

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.228/2017

DISTRICT: LATUR

Maroti s/o. Shivaji Nilewad,
Age : 22 years, Occu. : Nil,
R/o. Anupwadi,
Tq. Udgir, Dist. Latur.

...APPLICANT

V E R S U S

1) The State of Maharashtra,
Revenue Department,
Mantralaya, Mumbai – 32.
Through its Secretary.

2) The Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad Division,
Aurangabad.
Through its Member Secretary.

3) The Executive Magistrate/Tahsildar,
Udgir, Dist. Latur.

...RESPONDENTS

APPEARANCE :Shri Vivek U. Jadhav, Advocate for the
Applicant.

:Shri N.U.Yadav, Presenting Officer for the
respondents.

CORAM : B. P. Patil, Vice Chairman

Reserved on : 12-07-2019

Pronounced on : 19-07-2019

J U D G M E N T

1. By filing the present O.A. applicant has challenged the order dated 06-02-2017 issued by the respondent no.3 terminating his services.

2. Applicant is resident of village Anupwadi, Tq. Udgir, Dist. Latur. He belongs to "Koli-Mahadev" Scheduled Tribe Community. The Sub Divisional Magistrate, Udgir issued Caste Certificate in his favour after following due procedure on 31-07-2009. He was taking education in 11th Standard and at that time his Caste Certificate was referred to Caste Scrutiny Committee for verification through Dayanand Science College, Latur by letter dated 23-09-2011. There were certain discrepancies in the proposal and therefore it was returned to the applicant on 22-08-2013. The applicant had removed discrepancies and complied with the same and again submitted proposal for verification of his caste on 21-01-2014. He adduced evidence and submitted documents in support of his claim. On 09-01-2015 respondent no.3 issued advertisement inviting applications from eligible candidates for the appointment on the post of Kotwal. The applicant had applied for the said post. He

appeared for the examination. The respondent no.3 called upon him to appear for oral interview on 13-02-2015 by letter dated 10-02-2015. Accordingly, the applicant appeared for oral interview. Respondent no.3 selected him as Kotwal and issued appointment order to him in the month of February, 2015 and appointed him as Kotwal of Village Wadhwana (Bk) on honorarium of Rs.5,000/-. His appointment was made on the reserved post of Scheduled Tribe category on the condition to submit Caste Validity Certificate within a period of six months. The respondent no.3 directed the applicant to submit medical fitness certificate as well as character certificate issued by Police Department within a period of one month. Accordingly, the applicant joined duties and started discharging his duties as Kotwal.

3. On 04-03-2015, one Shri Dattatray Bhujangrao Surnar resident of Anupwadi, Tq. Udgir, Dist. Latur filed a complaint with respondent no.3 alleging that the applicant has not submitted his Caste Validity Certificate. It is further alleged that the applicant has deceived the Government while obtaining the appointment as Kotwal by suppressing the fact that a crime has been registered

against him on 21-08-2013. The respondent no.3 enquired into the matter and called the applicant as well as the complainant for hearing on 24-10-2016, 08-11-2016, 16-11-2016 and 23-11-2016. The applicant filed reply to the complaint filed by Shri Dattatray Surnar and contended that false complaint has been filed against him due to enmity. It is his contention that his father is running a ration shop in the village and the complainant requested him to help him in getting benefit of economically weaker section but his father was unable to help the complainant Shri Surnar. Therefore, complainant started harassing his father by filing false complaints against them. Not only this but he used to demand money illegally by blackmailing them. It is his further contention in the reply that criminal proceeding filed by the complainant against him is pending in the court of law for adjudication and he is not held guilty of any charges. Therefore, he cannot be declared as disqualified for the appointment on the post of Kotwal. It is his contention in the reply that the complainant is in habit of filing false proceedings and criminal complaints against him. Therefore, he prayed to reject the complaint filed against him by Dattatray Surnar.

4. It is his contention that he has produced medical fitness certificate as directed by the appointing authority. He approached the Superintendent of Police, Latur for issuance of character certificate. Superintendent of Police, Latur issued character certificate on 18-06-2015 mentioning that a crime bearing Cr.No.99/2013 for offences punishable u/s.324, 325, 326, 338 and 506 of the Indian Penal Code is registered against him. It is his contention that after receipt of the said character certificate, he has produced the same before the respondent no.3.

5. It is his further contention that after considering the submissions of both parties and on perusal of the documents, respondent no.3 issued order dated 06-02-2017 terminating his services as Kotwal on the ground that he had not produced caste validity certificate within a period of six months and a criminal case is pending against him. It is contention of the applicant he never suppressed material facts but the respondent no.3 has issued termination order illegally. It is his contention that he was not at fault in producing caste validity certificate as the proposal is pending with the respondent no.3 in that regard. It is his contention that there was

delay on the part of the respondent no.2 to verify his tribe claim and to issue caste validity certificate but the respondent no.3 has not considered the said aspect and passed the impugned order. It is his further contention that charges leveled against him in the criminal case are not of serious nature and the criminal case has not been yet finally adjudicated. Therefore, the same cannot be a ground for termination of his services. It is his further contention that the impugned order is illegal and therefore he has prayed to allow the O.A. by quashing and setting aside the impugned order.

