

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.531/2012**

DISTRICT – BEED

-----  
Abhijeet s/o Mohanrao Dahiwal,  
Age : 26 years, Occ : Nil,  
R/o. Idgaah Road, Subhash Colony,  
Opp. Peth Beed Police Station,  
Beed, Dist Beed.

...APPLICANT

**V E R S U S**

1. The State of Maharashtra,  
Through its Secretary,  
Home Department, M.S.,  
Mantralaya, Mumbai-32.

2. The Superintendent of Police,  
Beed, Dist. Beed.

...RESPONDENTS

-----  
APPEARANCE :Shri A.S.Deshmukh, learned Advocate for  
the applicant.

Shri D.R.Patil, learned Presenting Officer  
for the respondents.

-----  
CORAM: Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)  
A N D  
Hon'ble Shri J.D.Kulkarni, Member (J)

-----  
**DATE: 20<sup>th</sup> October, 2016.**  
-----

**O R D E R**

**[PER: MEMBER (J) ]**

Applicant has challenged the impugned  
communication dated 06-07-2011 whereby the respondents  
have taken decision not to appoint the applicant on the

post of Police Constable. Applicant has participated in the process of recruitment for the post of Police Constable as per advertisement dated 03-02-2010. In all 149 posts were notified, out of which, 30 posts were reserved for OBC and of which 6 were earmarked for Ex-serviceman category. Applicant has participated as a candidate from OBC category. Applicant's name was published in the final seniority list on 02-04-2010 by respondent no.2. It is the case of the applicant that he was duly selected for the post of Police Constable and was expecting appointment order.

2. According to the applicant, he was required to file attestation form (Annexure B). While answering the question no. 11(a), (b) & (c) applicant has answered in negative because he was never arrested or kept under detention or bound down or fined/convicted by any court as he was not aware of any crime registered against the applicant in 2007 at Police Station Peth, Beed under Prevention of Gambling Act. According to the applicant, he was falsely implicated in the said crime. Till May, 2010 applicant did not receive any summons in the said case. The Judicial Magistrate First Class (JMFC) Beed vide

judgment and order dated 30-08-2010 was pleased to acquit the applicant.

3. On 07-05-2010, applicant explained respondent no.2 as to how he has committed mistake while answering question no. 11 (a) in the attestation form. On 13/14<sup>th</sup> May, 2010 the PI, DSB, Beed reported to the respondent no.2 about pendency of the case against the applicant. Applicant has, therefore, on 06-09-2010 submitted one application to respondent no.2 making it clear that he was acquitted of the criminal case and he is deserved to be appointed on the post of Police Constable. However, the applicant has been denied appointment and hence this O.A.

4. Respondent nos.1 and 2 have resisted the claim and submitted that the applicant has given false information, or in other words, suppressed information as regards pendency of criminal case against him. He has, therefore, falsely replied the question no.11 (a) and (b) of the attestation form. He was acquitted because witnesses turned hostile. As there is clear warning in the application form/attestation form itself that if false information is given, candidature or selection will be cancelled.

Respondents, therefore, have rightly taken decision not to appoint the applicant.

5. We have heard Shri A.S.Deshmukh learned Advocate for the applicant and Shri D.R.Patil learned Presenting Officer (P.O.) for the respondents. We have also perused memo of O.A., affidavit in reply and various documents placed on record by the parties.

6. Only material point to be considered is whether the impugned communication whereby the respondents decided not to appoint the applicant as Police Constable is legal and proper ?

7. Perusal of the attestation form which is at Annexure B (page 17) shows that this form was submitted by the applicant on 15-04-2010. In paragraph 11(a) some information was called whereby the applicant was to give correct answers. Queries made vide question no.11(a), (b) and (c) are as under (page 20):

*“11. (a) Have you ever 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 examination / rusticated by any University or any other educational authority / Institution ?*

*11. (b) Is any case pending against you in any court of law, university or any other educational authority ?*

*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.”*

Applicant has answered in the negative as “**ukgh**” to all these queries. Query 11 clearly shows that the candidate has to feel particulars of the case, arrest, detention fine, conviction, sentence etc. and the nature of case pending in any court. Since the applicant has answered all these queries in negative, it was presumed that he was never arrested nor criminal case is pending against him.

