

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.12/2018

DISTRICT:- OSMANABAD

Khandu s/o. Trimbak Chavan,
Age: 26 years, Occu: Nil,
R/o. Holi Tanda, Post Peth-Sangvi,
Tq. Lohara, Dist. Osmanabad.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through: The Secretary,
Home Department,
Mantralaya, Mumbai-32.

2. The Commissioner of Police,
Police Commissioner, Thane.

...RESPONDENTS

APPEARANCE :Shri M.P.Tripathi, Counsel for Applicant.
:Shri V.G.Pingle, Presenting Officer for the
respondent authorities.

**CORAM : JUSTICE SHRI P.R.BORA, VICE CHAIRMAN
AND
SHRI VINAY KARGAONKAR, MEMBER (A)**

**Reserved on : 18-04-2024
Pronounced on : 07-05-2024**

O R D E R

[Per : Shri Vinay Kargaonkar, M (A)]

1. Heard Shri M.P.Tripathi, learned Counsel for the
Applicant and Shri V.G.Pingle, learned Presenting Officer
for the respondent authorities.

2. Brief facts of the case:-

Applicant belongs to VJ category and he had applied for the post of Police Constable in pursuance to the selection process initiated by respondent no.2. Applicant is also an Earthquake Affected Person. Applicant was selected for the post Police Constable from PAP category. In spite of getting selected applicant was not given appointment as a criminal case was registered against him. Applicant pointed out to the authorities that he is acquitted by the competent court of law in the criminal case lodged against him in the year 2008 and requested for issuance of appointment order. The applicant was denied the appointment and hence he has filed the present O.A.

3. Pleadings and arguments of the Applicant :-

(a) Learned Counsel for the applicant has submitted that, the applicant had applied for Maharashtra Police Recruitment process for the post of Police Constable in pursuance to the recruitment process initiated by respondent no.2 i.e. Commissioner of Police, Thane. Learned Counsel for the applicant has submitted that, respondent no.2 had issued certain guidelines for filling up

the application form. Candidates were asked to fill in the information regarding pendency of criminal case, arrest, detention, fine, charges proved, any other pending litigation; etc. It is further submitted that, applicant had said "No" in front of relevant column in application form regarding pending or previous criminal cases registered against him. Applicant had said "No" because he was acquitted from the criminal case by the competent court.

(b) Learned Counsel for the applicant has submitted that, after undergoing the selection process, applicant was selected from PAP category. It is further submitted that, respondent no.2 has prepared select list of the candidates who had secured requisite marks and applicant is shown at Sr.No.28 in the selection list, having obtained 147 marks. It is further submitted that, inspite of getting selected, appointment order was not issued in favour of the applicant. Applicant made representations to the authorities for his appointment. He had also given notice of hunger strike.

(c) Applicant has further submitted that, after long persuasion, he came to know that he was denied appointment because of a criminal case registered against

him in the past. Applicant submitted that, information of some candidates selected in the selection process of 2013-14, against whom criminal cases were lodged, pending or who were acquitted, were verified by the respondents. Information regarding 7 candidates was collected. Out of those 7 candidates there were certain remarks against 3 candidates. The information was sent to the committee and the committee has also concurred with the recommendations of the respondent no.2. Applicant submitted that, the proposal along with recommendation was forwarded to the Government and the Government vide its letter dated 19-04-2017 informed that the applicant is not eligible for appointment to the post of Police Constable. It is submitted that, accordingly, respondent no.2 cancelled selection of the applicant to the post of Police Constable vide its decision dated 11-05-2017.

(d) Applicant submitted that his selection to the post of Police Constable was cancelled on the ground that a criminal case was registered against him under section 354 of the Indian Penal Code (IPC) on 21-11-2008. It is pointed out that, the applicant was acquitted in that alleged criminal case. It is further submitted that, reason given by the respondent no.2 while communicating cancellation of

the selection on the post of Police Constable is not proper and applicant was falsely implicated in the said offence by some ill-motivated persons due to village politics. It is further submitted that, the prosecution could not place on record any material or evidence connecting the applicant with crime. Applicant has further submitted that the applicant is unnecessarily made to suffer due to the false criminal case registered against him. Learned counsel for the applicant argued that applicant was minor (less than 18 years old) when alleged offence was registered against him. Learned Counsel for the applicant has submitted that, the decision taken by the Government is illegal, unreasonable and deserves to be quashed and set aside. He has, therefore, prayed for allowing the O.A.

