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IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.362 OF 2014

DISTRICT : KOLHAPUR

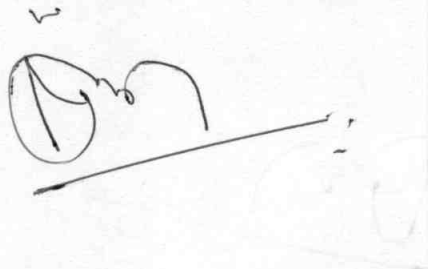
Shri Anil Rangrao Yadav. )  
Aged : 24 Yrs, Occu. Nil, R/o. Kolhapur. )  
Address of Service of Notice : )  
Shri A.V. Bandiwadekar, Advocate, )  
Having Office at 9, "Ram-Krishna", )  
Lt. Dilip Gupte Marg, Mahim, )  
Mumbai 400 016. )...Applicant

**Versus**

1. The Commandant. )  
Indian Reserve Batalion-3, )  
Kolhapur. )
2. The State of Maharashtra. )  
Through the Principal Secretary, )  
Home Department, Mantralaya, )  
Mumbai - 400 032. )...Respondents

**Shri A.V. Bandiwadekar, Advocate for Applicant.**

**Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents.**



**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)**  
**R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 04.10.2016**

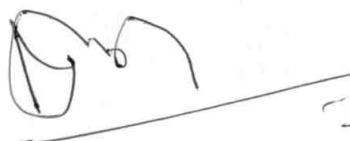
**PER : R.B. MALIK (MEMBER-JUDICIAL)**

### **JUDGMENT**

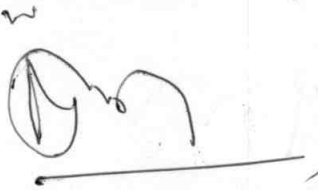
1. The Applicant having cleared the various tests for the post of Constable got stuck up in the matter of his Police Verification Report wherein he was found to have got criminal case registered against him for various offences under the Indian Penal Code (IPC). The Applicant had candidly disclosed this fact in what is called Attestation Form. This offence was registered against him and a large number of others who were unidentified including nine who can be called his immediate co-accused and yet neither the charge-sheet has been laid nor any further progress made.

2. We have perused the record and proceedings and heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer (CPO) for the Respondents.

3. It is not much in dispute that the Applicant cleared the various tests for appointment to the post of the




Police Constable (PC). He was required to and he did actually submit an Attestation Form on 17.6.2013 where in column 11(a), he disclosed that he had been arrested in connection with an offence on 9.9.2009, but no criminal case was pending against him in any Court, University or any other Educational Institution. As we shall be presently pointing out, this was a candid and accurate disclosure of the information even if adverse, but this very pendency of the matter became the undoing of the Applicant when by a communication of 4<sup>th</sup> March, 2014 at Exh. 'A' (Page 16 of the P.B), the Government in the Department of Home informed the Commandant of SRPF-3, Kolhapur that the Applicant could not be cleared for the final appointment because very serious offence was registered against him. A copy thereof was also endorsed to the Applicant. At Exh. 'D' (Page 24 of the P.B.), there is a communication from the Commandant, SRP, Batalion-3, Kolhapur to the Government in Home Department. It has been mentioned therein that CR No.84/2009 under Sections 307, 295, 436, 353, 153(A), 427, 109, 143, 147, 148 and 149 read with some other provisions of the Police Act have been registered against the Applicant and others. In the Annexures thereto, several other documents were enumerated. It was mentioned that the offence was subjudice against the Applicant (न्यायप्रविष्ट). However, that is



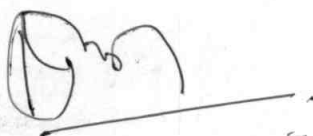
a factual error quite clearly because admittedly even till date, no charge-sheet has been laid against the Applicant and others relating to that particular incident. And this mistake was accepted in one of the last Affidavits filed by the Respondents.

4. The Additional Director General of Police vide Exh. 'F' (Page 29 of the P.B.) sought guidance from the Government in Home Department as to whether in the set of these circumstances, the Applicant should be appointed. It is not necessary for us to read each and every letter of the Applicant that he wrote to the authorities seeking appointment mentioning therein inter-alia that he had been falsely implicated and that he was cocksure that he would come clear from that particular matter.

