

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.232/2011. (D.B.)

Mohammad Waseem Mohammad Muneer,
Aged about 25 years,
Occ-Nil,
R/o 14-C, Rathod Layout, Near NoorieMasjid,
Anand Nagar, Nagpur.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Madam Cama Road, Mumbai.
2. The Commissioner of Police,
Nagpur City, Civil Lines, Nagpur.
3. The Deputy Commissioner of Police,
(Headquarters),
Nagpur City, Civil Lines, Nagpur.

Respondents

Shri A.J. Mirza, the Ld. Advocate for the applicant.
Shri A.M. Khadatkhar, the Ld. P.O. for the respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J) and
Shri Shee Bhagwan, Member (A)

JUDGMENT

(Delivered on this 6th day of November 2018.)

Per:Vice-Chairman (J)

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

2. In this case, the applicant has challenged the impugned communication dated 1.12.2010 (Annexure A-4) issued by respondent No.3 i.e. the Deputy Commissioner of Police, (Headquarters), Nagpur City on behalf of respondent No.2 i.e. the Commissioner of Police, Nagpur City and claimed that the said communication be quashed and set aside and the applicant be appointed to the post of Police Constable. Vide Annexure A-4, the applicant was denied the appointment to the post of Police Constable on the ground that, he has intentionally concealed the information about pendency of criminal case as required under Column No. 11 (a) (b) (c) of the attestation form.

3. From the admitted facts on record, it seems that the applicant participated in the recruitment process for the post of Police Constable in the year 2010. Process was initiated by respondent No.2 and the applicant was selected and called upon to fill up the attestation form. The attestation form (Annexure A-2) in column No. 11 (a) (b) (c), following information was sought and the applicant

replied in the negative to such information. Information sought and answers given by the applicant are as under:-

11 (a):- Have you ever been arrested / prosecuted / kept under detention, or bound down / fined / convicted by a court of law for any offences or debarred / disqualified by any Public Service Commission from appearing at its examinations / selections or debarred from taking any examination / rusticated by any University or any other educational authority / Institution ? **No.**

11 (b):- 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 ? **No.**

11 (c):- 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. ? **No.**

4. Immediately after filling up the attestation form, on 8.6.2010, the applicant intimated to the respondent No.3 on 6.8.2010 that there was a mistake in filling the attestation form and the said mistake was done inadvertently and, therefore, requested that the mistake may be allowed to be rectified. However, instead of allowing the applicant to rectify the mistake, the impugned communication was

issued, whereby the applicant was refused the order of appointment to the post of Police Constable.

5. According to respondent Nos. 2 and 2, the applicant concealed the fact that the offences punishable under sections 143, 147, 336, 3338 and 427 of the Indian Penal Code was registered against him and Criminal Case No. 253/2008 was pending and, therefore, the applicant has given false information and hence he was not considered. The applicant filed rejoinder also and submitted that the mistake was not deliberate and the F.I.R. lodged against him was quashed by the Hon'ble the High Court.

7. The learned counsel for the applicant has invited our attention to the judgment passed by the Hon'ble the High Court, Nagpur Bench in Criminal Application Nos. 1929/2010 and 1930/2010. These applications were filed by the applicant himself alongwith other accused persons in the alleged crime registered against the applicant and others. It seems that vide order dated 1.2.2011, the Hon'ble the High Court was pleased to quash the criminal cases against the applicant. Relevant final order in the said application is as under:-

“In the result, the Criminal Application Nos. 1929/2010 and 1930/2010 are allowed. Regular Criminal Case No.303418/2008 out of FIR in Crime

No. 259/2008 and Summary Criminal Case No. 14295/2008 arising out of FIR in Crime No. 258/2008, both pending on the files of learned J.M.F.C., Court No.10, Nagpur are quashed and set aside.”

8. From the earlier order, it is thus clear that the criminal case against the applicant arising out of said investigation of such FIR against the applicant has been quashed, but it had happened in 2011 i.e. on 1.2.2011.

9. The applicant has filled in the attestation form on 8.7.2010 and on that case, criminal case seems to have been pending. However, column Nos. 11 (a)(b)(c) are very vague in nature. There is nothing on record to show that, the applicant was ever arrested / prosecuted / kept under detention or bound down / fined or convicted by any court of law. It is, however, true that criminal case was pending against the applicant and others at the time of filling up of the attestation form and the applicant should have intimated this fact to the competent authority.

10. The learned counsel for the applicant has invited our attention to the fact that after the applicant has submitted the attestation form on 8.7.2010, he immediately intimated about the mistake to the respondents. A letter in this regard is at page Nos. 21

and 22 and it is dated 6.8.2010 (Annexure A-3). The subject of the letter is "rectification of mistake occurred due to inadvertence with respect of furnishing of information of selection in police department". It is material to note that in the said letter, the applicant has admitted about registration of crime against him and stated that his name has been falsely implicated in the crime. It is also stated that the applicant had secured anticipatory bail from the Sessions Court in the said case and, therefore, this fact was brought to the notice of the respondent authorities. However, vide impugned communication, the authority took a decision not to appoint the applicant.