6. The respondent no.3 has filed his affidavit in reply and resisted the contentions of the applicant. Respondent no.3 has not denied the fact that the applicant was appointed as Kotwal on the condition to produce character certificate, medical certificate and caste validity certificate. It is the contention of the respondent no.3 that it was duty of the applicant to produce said certificates within stipulated time but the applicant has not produced the caste validity certificate within time. It is contention of the respondent no.3 that the Superintendent of Police, Latur had issued character certificate to the applicant mentioning

that a criminal case for offences punishable u/s.324, 325, 326, 338 and 506 of the Indian Penal Code is pending against the applicant. It is contention of the respondent no.3 that for appointment on the post of Kotwal, candidate must be of good moral character but the applicant is involved in the offences of serious nature. Not only this but he has not produced the caste validity certificate within stipulated period. Therefore, after giving an opportunity of hearing respondent no.3 has passed the impugned order and terminated services of the applicant. It is contended by the respondent no.3 that there is no illegality in the impugned order. Therefore, respondent no.3 has justified the impugned order and prayed to dismiss the O.A.

7. I have heard Shri Vivek U. Jadhav, Advocate for the Applicant and Shri N.U.Yadav, Presenting Officer for the respondents. I have perused the documents placed on record by the parties.

8. Admittedly, the applicant is resident of village Anupwadi, Tq. Udgir, Dist. Latur. He belongs to "Koli-Mahadev" i.e. Scheduled Tribe. Admittedly, the respondent no.3 published an advertisement inviting applications from the eligible candidates for the post of Kotwal on

09-01-2015. The applicant had filed application for appointment on the post of Kotwal. He appeared for written examination and thereafter he was called for oral interview. His oral interview was held on 13-02-2015. The selection committee selected him as Kotwal and thereafter, he has been appointed on the post of Kotwal of village Wadhwana (Bk) on honorarium of Rs.5000/- by the respondent no.3. The respondent no.3 had laid down certain conditions while issuing appointment order and directed the applicant to produce caste validity certificate within six months from the date of appointment and also directed to produce medical fitness certificate as well as character certificate within a period of one month. Accordingly, the applicant accepted the job and joined the duty as Kotwal. Admittedly, on 04-03-2015 one Shri Dattatray Bhujangrao Surnar resident of Anupwadi filed the complaint before the respondent no.3 alleging that the applicant has not submitted caste validity certificate within a period of six months and he had deceived the Government by suppressing the fact that a crime bearing Cr.No.99/2013 for offences punishable u/s.324, 325, 326, 338 and 506 of the Indian Penal Code has been registered against him. Admittedly, the applicant has produced character certificate issued by the

Superintendent of Police, Latur wherein it has been mentioned that a crime bearing Cr.No.99/2013 for offences punishable u/s.324, 325, 326, 338 and 506 of the Indian Penal Code is pending against him with Police Station Udgir Rural. The respondent no.3 had issued notice to the applicant on the basis of complaint filed by Dattatray Surnar to which the applicant had filed his reply. An opportunity of hearing was given to both the parties and thereafter respondent no.3 passed the impugned order and terminated services of the applicant as Kotwal on the ground that he has not produced caste validity certificate within stipulated period and also on the ground that the applicant is involved in a crime.

9. Learned Advocate for the applicant has submitted that the applicant was selected as Kotwal by the selection committee and accordingly he has been appointed as Kotwal of village Wadhwana (Bk), Tq. Udgir, Dist. Latur by the respondent no.3. He has submitted that the applicant had produced caste certificate before the Caste Scrutiny Committee but the Caste Scrutiny Committee has not issued caste validity certificate and there were no lapses on his part in getting validity certificate. Therefore he cannot

be blamed for the same. He has submitted that one Dattatray Surnar, who has enmity with the applicant, had filed a complaint against him with the respondent no.3. He has submitted that the complainant Dattatray Surnar is in habit of filing false complaints to harass family members of the applicant as his father had not helped Dattatray Surnar in getting benefits of economically weaker section. He has submitted that because of the enmity Dattatray Surnar filed criminal case bearing Cr.No.99/2013 for offences punishable u/s.324, 325, 326, 338 and 506 of the Indian Penal Code against the applicant and others. He has submitted that the said criminal case is still pending and it has not been yet finally decided by the criminal court. Mere pendency of the criminal case is not sufficient to terminate services of the applicant. Therefore, he has prayed to quash the impugned order by allowing the present O.A.

10. He has argued that no opportunity of hearing was given to the applicant by the respondent no.3. Therefore, the impugned order is illegal. He has submitted that the offences charged against the applicant are not of serious nature, and therefore, considering nature of the offences respondent no.3 ought to have rejected the complaint filed

by Dattatray Surnar. In support of his submission, he has placed reliance on the judgment of **Avtar Singh V/s. Union of India** reported in [**LEX (SC) 2017 11 80**]. He has submitted that the impugned order is illegal and therefore, prayed to quash and set aside the same by allowing the O.A.