(e) Applicant has relied upon judgment of the Hon'ble Bombay High Court passed in **Writ Petition No.1994/2002 [The State of Maharashtra & Ors. V/s. Balu Gahininath Bahirwal]** to support his arguments.

4. Submissions of the Respondents:-

(a) Learned P.O. submitted that respondent no.2 had issued certain guidelines for filling up application form.

The authorities had intimated to all the applicants to fill in the information regarding pendency of criminal case, arrest, detention, charges proved; etc. as well as any other litigation pending before the judicial, quasi-judicial forum, University or School Tribunal; etc. Learned P.O. submitted that, the fact that a complaint was lodged against the applicant was concealed by the applicant. It is further submitted that a crime was registered against the applicant under section 354 of IPC and it was revealed during the police verification. Learned P.O. submitted that, since the applicant had concealed that he was prosecuted under section 354 of IPC in Criminal Case No.1504/2008, his selection was cancelled.

(b) Respondents have relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Avtar Singh V/s. Union of India & Ors. [(2016) 8 SCC 471]**. Respondents have accordingly prayed for dismissal of O.A.

5. Reasoning and conclusions:-

(a) After hearing both sides it appears that, the main issue is that the applicant has suppressed the material information i.e. registration of offence under section 354 of IPC. He has made a false declaration and

the respondents have cancelled his selection for the post of Police Constable on the basis of suppression of material information and making a false declaration. Similar issue is covered in **Writ Petition No.1994/2002 [The State of Maharashtra & Ors. V/s. Balu Gahininath Bahirwal]**.

Relevant part of the said judgment is reproduced below:

“3.The facts that were not revealed in the application for recruitment were as under: .

When the applicant was 19 years old, he and his friend were arrested and prosecuted for the offence punishable u/s. 354 r/w sec.34 of IPC. Other accused was older in age and was the main culprit. The allegations were that the applicant allegedly uttered a sentence about the victim and other accused then pelted a small stone on the bosom of the victim whereby her modesty was outraged. The case remained pending for few months and thereafter the parties arrived at compromise and the case ended in acquittal.

4. In the background of this, one must appreciate the allegation as against the applicant.

5. Indeed, he ought to have mentioned in the application that he was involved in the criminal case and was acquitted long back. The question that he was asked in the printed form comprehensively indicated that he ought to have disclosed information regarding arrest, preventive detention, conviction, sentence and fine. By no stretch of imagination, we can accept argument which is advanced at the bar on behalf of the applicant that in the facts and circumstances of the case, the applicant could have simply answered the question in negative. In our view, he ought to have explained as to what had happened to him earlier.

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. In-fact, 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.”

(b) Hon’ble Supreme Court in judgment delivered in **Civil Appeal No.3574/2022 [Pawan Kumar V/s. Union of India & Anr.]** has also covered a similar issue. Relevant portion of the said judgment is reproduced below:

“11. This cannot be disputed that the candidate who intends to participate in the selection process is always required to furnish correct information relating to his character and antecedents in the verification/attestation form before and after induction into service. It is also equally true that the person who has suppressed the material information or has made false declaration indeed has no unfettered right of seeking appointment or continuity in service, but at least has a right not to be dealt with arbitrarily and power has to be judiciously exercised by the competent authority in a reasonable manner with objectivity having due regard to the facts of the case on hand. It goes without saying that the yardstick/standard which has to be applied with regard to adjudging suitability of the incumbent always depends upon the nature of post, nature of duties, effect of suppression over suitability to be considered by the authority on due diligence of various aspects

but no hard and fast rule of thumb can be laid down in this regard.

12. Earlier, there has been a conflict of opinion in the various decisions of Division Benches of this Court and at the stage when the Division Bench of the High Court dismissed the writ petition under the impugned order dated 17th November, 2015, there were divergent views of this Court and that came to be later settled by a three Judge Bench of this Court in Avtar Singh v. Union of India and others.. While summarizing the conclusion, this Court has laid down broad guidelines which has to be taken note of by the appointing/competent authority in dealing with the matters where there is a suppression of material information or disclosure of false information and after reconciling the earlier judgments succinctly summarized the conclusions as under:

"34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and It is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37. The "McCarthyism" is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

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 recourses 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 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."

