

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.304 OF 2017**

DISTRICT : SANGLI

Dr. Kiran Ramchandra Patil,)
Age 31 years, occ. Doctor,)
R/o Gangotri Niwas, Sambhajinagar,)
Vita, District Sangli)
)..Applicant

Versus

1. The District Collector, Gadchiroli,)
2. The State of Maharashtra,)
Through the Secretary,)
General Administration Department,)
Mantralaya, Mumbai)..Respondents

Shri Tushar Khairnar, Advocate holding for
Shri U.R. Mankapure – Advocate for the Applicant
Miss Savita Suryawanshi – Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman
Shri P.N. Dixit, Member (A)
RESERVED ON : 5th December, 2018
PRONOUNCED ON : 7th December, 2018
PER : Shri P.N. Dixit, Member (A)

J U D G M E N T

1. Heard Shri Tushar Khairnar, learned Advocate holding for Shri U.R. Mankapure, learned Advocate for the Applicant and Miss Savita Suryawanshi, learned Presenting Officer for the Respondents.

Admitted facts of the case:

2. The applicant was selected for the post of Chief Officer, Municipal Council Group 'B'. The applicant was directed to join before 28.9.2016. Accordingly, the applicant joined and was posted at Mulchera Nagar Panchayat, Gadchiroli. While working there the applicant received order dated 31.3.2017 from GAD, Government of Maharashtra mentioning that the services of the applicant have been terminated in view of the adverse character report. The relevant portion of impugned order reads as under:

“ज्या अर्थी डॉ. किरण रामचंद्र पाटील यांच्या चारित्र्य पडताळणीसंदर्भात पोलीस महासंचालक कार्यालय, महाराष्ट्र राज्य, मुंबई यांच्या उपरोक्त संदर्भाधिन अनुक्रमांक ४ च्या दिनांक ०६ ऑक्टोबर, २०१६ च्या पत्रान्वये प्रतिकूल अहवाल प्राप्त झालेला आहे. सदर अहवालानुसार डॉ. किरण रामचंद्र पाटील, परिवीक्षाधीन मुख्याधिकारी गट - ब यांच्याविरुद्ध गु.र.नं.४९/१५ भा.द.वि.स. कलम ३५४. ३५४ (अ), ५०९, ३२३ नुसार दिनांक २७.०२.२०१५ रोजी इस्लामपूर पोलीस ठाणे जिल्हा सांगली येथे गुन्हा दाखल झालेला आहे.

ज्या अर्थी उपरोक्त वस्तुस्थिती विचारात घेता वाचा येथील क्रमांक १ येथील परपित्रकानुसार डॉ. किरण रामचंद्र पाटील, परिवीक्षाधीन मुख्याधिकारी गट- ब यांचे चारित्र्य व पूर्वचारित्र्य पडताळणी अहवाल याचा साकल्याने विचार करुन डॉ. किरण पाटील परिवीक्षाधीन मुख्याधिकारी गट ब यांची नियुक्ती पुढे चालू ठेवावी किंवा समाप्त करावी याचा निर्णय घेण्यासाठी सदर प्रकरण मा. अपर मुख्य सचिव (गृह) यांच्या अध्यक्षतेखालील समितीच्या निर्णयार्थ दिनांक ०५ जानेवारी, २०१७ च्या बैठकीत ठेवण्यात आले होते.

ज्या अर्थी समितीने डॉ. किरण रामचंद्र पाटील, परिवीक्षाधीन मुख्याधिकारी गट - ब यांच्याविरुद्ध गु.र.नं.४९/१५ भा.द.वि.स. कलम ३५४, ३५४ (अ), ५०९, ३२३ नुसार दिनांक २७.०२.२०१५ रोजी इस्लामपूर पोलीस ठाणे जिल्हा सांगली येथे दाखल गुन्हा आणि त्यातील वस्तुस्थिती विचारात घेऊन डॉ. किरण रामचंद्र पाटील, परिवीक्षाधीन मुख्याधिकारी गट -ब यांचे चारित्र्य प्रमाणपत्राबाबत considering the fact, character certificate is withheld करुन श्री. किरण रामचंद्र पाटील यांच्या शासकीय सेवा समाप्त करण्याचा निर्णय घेतलेला आहे.

त्या अर्थी सदर कार्यालयीन आदेशान्वये डॉ. किरण रामचंद्र पाटील, परिवीक्षाधीन मुख्याधिकारी, सीपीटीपी- ३ यांच्या शासकीय सेवा तात्काळ समाप्त करण्यात येत आहेत.”