8. We have perused attestation form. In the opening paragraph of the said attestation form (Annexure B,

page 17) warning has been given that furnishing of false information or suppression of any material factual information in the attestation form would be disqualification and is likely to render the candidate unfit for employment under the Government. Warning no.3 further states that if false information is furnished or suppression of factual information in the attestation form comes to the notice at any time during service of person, his service would be liable to be terminated. It is, therefore, clear that submission of false information may disqualify candidate for appointment and if a candidate is appointed ignoring such false information, his service can be terminated at any time. We are, therefore, unable to accept that information was not supplied under fear or due to ignorance.

9. Learned Advocate submitted that the applicant has been acquitted of the criminal case. This attestation form has been filled by applicant on 15-04-2010. He invited our attention to the judgment of acquittal dated 30-08-2010. Said judgment is placed on record at paper book page 30, from which, it seems that the applicant was prosecuted in criminal case no.1746/2007 before Judicial Magistrate

First Class Court No.6 at Beed. Said criminal prosecution was under Prevention of Gambling Act. Applicant along with 2 others was prosecuted and was acquitted since panch witnesses turned hostile and due to technical lacunas in the investigation. As already stated above, the applicant filled in attestation form on 15-04-2010. In short, on the date of filling of that attestation form prosecution under Prevention of Gambling Act was pending against the applicant, and he did not disclose that fact in the said attestation form. On the contrary, he gave false information that no prosecution was pending against him by answering all the queries 11 (a), (b) and (c) in negative.

10. From the record, it seems that on 07-05-2010, the applicant filed one application before Superintendent of Police, Beed stating that he has, inadvertently, given wrong information that no case was pending against him and stated that since he was not concerned with crime no.06/2007 registered at Police Station Peth, Beed, he did not give detailed information in column no.11(a). Such an explanation cannot be said to be genuine and proper as it is clear from the judgment dated 30-08-2010 passed in criminal case no.1746/2007 pending against the applicant,

that he was accused in the said case. Not only that, in the said case, evidence of witnesses was recorded and the witnesses were also cross-examined on behalf of the accused/applicant. It, therefore, cannot be said that the applicant was not concerned with the criminal case filed against him.

11. Applicant, therefore, filed another application on 06-09-2010 as per Annexure G. This application was filed after he was acquitted in the case. Therein, it is submitted that crime was registered against him at Police Station Peth Beed bearing no.06/2007 u/s.12 (a) of Prevention of Gambling Act but he did not receive any summons or warrant in the said case till filing the attestation form. This also seems to be a false statement for the reasons already stated above.

12. It seems that Special Inspector General of Police (IGP), Maharashtra State wrote a letter to additional Chief Secretary, Home Department on 10<sup>th</sup> January, 2011 (page 39-40). Vide said letter, Special IGP intimated the Government that applicant was acquitted because the witnesses turned hostile and possibility that the applicant



might have won over the witnesses, cannot be ruled out. He, further stated that though the applicant was acquitted, he has given false information as regards pendency of the criminal case against him, and therefore, he was not appointed. It was also opined by the Special IGP in the said letter that it will not be proper to appoint such a person on the post of Police Constable. However, since such decision is to be taken by the competent committee, the matter was referred to the Government. It seems that in view of the said letter, the Government has taken decision and decided not to appoint applicant on the post of Police Constable vide impugned communication dated 6<sup>th</sup> July, 2011.