13. What emerges from the exposition as laid down by this Court is that by mere suppression of material/false Information regardless of the fact whether there is a conviction or acquittal has

been recorded, the employee/recruit is not to be discharged/terminated axiomatically from service just by a stroke of pen. At the same time, the effect of suppression of material/false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service rules into consideration, while taking appropriate decision regarding continuance/suitability of the employee into service. What being noticed by this Court is that mere suppression of material/false information in a given case does not mean that the employer can arbitrarily discharge/terminate the employee from service."

(c) Applicant was selected for the post of Police constable based on his merit and qualifications. However, his appointment order was cancelled due to a single alleged accusation of outraging the modesty of a girl, which resulted in legal proceedings against him. It is imperative to note that applicant was minor when offence was registered against him and he was acquitted of this charge, signifying the absence of any proven wrongdoing on his part. In considering the suitability of applicant for the police services, it is crucial to examine relevant legal precedents and principles. The principle of "innocent until proven guilty" is fundamental to the justice system. A mere accusation, without conclusive evidence or a conviction, should not serve as grounds for life long disqualification or prejudice against an individual.

(d) Furthermore, it is essential to recognize the concept of rehabilitation and the value of affording individuals the opportunity for redemption and reintegration into society. Applicant has demonstrated his commitment to rehabilitation by adhering to the law, contributing positively to society and intention to pursuing a career in law enforcement, which reflects his desire for personal growth and societal responsibility.

(e) It is pertinent to note that applicant was minor, less than 18 years old when FIR was registered against him. Applicant was born on 24/6/1991 and FIR was registered against him on 26/8/2008. Applicant was 17 years, 2 months and 3 days old when the FIR was registered against him. Minors, by virtue of their age and developmental stage, are inherently vulnerable to external influences and may lack the maturity and judgment necessary to fully comprehend the consequences of their actions. Research in developmental psychology underscores the fact that the adolescent brain is still evolving, particularly in areas related to impulse control, decision-making, and risk assessment. As such, actions taken

during this period may not accurately reflect an individual's character or future potential.

(f) From a legal standpoint, many jurisdictions recognize the inherent differences between juvenile and adult offenders, acknowledging the need for a separate and distinct justice system for minors. This recognition is based on the understanding that rehabilitation, rather than punishment, should be the primary objective when dealing with juvenile offenders. Ethically, society has a responsibility to nurture and support the development of young individuals, even when they have made mistakes, in order to facilitate their reintegration into society as productive and law-abiding citizens.

(g) Central to the concept of juvenile justice is the principle of rehabilitation. Unlike punitive measures aimed at retribution or deterrence, rehabilitation focuses on addressing the underlying causes of delinquent's behaviour and providing individuals with the support and resources they need to make positive changes in their lives. Numerous case studies and success stories highlight the transformative power of giving individuals a second chance after they have committed offenses as minors. Several cases

are seen where juvenile offenders have gone to lead successful careers, contribute to their communities and served as positive role models to other individuals in the society.

6. Some of the key observations made by the Hon'ble Apex court in the above mentioned judgements are reproduced below:

- *The Supreme Court held that in young age, a person may commit minor indiscretions but for such as act he should not be branded as a 'criminal' for his entire life.*
- *Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.*
- *For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.*
- *The "McCarthyism" is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.*

7. In light of the case laws mentioned above, legal principles enshrined in those case laws, coupled with the fundamental principles of fairness, justice, and rehabilitation, we advocate for the induction of Applicant into the Police Force.

8. On conspectus of the foregoing paragraphs, following order is passed:

[i] Original Application is allowed.

[ii] Order dated 11/5/2017 issued by the Respondent No.2 is quashed and set aside.

[iii] Respondent No.2 shall issue appointment order to the applicant within two months from the date of this order, provided there is no other legal impediment.

[iv] There shall be no order as to costs.

(VINAY KARGAONKAR)
MEMBER (A)

(P.R.BORA)
VICE CHAIRMAN

Place : Aurangabad
Date : 07-05-2024.