11. Learned P.O. has submitted that in the advertisement issued by the respondent no.3, it has been specifically mentioned that the selected candidate has to produce character certificate and fitness certificate within one month and also produce caste validity certificate within 6 months from the date of appointment but the applicant has not produced the caste validity certificate within stipulated time. The Superintendent of Police, Latur had issued character certificate which shows that the applicant was involved in the crimes of serious nature. He has submitted that the post of Kotwal is a key post in the village and therefore, person to be appointed on the said post has to bear good moral character. Antecedents of the applicant show that the applicant was involved in criminal offence of serious nature. Therefore, respondent no.3 has terminated the services of the applicant. He has submitted that the

impugned order is in accordance with the provisions of law. The respondent no.3 has rightly terminated the services of the applicant by the impugned order. Therefore, he has supported the impugned order and prayed to dismiss the O.A.

12. On perusal of the impugned order, it reveals that the respondent no.3 had issued advertisement on 09-01-2015 inviting applications from the eligible and aspiring candidates for appointment on the post of Kotwal. In the advertisement, it has been specifically mentioned that the candidate selected and appointed on the post of Kotwal shall produce character certificate issued by the concerned Police Station. The applicant was selected as Kotwal, and therefore, he was appointed as Kotwal of Village Wadhwana (Bk), Tq. Udgir, Dist. Latur by order dated nil February, 2015 which is at paper book page 33-34. On perusal of the same, it reveals that while appointing the applicant, respondent no.3 has laid down certain conditions and it was made mandatory to the applicant to produce caste validity certificate within 6 months from the date of his appointment.

13. The applicant was also directed to produce medical fitness certificate issued by Civil Surgeon and to produce character certificate issued by concerned Police Station within one month from the date of his appointment. Documents on record show that the applicant has not produced the caste validity certificate within the stipulated period of 6 months. He produced character certificate issued by Superintendent of Police Latur dated 18-06-2015 (paper book page 39), which shows that Superintendent of Police has mentioned the fact that a crime bearing Cr.No.99/2013 for offences punishable u/s.324, 325, 326, 338 and 506 of the Indian Penal Code is pending against the applicant in Udgir Rural Police Station and the same is pending for adjudication before the concerned court. The offences charged against the applicant are of serious nature. Person to be appointed as Kotwal must possess good moral character. Antecedents of the candidate to be appointed on such key post in the village shall have to be taken into consideration while appointing such person on the post of Kotwal. Therefore, the respondent no.3 who is appointing authority had enquired into the complaint received from Dattatray Surnar against the applicant and an opportunity of hearing to the applicant as well as

Dattatray Surnar was given. On perusal of the documents on record and taking into consideration the nature of offences for which the applicant was charged, the respondent no.3 has passed the impugned order and terminated the services of the applicant as Kotwal. Therefore, I do not find any illegality in the impugned order.

14. I have gone through the judgment of the Hon'ble the Apex Court in the case of **Avtar Singh V/s. Union of India** reported in [**LEX (SC) 2017 11 80**]. On perusal of the same, it reveals that Hon'ble the Apex Court has considered its judgment in **Avtar Singh V/s. Union of India** and observed as under:

"4. In Avtar Singh v. Union of India and Others, reported in (2016) (3) SCT 672: 2016(5) Recent Apex Judgments (RAJ) 385: (2016) 8 SCC 471, this Court has considered in detail as to the circumstances under which the stringent action could be taken and to what extent the employer can exercise its discretion. Relevant portion reads as follows:-

"38.1 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.

38.2. 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.

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

38.4. 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 :

38.4.1. 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.

38.4.2 Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3 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.

38.5. 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.

38.6. *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.*

38.7. *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.*

38.8. *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.*

38.9. *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.*

38.10. *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.*

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

15. The Hon'ble Apex Court has laid down circumstances under which the stringent action will have to be taken and to what extent an employer can exercise its discretion. On going through the said observations of the Hon'ble the Apex Court, it is crystal clear that the appointing authority can take into consideration the seriousness of the offences and charges levelled against the candidate and to take appropriate decision in relation to continuation or termination of the services of the concerned candidate. The respondent no.3 has decided to terminate the services of the applicant considering the seriousness of the offences registered against the applicant. Not only this but the respondent no.3 has considered the aspect that the applicant has failed to produce caste validity certificate within stipulated time as he has been appointed from reserved category. An opportunity of hearing was given to the applicant and principles of natural justice were followed by the respondent no.3 while terminating services of the applicant.

16. In these circumstances, I do not find any fault on the part of the respondent no.3 in terminating services of the applicant. Action taken by respondent no.3 is just, legal

and proper. Therefore, no interference is called for in the impugned order. There is no merit in the O.A. Consequently, O.A. deserves to be dismissed.

17. In view of the discussion in the foregoing paragraphs, O.A. stands dismissed without any order as to costs.

(B. P. PATIL)
VICE CHAIRMAN

Place : Aurangabad
Date : 19-07-2019.