5. An Additional Affidavit-in-reply has been filed along with other Affidavits on behalf of the Respondents and this has been filed by Shri Pundlik S. Ghode, Police Inspector in the Office of the Commandant, Indian Reserve Batalion-3, Kolhapur. In Para 4 and subsequent Paragraphs at Pages 64 onwards of the Paper Book, the details of that incident have been given. In Para 3 thereof, it has been mentioned inter-alia that it was incorrect on the part of the Office of the Commandant, IRB-3 that is his

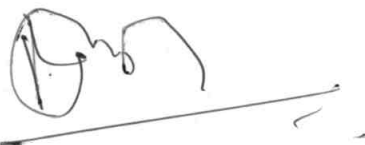
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Office not to have submitted the charge-sheet and he expressed regrets therefor. In as much as Section 153-A of the IPC was invoked against the Applicant, the Government would have to take a decision on the issue of sanction. The perusal of the other papers on the record would show that the idea was to suggest that governmental sanction would be necessary for prosecuting the accused under this particular provision of IPC. According to this Affidavit, it would be necessary to take into consideration the facts of that incident, but he then gave out the details of that incident. It occurred during the Ganapati Emersion procession in the year 2009 at Miraj in Sangli District. Certain cutouts of Afzal Khan were put up on the welcome gate which resulted in its repercussions on 9.9.2009. A mob comprising about 260 unidentified persons, residents of Uchgaon, Tal. : Karvir, District Kolhapur got collected near Jama Masjid, Uchgaon and raised slogans exhorting that the Police be assaulted and the mosque be pulled down. The slogans of, "Jai Bhavani, Jai Shivaji" came to be raised and stone pelting began. The window panes of the mosque got damaged and the mob also vandalized the Government vehicles and a private Maruti Car and tried to set them afire. The mob also became furious and started throwing the swab of kerosene and petrol towards the mosque which resulted in firing by the Police at the said




spot to disperse the mob in which the Police succeeded. Out of the entire mob of about 260, 10 accused persons could be identified of which the Applicant was the one. He has been arrayed as Accused No.8 in that particular matter. The statement of as many as 21 witnesses have been recorded and as per the S.P, Kolhapur's report dated 24.2.2014, there was sufficient and concrete evidence against all the accused. An Annexure thereto is the report of the Superintendent of Police, Kolhapur to the Commandant dated 10.7.2014 wherein it is mentioned that the Government had been moved for sanction as just discussed. There is another report submitted by the Superintendent of Police, Kolhapur to the Collector, Kolhapur dated 24.12.2014. It is at Page 68 of the P.B. It also sets out the fact as to how on 9.9.2009, the Applicant along with 9 others and 200 to 250 unidentified persons got gathered near the mosque at Unchgaon and did whatever has been summarized on the basis of the Affidavit hereinabove.

6. Certain factual deductions which can be most safely made from the above discussion are that the Applicant has otherwise become eligible and qualified for appointment. A certain incident took place on 9.9.2009 in which the Respondents alleged that the Applicant was one

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of the persons in the mob of 250 to 260 out of which, but for 10, all remained unidentified. Broadly so speaking, there was a colour of communal disturbance or worse as discussed above. The Applicant was arrested along with 9/10 others, but was enlarged on bail. The record of this OA would show that for all practical purposes, that investigation remained completely dormant and if it started moving in the year 2014, it would by some curious coincidence or otherwise coincided with the orders made by the Bench of the Hon'ble Chairman from time to time. It appears quite reasonable to believe that the constant monitoring of the matter by the Hon'ble Chairman infused a new life into the dormant investigation, but still not much has been done. We are not here to express any opinion about merit of that matter. We also express no opinion on the need for seeking governmental sanction as pre-requisite to the launch of the prosecution when even on Respondents' own showing the sanction would be required only in case of one of the several penal provisions invoked and not in case of a host of others which were invoked. There must be some procedure in that behalf, if there was a desire to expedite the matter rather than keeping the sword hanging forever. Therefore, it is clear that no progress was made during 2009 and 2014 and even if the Government was moved for sanction in case of

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one of the penal provisions, now that one is in the last quarter of the year 2016, apparently nothing has happened. Therefore, the issue would be as to whether the matter could just be allowed to hang fire forever as it were. When according to the Respondents the incident was serious, the further steps ought to have been taken in a manner consistent with that stand of the Respondents.