(Quoted from page 54-55 of OA)

3. The applicant has agitated grievance against the impugned order. Applicant relies on the GR dated 26.8.2014 issued by the GAD regarding the procedure and guidelines for terminating services of the candidates having criminal background. Relevant pleadings of the applicant contained in OA read as under:

“16.

It is pertinent to note that as far as offence against present applicant is u/s. 354 and 354A, 509 which will following column no.18. The said GR itself provides that when candidate is facing offence for molestation his candidature can be rejected only if he is convicted. As far as present applicant is concerned, it is matter of record that not even charge sheet is framed against the present applicant and the applicant's candidature cannot be rejected much less he can be terminated from the services.”

(Quoted from page 7 of OA)

4. He also avers one of the grounds as under:

“(k) That, admittedly applicant has not suppressed the fact of facing criminal complaint and merely because a false complaint is pending the applicant cannot be denied.”

(Quoted from page 9 of OA)

5. The respondent no.2 has contested applicant’s pleading raised in OA. The relevant portion from the affidavit of the State reads as under:

“2. With reference to para no.1, I say as follows: The Government vide letter dated 9th September, 2016 had appointed the applicant on a temporary basis to the post of Chief Officer, Group B for Combined Probationary Training Programme – 3 subject to verification of character. Thereafter, Director General of Police has duly verified character and it is clearly revealed from the character verification report of the Applicant that FIR vide CR No.49/15 has been registered against the applicant under Section 354, 354(A), 509, 323 of Indian Penal Code in the Islampur Police Station, District Sangli on 27.2.2015.

(i) Considering the adverse character verification report the case of the applicant has been placed before committee on 5.1.2017 which is constituted as per Government Circular dated 26.8.2014 under chairmanship of the Additional Chief Secretary (Home) for taking a decision in respect of suitability of the applicant to continue in his post or to terminate services of the applicant in view of his adverse character certificate. Though the applicant is facing criminal prosecution under Section 354, 354(A), 509 of IPC, the very fact of pendency of criminal prosecution fall within the clause 18 of schedule A of circular dated 26.8.2014 and though as per Circular dated 26.8.2014 applicant’s services could be terminated only if there is conviction in molestation offense. The committee considering the gravity of the criminal accusations as alleged in the FIR decided to

withheld the character certificate of the applicant and terminate the services of the applicant.

(ii) The said committee also took a conscious decision that it is necessary to review all offences mentioned in circular dated 26.8.2014 on the basis of nature of offenses, gravity of offenses, the quantum of punishment for the offenses.”

(Quoted from page 58-60 of OA)

6. The affidavit of the State further states as under:

“19. With reference to para No.17(K), I say as follows: The Government vide letter dated 9th September, 2016 had temporarily appointed the applicant on the post of Chief Officer, Group B for Combined Probationary Training Programme 3 subject to verification of character of the applicant. At the time of joining i.e. on 28.9.2016 applicant had neither submitted his Attestation Form nor disclosed that the offense is registered against him, therefore, it proves that at the time of joining. Applicant has deliberately suppressed material fact from Government in respect of the offense registered against him. The applicant has criminal antecedents which has been deliberately suppressed by him. Therefore, it denied that at the time of joining the applicant has submitted any attestation form as mentioned in this para.”

(Quoted from page 67-68 of OA)

7. In view of the controversy, the question which arises for consideration is:

Whether impugned order issued by Government against the applicant is malafide, erroneous and illegal?

Discussions and findings:

8. The applicant admits that following the directives from Government, he had joined the services. The applicant has relied on the GR dated 26.8.2014 issued by the GAD. The relevant portion of the GR is as under:

