decision after considering seriousness of the crime. In present case, the Applicant is facing serious charges of cheating, forgery etc. The Applicant had applied for Police Constable in police force where antecedent of candidate plays vital role. In such situation, the decision of High Power Committee holding the Applicant

ineligible for appointment on the post of Police Constable can hardly be faulted with. Indeed, it is in tune with G.R. dated 28.07.2006 issued by the Government whereby guidelines were issued for appropriate decision in the matter. As per the guidelines as reproduced above, mere pendency of criminal case itself is treated as disqualification.

15. The reliance placed by Shri C. T. Chandratere, learned Counsel for the Applicant in **(2013) 2 SCC (L & S) 773 Ram Kumar V/s State of Uttar Pradesh & Others** is totally misplaced. In that case, in attestation form, the candidate did not disclose about the criminal case registered against him under Section 323, 324 and 504 of I.P.C. However, he was admittedly acquitted before submission of attestation form/affidavit. It is in that context, the Hon'ble Supreme Court held that the competent authority could not have found appellant unsuitable for appointment to the post of Constable. Whereas in present case, admittedly, both the criminal cases are subjudice. Suffice to say, this decision is of no assistance to the Applicant.

16. Indeed, the present situation is squarely covered by the decision of the Hon'ble Supreme Court in **AIR 2016 SC 3598 (Avtar Singh V/s Union of India)**. In Para No.24, the Hon'ble Supreme Court held as under :-

"No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services".

17. In this view of the matter, in our considered opinion, challenge to impugned communication holds no water and the Original Application is liable to be dismissed. Hence, the following order :-

ORDER

- (A) Original Application is dismissed.
- (B) No order as to costs.

Sd/-

**(Bijay Kumar)
Member (A)**

Sd/-

**(A.P. Kurhekar)
Member (J)**

Place: Mumbai

Date: 20.02.2023

Dictation taken by: Vaishali Santosh Mane

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