

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 600 of 2016 (D.B.)

Sunil S/o Anandrao Wankhede,
Aged about 29 years,
Resident of near Karuneshwar Mandir,
Ganeshpeth, Washim-444 505.

Applicant.

Versus

- 1) State of Maharashtra through its Secretary
Department of Home,
Mantralaya, Mumbai-400 032.
- 2) Collector and President,
Character and Antecedent Verification Committee,
Washim.
- 3) The Superintendent of Police,
Washim.

Respondents.

S/Shri A.M. Haque, A.I. Sheikh, Advocates for the applicant.
Shri A.M. Khadatkar, learned P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J) and
Hon'ble Shri Shree Bhagwan, Member(A).**

JUDGMENT

PER : V.C. (J).

(Delivered on this 3rd day of September,2018)

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

2. The applicant has challenged the order of respondent no.2 dated 26/11/2015 whereby appointment to the post of Police Constable has been rejected to him on the ground that he has concealed the information as regards his character. The exact reason for rejection of appointment to the applicant as mentioned in the impugned order dated 26/11/2015 (Annex-A-4,P-16) as under :-

^ pkfj=; i MrkG.kh vgokeye/; s l nj xllg; kl c/kh ekfgrh yi foY; keGs l nj
menokjkl fu; Ørhnrk; skkj ukgh**

3. From the admitted facts it seems that the applicant participated in the process of recruitment for the post of Police Constable and got 177 marks. In the merit list he stood at sr.no.6 and he belongs to OBC category and the recruitment was carried out by the respondent no.2, i.e., the Collector, Washim. The respondent no.2, i.e., the Collector was the Chairman of Character and Antecedent Verification Committee. It is stated that respondent no.2 in the meeting dated 09/03/2015 reported to the competent authority that there was no problem in appointing the applicant on the post and the applicant was accordingly recommended for the post. However, on 17/11/2015 the respondent no.2 again held a meeting and took a decision that the applicant has dishonestly not disclosed the information about his prosecution and therefore he was not entitled to be appointed.

4. According to the applicant, he was prosecuted for the offence under section 12A of the Bombay Gambling Act, 2004 and was acquitted on 2008. He never concealed the fact of prosecution since on the date of application there was no case was pending against him and he was acquitted long back and there was no reason for the committee to change its decision.

5. The respondent no.2 has filed reply-affidavit and submitted that an offence was registered against the applicant in 2004 and though he came to be acquitted on 23/07/2008 by the JMFC Court, Washim, he concealed this fact in the attestation form and therefore the material fact was suppressed. The Superintendent of Police, Washim, i.e., the respondent no.3 intimated the Committee that the applicant was prosecuted and therefore decision was taken on the basis of information given by the respondent no.3 and it was decided not to appoint the applicant.

6. From the admitted facts on record as aforesaid, it is clear that prior to filling of application, the applicant was prosecuted for the offence under Section 12A of the Bombay Gambling Act. He was acquitted on 23/07/2008. The applicant filed an application for the post of Police Constable on 7/1/2014, the examination was conducted on 22/08/2014 and the attestation form was filled by the applicant on 04/07/2014. Admittedly on the date of filling of

application or attestation form, no prosecution was pending against the applicant.

7. The learned P.O. has invited our attention to Clause-11 A, B and C of the attestation form (Annex-R-3I, P-44 to 49) and relevant paragraphs are at P.B. page no.47 which are as under :-

11(a)	<i>Have you even 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 ?</i>	No.
11(b)	<i>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 ?</i>	No.
11(c)	<i>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.</i>	No.

8. The plain reading of the aforesaid Clause shows that the applicant was asked to mention whether he was ever arrested / prosecuted, kept under detention, or bound down/ fined / convicted by a court of law for any offence. It is true that the applicant was prosecuted for the offence under Section 12A of the Bombay Gambling Act. However there is nothing on record to show that he was either arrested or kept under detention or fined or convicted by

the order of the Court. Since it was the matter of 2008, the applicant has rightly stated that he was never convicted, prosecuted or arrested or kept under detention or bound down/ fined / convicted by the order of any Court. The Judgment of acquittal is dated 23/07/2008 and prosecution had failed to prove the allegations against the applicant. It is material to note that all these facts were considered by the competent committee headed by the respondent no.2 in its meeting dated 09/03/2015. The minutes of the said meeting are placed on record at Annex-A-1 wherein following observations were made by the Committee headed by the respondent no.2 of which the respondent no.3 was the Member. The said observations are as under :-