13. Learned Advocate for the applicant placed reliance on the judgment reported in [**2011 (4) SCC 644**] in the case of **Commissioner of Police and ors. V/s. Sandeep Kumar** decided on 17-03-2011, wherein Hon'ble the Apex Court has observed as under (page 64-65):

*“13. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth.*

*They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.*

*14. In this connection, we may refer to the character 'Jean Valjean' in Victor Hugo's novel 'Les Miserables', in which for committing a minor offence of stealing a loaf of bread for his hungry family Jean Valjean was branded as a thief for his whole life.*

*15. The modern approach should be to reform a person instead of branding him as a criminal all his life.”*

14. While discussing the peculiar circumstances before Hon’ble the Apex Court, it is observed in paragraph nos.17 to 21 (page 65) as under:

*“17. In our opinion, we should display the same wisdom as displayed by Lord Denning.*

*18. As already observed above, youth often commit indiscretions, which are often condoned.*

19. *It is true that in the application form the respondent did not mention that he was involved in a criminal case under Section 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified.*

20. *At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.*

21. *For the reasons above given, this Appeal has no force and it is dismissed. No costs.”*

15. Learned Advocate for the applicant, therefore, submits that the applicant might not have disclosed pendency of the case against him due to fear, and therefore, respondents ought to have ignored his mistake.

16. Learned P.O. has invited our attention to one judgment in the case of **State of West Bengal V/s. Nazrul Islam** decided by the Hon'ble Apex Court in **Civil Appeal No.8638 of 2011** decided on 13<sup>th</sup> October, 2011. In the said case, it was observed by the Hon'ble Apex Court as under (page 67):

*“The authorities entrusted with the responsibility of appointing constables were under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of constable and so long as the candidate has not been acquitted in the criminal case of the charges he cannot possibly be held to be suitable for appointment to the post of constable.”*

17. Learned P.O. further submits that post of constable is a very responsible post. If candidates having tainted record are allowed to work in Police Force, it may have adverse impact on the Police Force. It is also submitted that the applicant has concealed fact of pendency of prosecution, deliberately and intentionally, and therefore, mistake committed by the applicant is not inadvertent.

18. Countering the arguments made by the learned P.O., learned Advocate for the applicant has placed reliance on one judgment delivered in **Writ Petition No.1994/2002** by Hon'ble High Court of Judicature of Bombay Bench at Aurangabad on 29-10-2014 in the case of **State of Maharashtra & ors. V/s. Balu Gahininath Bahirwal**. In the said case, the petitioner was aged about 29 years. In

the year 1999, he made an application for recruitment to the post of Police Constable. He was selected but prior to issuance of appointment order, it was noticed that he concealed certain facts in respect of criminal prosecution, and therefore, he was refused appointment. Said act on the part of State Government was challenged before Maharashtra Administrative Tribunal (MAT) and it was observed by the MAT that the applicant did not conceal any material fact while making application for recruitment. Said findings were not disturbed by the Hon'ble High Court but while dismissing the petition filed by the State Government, view taken by Hon'ble the Apex Court in the case of Commissioner of Police and ors. V/s. Sandeep Kumar was considered. Hon'ble High Court has observed in the said judgment in paragraph 6 as under:

*“6. However, we are not inclined to disturb the findings recorded by the M.A.T. Our reasons are little different and we will also follow judgment of the Supreme Court in the case of **Commissioner of Police and Ors. Vs. Sandeep Kumar, 2011 (4) SCC 644.** The facts of reported case are almost similar to the facts of this case. Similarly situated candidate for recruitment as Constable*

*similarly mentioned in his application that he was not involved in any criminal case. Infact, he was long back arrested for the offence punishable under section 362, 325 r/w 34 of IPC along with his family members. But the case ended in acquittal due to compounding etc. The Supreme Court took a view that the incident that took place in the applicant's life particularly when he was young, should be condonable. The Supreme Court held that in young age, a person may commit minor indiscretions, but for such an act, he should not be branded as a 'criminal' for his entire life.”*