“शासन परिपत्रक :-

महाराष्ट्र लोकसेवा आयोग पुरस्कृत उमेदवार किंवा अन्य कोणत्याही विहित निवड प्रक्रियेद्वारे जिल्हास्तरीय व स्थानिक पातळीवरील सरळ सेवा भरतीसाठी पुरस्कृत उमेदवारांच्या नियुक्ती संदर्भात चारित्र्य पडताळणीच्या साक्षात्कार नमुन्यात उमेदवारांनी दिलेली माहिती तसेच अशा उमेदवारांच्या संदर्भात पोलीस विभागातर्फे करण्यात आलेल्या पडताळणीच्या अनुषंगाने संबंधित नियुक्ती प्राधिकार्याकडे सादर करण्यात आलेले सदर उमेदवाराचे चारित्र्य व पूर्व चारित्र्य पडताळणी अहवाल याचा साकल्याने विचार करून सदर उमेदवाराची शासन सेवेत नियुक्ती करावी किंवा कसे वा ज्यांची नियुक्ती अशा चारित्र्य व पूर्व चारित्र्य पडताळणी अहवाल प्राप्त होण्याच्या अधीन राहून करण्यात आलेली असेल ती पुढे चालू ठेवावी किंवा समाप्त करावी या करिता सक्षम नियुक्ती प्राधिकारी यांनी खालील निकष विचारात घ्यावेत तसेच पुढील कार्यपध्दतीचा अवलंब करावा :-

<p>ज्या उमेदवारांविरुद्ध फौजदारी स्वरूपाचे गुन्हे दाखल करण्यात आले आहेत वा प्राप्त झालेल्या तक्रारी फौजदारी स्वरूपाच्या आहेत अशा गुन्ह्यांच्या दोन याद्या परिशिष्ट 'A' व परिशिष्ट 'B' येथे जोडल्या आहेत.</p>	<p>सदर दोन्ही याद्यांमधील नमूद असलेल्या गुन्ह्यांच्या संदर्भात अशा उमेदवारांविरुद्ध सक्षम न्यायाधिकरणासमोर कार्यवाही सुरु असेल / प्रलंबित असेल त्या स्तरावर वा अशी कार्यवाही पूर्ण होऊन उमेदवारास अंतिमतः दोषी ठरविण्यात आल्यास त्या स्तरावर त्यांना नियुक्ती देण्यात येऊ नये / त्यांच्या सेवा समाप्त कराव्यात, अशा दोन्ही प्रकारच्या कार्यवाहीचे देखील सदर याद्यांमध्ये स्पष्टीकरण देण्यात आले आहे. त्यानुसार या गुन्ह्यांमध्ये अडकलेल्या / संशयित उमेदवारांना शासन सेवेत नियुक्ती देण्यात येऊ नये / नियुक्ती दिली असल्यास त्यांच्या सेवा समाप्त करण्यात याव्यात.</p>
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संबंधित उमेदवार ज्या गुन्ह्यांमध्ये आरोपी आहेत अशा गुन्ह्यांची यादी व अशा गुन्ह्यात अडकलेल्या उमेदवारावर सुरु असलेली न्यायालयीन प्रक्रिया कोणत्या स्तरावर असेल तर त्याला शासकीय सेवेत नियुक्ती देण्यात येऊ नये याचा तपशील (ही सर्व समावेशक यादी नाही. उदाहरणार्थ यादी आहे) (Illustrative List)

परिशिष्ट - A

Sr.No.	Crime Head	Candidates should be rejected on following criteria	
अ.क्र.	गुन्हा	उमेदवारास अपात्र ठरविण्याबाबत खालील निकष लागू राहतील.	
18	Molestation	Convicted	Pending Trial
	विनयभंग	दोषी	प्रलंबित खटला

(Quoted from pages 57(B), (C), (G) & (H) of OA)

9. As clarified in the GR the suggestion made in the GR are only in the form of directory principles for assistance to the committee and are not mandatory.

10. As clarified by the respondent no.2 a meeting was held of the committee headed by the Additional Chief Secretary (Home) to examine the suitability of the applicant in view of his adverse character certificate.

11. After examining the report received from the office of DGP (Exhibit R-1 page 71), the committee had come to the conclusion that the allegations against the applicant involve moral turpitude and are of serious nature. In view of the fact that the charge sheet has been submitted against the applicant and as the character certificate was withheld against him and upon considering facts of the case, the committee recommended termination of applicant's appointment. Following the recommendations, the Government has applied its mind and approved the recommendations to terminate applicant's services.

12. In view of the foregoing discussion, it cannot be said that the impugned order against the applicant is issued maliciously or against the rules or against any existing legal provisions.

13. Moreover, during the hearing the Ld. counsel admitted that no effort has been made to quash the FIR against the applicant in the criminal case.

14. In view of the above, no interference is called for in the impugned order. OA is without merits and is dismissed without costs.

Sd/-
(P.N. Dixit)
Member (A)
7.12.2018

Sd/-
(A.H. Joshi, J.)
Chairman
7.12.2018

Dictation taken by: S.G. Jawalkar.