v-d-	menokjphulo:	?rmysu.kz
3-	I fuy vkunjko oku [kMs	<p>1- i kyhl fujh{kcd ftYgk fo'ksk 'kk[kk] okf'ke ; kR; k pkfj=; i MrkG.kh vgokyke/;s I nj menokjkoj xDgk fn-23@9@2004 jksth nk[ky gkrk-</p> <p>2- I ?kLFkrhuq kj I cdlhr dks/kZs I nj menokjkyk fn-23@7@2008 jksth nkskeDr dys</p> <p>3- I nj menokjkph i kyhl f'ki kbZ i nkph ifj{k knukad 22@08@2014 jksth >kyh-</p> <p>4- nkskeDrh fn-23@7@2008 e/;s >kyh o i jh{k kn-22@8@2014 jksth >kyh- xDgk nk[ky ul Y; keGs I nj menokjkus pkfj=; i MrkG.kh vgokykr nkskeDr >kyh; k xDg; kph ulm dsh ul koh- Eg.ku R; kusekgrh yi foyh vl s Eg.krk ; skkj ukgh- R; kl fu; Drh ns; kl gjdr ukgh- rFkki h jkT; Lrjh; cBdhr varhe fu.kz ?ks; kr ; kok-</p>

9. Similar observations were also made in the reference to the Government by the Superintendent of Police, Washim (R/3) as per Annex-A-2 wherein it was observed as under :-

v-dz	menokjksulo	xllgkdz o dye	ftYgk/kdkjh] ok'ke ;kwh cBdlr ?r ysfu.kz
3-	I fuy vkunjko oku [kMs	3059@14 dye 12 v tqkj vDV iek.ks	1- I nj menokjkoj fn-24@09@2004 jksth xllgk nk[ky gsrk- 2- I ?kLFkrhuq kj I cdi/kr dks/kzs I nj menokjkyk fn-23@07@2008 jksth nkskeDr dsys 3- I nj menokjkph ikyhl f'ki kbz inkph ifj {kk fn-22@08@2014 jksth >kyh- 4- nkskeDrh fn-23@8@2014 jksth >kyh o ijh{kk fn-22@8@2014 jksth >kyh- xllgk nk[ky ul Y; keGs pkfj=; iMrkG.kh v gokykr nkskeDr >kyh; k xllg; kph ukn dsyh ul koh Eg.ku R; kwh ekfgrh yifoyh vI sEg.krk ; sikk ukgh- R; kl fu; Drh ns; kl gjdr ukgh rFkkih jkT; Lrjh; cBdlr varhe fu.kz ?s; kr ; kok v'kh f'kQkjl dsyh vlgs

10. However all of a sudden a decision was taken not to consider the applicant and it was intimated accordingly as per Annex-A-4 i.e. impugned order dated 26/11/2015. It is not known as to how the Committee took a summersault and took totally adverse decision.

11. The similar issue was considered by this Tribunal while deciding the O.A.No. 408/2016 in case of **Ab. Firoj Ab. Rahim Sheikh Vs. State of Maharashtra & Ors.** The Judgment was delivered on 11/08/2017 and the similar decision taken by the same Committee in respect of Ab. Firoj Ab. Rahim Sheikh was quashed

and this Tribunal while considered the attestation Clause 11(a), (b) & (c) has observed as under :-

“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.”

12. This Tribunal also referred to the case of **Avtar Singh Vs. Union of India & Ors.**, decided by the Hon'ble Apex Court and observed as under :-

“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."

13. The Committee has rejected the appointment of the applicant on the similar ground on which it rejected the claim of Shri Abdul Firoj Ab. Rahim Sheikh in the similar circumstances. The case of the **Ab. Firoj Ab. Rahim Sheikh Vs. State of Maharashtra & Ors.** and that of the applicant is similar and has been considered by the same Committee and therefore we cannot apply two different scales for deciding the case of the applicant. We are satisfied that the case of the applicant has been covered by the Judgment delivered by this Tribunal in O.A.No. 408 of 2016 as aforesaid.

14. The learned P.O. has placed reliance on the Judgment in case of **Union Territory, Chandigarh Administration & Ors. Vs. Pradeep Kumar & Ano.,** decided by the Hon'ble Apex Court in **Civil Appeal No.67 of 2018 (arising out of SLP (c) No.20750 of 2016) reported in 2018 SCC online SC 8.** We are of the view that the facts of the said case are not applicable in the present set of facts. Hence, we 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.

(Shree Bhagwan)
Member(A).

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

Dated :- 03/09/2018.

dnk.