7. To one of the Affidavits-in-reply dated 17.7.2014, an order of the Government issued under the relevant provisions of the Bombay Police Act, 1951 dated 8<sup>th</sup> October, 2012 to serve as guidance has been annexed. That deals with the character verification. It lays down inter-alia that the appointment to the Police Force would not be made unless such a character verification was made and they would not be sent for training without that. It is further provided that in case of those candidates against whom crime had been registered or the matter was subjudice and even if, they have been acquitted later on, they should not be appointed, but their case should be forwarded to the High Powered Committee at the State level and that should be done expeditiously.

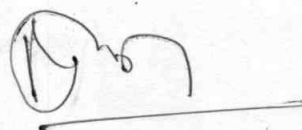
8. Now, these are the instructions and not the instruments that the Government issues under the powers

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conferred by Article 162 of the Constitution of India. However, even if one were to read the same, it would become very clear that as per the Affidavit filed quite late in the day by Shri Dagdu R. Damse, Assistant Commandant holding the charge of Commandant (Para 3 Page 71 of the P.B.), the offence was not subjudice because the charge-sheet is not laid. This fact has too firmly established to brook any dispute namely that even as of today, the matter is not subjudice against the Applicant, the progress of investigation or rather total lack of it, as already discussed above and there is no earthly reason why the time of even 7 years was found short to submit the charge-sheet. We would repeat that the issue is as to whether the life of an individual can be allowed to hang in limbo in such circumstances. While it is no doubt true that the gravity of the offence has to be given due consideration, but at the same time, other factors cannot be ignored including the fact that closely connected with the factor of gravity of offence was the need to expedite the trial and reach final decision. It is a matter of some significance and we must repeat that even in the past about more than two years also, there has been no progress in this matter.

9. At Exh. 'H' (Page 32 of the P.B.), there is a Home Department Circular dated 13<sup>th</sup> June, 1988 which again

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provides guidelines issued by the Government with regard to the matter such as this one. It covers the issue of false information having been given in the Attestation Form. That is not applicable hereto as already mentioned above. It is then mentioned that the nature of the offences should be examined on the touch-stone of whether the offence was one of moral turpitude or violence and as to whether he had been convicted of such an offence. Such offenders be not taken in while others could be. Now, as to this aspect of the matter, we find that the issue is still pending at the Police Station and the matter is not even subjudice. The other aspect of this Circular provides that if the offence was subjudice, the candidate could be appointed, but if it was found by the Court that he was guilty of an offence involving moral turpitude or violence, he could be proceeded under the relevant disciplinary Rules.

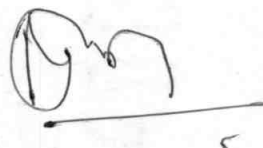
10. The first blush impression of the above referred Circular would naturally be that the Applicant could have been given appointment leaving his fate open to the Judgment of the Court if and when rendered.

11. The Applicant has annexed to his OA itself a copy of a common order rendered by the Bench of the then Hon'ble Chairman in a fasciculus of OAs, the leading one

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being **OA 348/2011 (Shri Sunil U. Jadhav Vs. State of Maharashtra and one another and other OAs, dated 27.4.2012)**. A number of Applicants who were the camdodates were so placed as to have been got involved in a criminal matter and at the same time vying for either getting appointment or defending it. The Circular of 13.6.1988 above referred to was cited on behalf of those Applicants. In the concluding Paragraph, a part portion of the said Circular (described as G.R) was referred to and it was observed that it was clear that even if a person was facing criminal case, such a person could be appointed and having regard to the facts and circumstances, the further steps could be taken which in that group of matters was about the continuation of departmental enquiry.

12. Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant referred us to an unreported Judgment of the Division Bench of the Hon'ble High Court at Nagpur Bench in **Writ Petition No.912/2010 (Mahadev L. Pund Vs. State of Maharashtra and one another, dated 9<sup>th</sup> Marcy, 2010)**. That was also a case when the Applicant was running for the post of the Constable in State Reserve Police Force itself. He was also facing prosecution for having allegedly committed the offence of having caused hurt by dangerous means, threat, riot, etc. The invocation

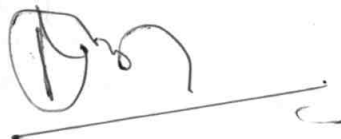


of Section 34 of the IPC exemplified the fact that there were others along with him. There also, the Applicant had disclosed the information about the above referred offences having been registered against him. In that background, Their Lordships were pleased to refer to Rule 18 of the Bombay State Reserve Police Force Rules, 1959. We may now as well reproduce Paras 3, 4 and 5 from that particular Judgment because it seems that it is still unreported.

“3] Learned counsel for the petitioner points out that the petitioner himself gave this information that he has been charged with the offences stated above vide his application form, and that cannot be said to be a disqualification in view of the Bombay State Reserve Police Force Rules, 1959. Rule 18 of the said rules reads as follows:

“18 Conviction, by itself may not be considered as a disqualification, but each case shall be considered on its merits with due regard to the nature of the offence for which the person concerned was convicted, the guiding principle being whether the act involves moral turpitude or not.”

Learned counsel for the petitioner submits that there is no rule which disqualifies a person from being considered for the Armed Constabulary merely because the offence is pending. In fact according to the petitioner even a conviction does not automatically disqualify a person from being appointed to the Armed



Constabulary unless the authorities are of the view that he should be so disqualified, depending on whether the act involves moral turpitude or not.

4] Shri Khubalkar, learned AGP is not in a position to point out any rule which disqualifies the person who has been charged with an offence and undergoing trial is disqualified from being considered for appointment.

5] Having regard to the scheme of the Bombay State Reserve Force Rules, we are of the view that the petitioner ought not have been treated as disqualified for appointment to the Armed Constabulary because he disclosed that he is being tried for certain offences. In this view of the matter, we set aside the rejection of the petitioner's candidature and direct respondent no.2 - The Commandant, Indian Reserve Battalion -2 (I.R.B.) State Reserve Police Force Gat No.15, Birsi Camp Gondia, Dist. Gondia to consider his candidature afresh for appointment to the Police Constabulary in accordance with law.

Rule made absolute in the above terms.”

13. In our view, this particular Judgment of the Hon'ble Bombay High Court is a complete guidance even for the present matter because as already discussed above, there has been no progress at all from the year 2009 till date and mere high sounding averments about the offence being serious would not be ipso-facto sufficient to hold



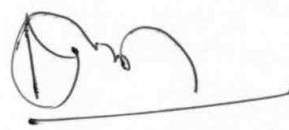
against the Applicant. The passage of time has its own effect on the decision of such matters. No doubt, there has to be realization of the realities of life including the public and police administration. Some time is bound to be consumed in laying the charge-sheet before the Court of competent jurisdiction and in fact, had the Tribunal being moved with such an OA way back in the year 2010 and even 2011, the Tribunal would have been slow in advancing remedy because after-all, some time is required to complete the charge-sheet and submit it to the Court of law. Here, if a large number of those persons who were in the mob in fact as large as 250/260 have remained unidentified that must put us on guard as to whether we can readily accept that for the last 7 years, they could not move against the Applicant though he was in the manner of speaking identified. The Respondents were in duty bound if they were so cocksure to place before us the relevant police papers to show as to how the Applicant's role was so prominent as to be called serious. Merely by citing the legal provisions and then trying to block the Applicant is not something that can be readily accepted. It does appear that here, during the incident, there was police firing and police firing is something that is not taken too kindly by the society as a whole and therefore by the authorities. But the registration of offence by itself will not

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be sufficient to hold it against the Applicant. Only the further logical step should take with due dispatch.