19. We have perused various judgments produced before us in the matter. It seems that the case of appointment and termination of Police Constable in Police Department in view of non-disclosure/suppression of information regarding prosecution, arrest etc. were referred to the Larger Bench vide judgment passed by Hon'ble the Apex Court in **Civil Appeal No.5671/2012** in the case of **Jainendra Singh V/s. State of Uttar Pradesh & Ors.** In this judgment, following observations are made (page 81):

*“15. When we consider the above principles laid down in majority of the decisions, the*

*question that looms large before us is when consideration of such claim by the candidates who deliberately suppressed information at the time of recruitment; can there be different yardsticks applied in the matter of grant of relief.*

*Though there are very many decisions in support of the various points culled out in the above paragraphs, inasmuch as we have noted certain other decisions taking different view of coordinate Benches, we feel it appropriate to refer the above mentioned issues to a larger Bench of this Court for an authoritative pronouncement so that there will be no conflict of views and which will enable the Courts to apply the law uniformly while dealing with such issues.*

*16. With that view, we feel it appropriate to refer this matter to be considered by a larger Bench of this Court. Registry is directed to place all the relevant documents before the Hon'ble the Chief Justice for constitution of a larger Bench."*

20. Learned Advocate for the applicant has also referred to judgment delivered by Hon'ble the Apex Court in **Special Leave Petition (C) No.20525 of 2011** in the case of **Avtar**

**Singh V/s. Union of India & Ors.** In the said, the Hon'ble the Apex Court has given some guidelines in paragraph 30 of the said judgment, wherein it is 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.”*

21. In the present case, we have perused impugned order dated 6<sup>th</sup> July, 2011 whereby the Government has decided

not to appoint the applicant as Police Constable. Government has intimated to the Superintendent of Beed vide letter dated 6<sup>th</sup> July, 2011 that the Government has taken decision not to appoint the applicant on the post of Police Constable but the said letter is silent as regards reasons as to why it was so decided. May be, because of various views in field, respondents have not specifically stated in the impugned communication as to why the appointment was denied to the applicant. Considering the latest judgment in the case of Avtar Singh V/s. Union of India and Ors., referred supra, we feel that it is necessary for the respondent authorities to consider various aspects and guidelines issued by the Hon'ble Apex Court before taking any decision in the matter.

22. We are, satisfied that there is no doubt that the applicant has suppressed fact of criminal prosecution against him and various information required as per query no.11(a), (b) and (c). However, it will be better to give an opportunity to the respondents to consider all the guidelines issued by Hon'ble the Apex Court in the case of Avtar Singh (supra) and pass necessary order thereafter in the matter coming to conclusion as to whether the

applicant should be given appointment to the post of Police Constable or not.

23. It is worthwhile to note that Hon'ble the Apex Court in the case of Avtar Singh (supra) has given valuable guidelines as to how the cases of the employees concealing material information or giving false information about the prosecution against them are to be dealt with. In view thereof, we expect that the State Government may issue guidelines to Head of the offices under its control for taking proper decision under particular circumstances as per those guidelines. In view thereof, we pass following order:

**ORDER**

- (A) O.A. is partly allowed.
- (B) Impugned order dated 6<sup>th</sup> July, 2011 is quashed and set aside.
- (C) Matter is remanded back to the competent authority i.e. the State of Maharashtra for reconsidering application of the applicant for appointment to the post of Police Constable in view

of the guidelines of the Hon'ble the Supreme Court case in the case of Avtar Singh (supra).

(D) Respondent no.1 may take proper decision as it may deem fit in the peculiar circumstances, as per rules and taking into consideration the guidelines in Avtar Singh's case on merits, without being influenced by any of the observations made by us in this judgment.

(E) Requisite decision may be taken within 3 months from the date of passing of this order and shall be intimated to the applicant in writing.

(F) In the peculiar circumstances, there shall be no order as to costs.

**(J. D. Kulkarni)**  
**MEMBER (J)**

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

\2016\db\YUK oa 531.12 rajdk appointment