11. The learned P.O. has invited our attention to the case of **Avtar Singh V/s Union of India and others reported in (2016) 8 SCC-471** in which it has been held that in case of suppression of relevant information or submission of false information in verification form in regard to criminal proceedings, prosecution, arrest or pendency of criminal case against the candidate / employee, it is the discretion of the employer to take a decision to terminate or retain the employee.

12. The learned counsel for the applicant, however, submits that the respondent authorities have not taken any conscious decision, but on the contrary, punished the applicant, because he

has disclosed the inadvertent mistake committed by him. His case was not referred to the Committee. The learned counsel for the applicant has placed reliance on the judgment reported in **2018 SCC online SC-8 in case of Union Territory of Chandigarh Administration and others V/s Pradeep Kumar and another.** The Hon'ble Apex Court in para No.9 of the said judgment observed as under:-

“On 23.6.2010, the Inspector General of Police, UT Chandigarh issued Standing Order No. 44 of 2010 laying down the guidelines to consider cases of candidates selected in Chandigarh Police on having found involvement in criminal cases in the past. The standing order deals with the cases of candidates before issuance of appointment and joining. Relevant portion of the said Guidelines reads as under:-

GUIDELINES

(A) CASES BEFORE ISSUE OF APPOINTMENT

- (a) The candidature will be cancelled in case the candidate does not disclose the fact of his involvement and / or arrest in criminal case(s), complaint case(s), preventive proceedings etc. in the attestation form and the fact is subsequently found out from any verification report received from the District authorities or for any / other source.
- (b) If a candidate had disclosed his involvement and/or arrest in the criminal case(s), complaint

case(s), preventive proceedings etc., the case will be referred to the Screening Committee to assess his suitability for appointment in Chandigarh Police irrespective of the fact that the case is under investigation, trial or decided in conviction or acquittal.”

13. In the present case, the case of the applicant was not kept before the competent committee for reconsideration when the applicant disclosed that the criminal case was pending against him and a decision was taken straightway not to appoint the applicant. This seems to have been done without application of mind.

14. The learned counsel for the applicant has placed reliance on **(1999) 1 SCC-246 in case of Commissioner of Police, Delhi and another V/s Dhaval Singh.** In the said case, a candidate for appointment as Police Constable, submitted information about pendency of a criminal case. He was already informed about the pendency of criminal case against him and his candidature was cancelled. He is also acquitted subsequently in the criminal case. But the authority did not apply its mind and straightway cancelled the appointment, but it was already for cancellation, was invalid.

15. The learned counsel for the applicant has placed reliance on the judgment reported in **(2011) 4 SCC 644 in case of Commissioner of Police and others V/s Sandeep Kumar.** In the

said case, a candidate to be appointed was aged about 20 years as a Head Constable and he concealed the fact of involvement in criminal case under section 325 r/w section 34 of the I.P.C. It was observed by the Hon'ble Apex Court that young people often commit indiscretion rather than branding them as criminals for rest of their lives. Besides, it was not a serious offence and hence more lenient view should be taken.

16. Coming to the case against the applicant, it is material to note that the applicant was never arrested in the crime registered against him and on the contrary, he sought anticipatory bail. Number of persons from accused community were the accused in the crime and such registration of crime was challenged before the Hon'ble High Court and the Hon'ble High Court, as already stated, quashed and set aside the registration of crime as well as criminal case against the applicant. From record, it seems that the said litigation had arisen due to social problems of muslim community attending the mosque. The members of the community thereafter compromised dispute and admittedly the proceedings were quashed. This fact has not been considered at all by the competent authority. On the contrary, the competent authority took a decision not to appoint the applicant on the basis of information given by the

applicant himself, whereby the applicant intimated that he has not inadvertently mentioned about registration of crime.

17. Now, considering the fact of the present case, it will be clear that even though the applicant has filled in the attestation form on 8.7.2010, mentioning therein that no criminal case was pending against him, or giving negative answer to question No. 11 (a) (b) and (c), immediately on 6.8.2010 he intimated the competent authority that he has inadvertently not given information and, therefore, his mistake may be rectified. So just within a span of one month, the applicant brought this fact to the notice of respondent authorities about his mistake. However, this was not considered with open mind. The respondent authorities ought to have considered the application for rectifying the mistake with a proper perspective and should have considered the fact that crime against the applicant has been quashed by the Hon'ble High Court and there was no other crime registered against the applicant. The appointment to the applicant, therefore, has been rejected without application of mind and, therefore, it is a fit case where we shall interfere. Hence, we proceed to pass the following order:-

ORDER

- (i) The O.A. is partly allowed.

- (ii) The communication dated 1.12.1990 (Annexure A-4) issued by respondent No.3 purportedly on behalf of respondent No.2 is quashed and set aside.
- (iii) The respondent No.2 is directed to consider the application of the applicant for rectifying his mistake date 6.8.2010 with a proper perspective and shall also consider the fact that the criminal case against the applicant has been quashed by the Hon'ble High Court and shall take a conscious decision as regards appointment to be given to the applicant considering the merits of the applicant, in view of the guidelines issued by the Hon'ble Apex Court in various cases as already discussed in this judgment.
- (iv) A conscious decision shall be taken on applicant's appointment within a period of two months from the date of this order and shall be communicated to the applicant in writing.
- (v) No order as to costs.

(Shree Bhagwan)
Member (A)

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

Dated:- 6.11.2018.

pdg