14. The learned Chief Presenting Officer in stoutly opposing this OA, referred us to a recent Judgment of the Hon'ble Supreme Court (unreported) in **Special Leave Petition (C) No.20525 of 2011 (Avtar Singh Vs. Union of India, dated 21<sup>st</sup> July, 2016)** rendered by a Bench of three Hon'ble Judges which was constituted to resolve the conflict of opinion in the various decisions of the Division Benches of the Hon'ble Supreme Court. Right at the commencement of the Judgment in Para 3, there is a reference to an earlier case law in **State of Madhya Pradesh Vs. Ramashankar Raghuwanshi (1983) 2 SCC 145.** That was a matter where the Association of the Applicant with a particular social and political Organization was held against him. The Hon'ble Supreme Court was pleased to observe that the said fact by itself would not be sufficient to be held against him unless the activities that he allegedly involved were subversive. A large number of earlier Judgments were discussed and analyzed. In Para 9 (Page 23), it was observed as follows.

“9. ....Thus, it follows that merely because there is a power to terminate services or cancellation of offer of appointment, it does not




follow that the person should be removed outrightly. Various aspects have to be considered and the discretion so used should not be arbitrary or fanciful. It has to be guided on certain principles for which purpose verification is sought.”

15. As we peruse the Judgment of the Hon'ble Supreme Court in Avtar Singh's case, we find that the penal provision invoked against the Applicant may have some significance, however, that by itself was not decisive of the matter. In Para 30, which is concluding Paragraph, Their Lordships have been pleased to summarize the conclusions which are 11 in number. Let us reproduce it for facility.

“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.

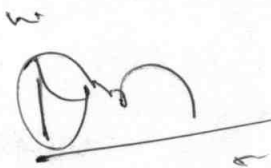
(3) The employer shall take into consideration the Government orders / instructions/rules, applicable to the employee, at the time of taking the decision.

(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

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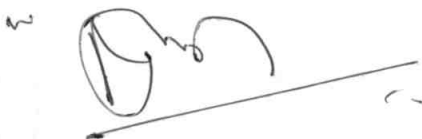
ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(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.


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(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.

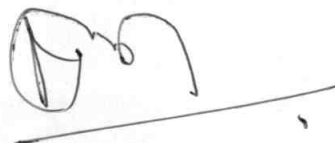
(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

16. The Clause 6 thereof is applicable herein although the Respondents could always argue that this is not an offence of trivial nature. In our view, however, one particular sentence here and there cannot be torn out of context and read. The whole Judgment has to be read and then the ratio should be applied. The fact, in our view, remains that if we were to decide the OA against the Applicant, what we will have done is to rely on the police version only when their version has remained to be the

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only one for the last 7 years. There was no impediment in their way to submit the charge-sheet, so that the Applicant could have known his fate early. If we have to take into consideration the seriousness of the alleged crime as made out by the Respondents, we also have to take into consideration the other aspects of the matter including the completely and inexplicably long delay in the matter of submission of the charge-sheet.

17. The upshot, therefore, is that we have to take a balanced view of the matter. In our opinion, even as we cannot direct the concerned authorities to submit the charge-sheet within a specified time limit, but what we can surely do is to direct in view of the various facts discussed hereinabove including the 1988 Circular and the Judgment of the then Hon'ble Chairman and more importantly of the Hon'ble Bombay High Court and the Hon'ble Supreme Court that the Applicant be given the appointment, but it should also be made clear that it will be subject to the ultimate outcome of the prosecution and that is, if the charge-sheet was laid any time and the decision thereof. If the authorities have any powers to exercise post decision by the Court of criminal jurisdiction, they would be free to exercise the same in the matter. We are, however, quite



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convinced that the fate of the Applicant cannot be allowed to remain in limbo as if forever.

18. It is hereby directed that subject to the outcome of the prosecution, if at all, it was initiated against the Applicant in the crime, the details of which have figured hereinabove, the Respondents shall give the appointment to the Applicant within six weeks from today because admittedly, there is no other objection to his appointment except the said objection. It is clarified that this appointment shall be subject to the ultimate decision of that criminal prosecution, if it was initiated and post decision thereof by the Court of competent criminal jurisdiction, the concerned authority shall be free to exercise their powers, if any, in accordance with the Rules relevant hereto. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**04.10.2016**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**04.10.2016**

Mumbai

Date : 04.09.2016

Dictation taken by :

S.K. Wamanse.

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