

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 137 OF 2023

DIST. : AURANGABAD

Shri Vijay S/o Vishram Pagare,)
 Age. 29 years, Occu. Service as)
 Clerk Typist, R/o Plot No. 6,)
 Saujanyaanagar, New Balaji Nagar,)
 Behind Kalda Corner, Aurangabad.) .. **Applicant**

V E R S U S

1. **The State of Maharashtra,**)
 Through Secretary,)
 Animal Husbandry Department,)
 Mantralaya, Mumbai – 32.)
2. **The Commissioner,**)
 Animal Husbandry, Maharashtra State)
 Opp. Spicer Memorial College,)
 Aundh, Pune-67.)
3. **The Chief Executive Officer,**)
 Maharashtra Animal Development)
 Circle, Katol Road, Nagpur-440013.)
4. **The Assistant Commissioner,**)
 Regional Animal Husbandry,)
 Khadkeshwar, Aurangabad Division,))
 Aurangabad.)
5. **The Divisional Manager,**)
 Frozen Semen (Atishit Ret) Laboratory,)
 Jalgaon Road, Aurangabad.) .. **Respondents.**

 APPEARANCE :- Shri K.B. Jadhav, Advocate for the
 applicant.

: Shri V.G. Pingle, learned Presenting
 Officer for the respondent authorities.

CORAM : **Hon'ble Shri Justice P.R. Bora,**
Vice Chairman
and
Hon'ble Shri Vinay Kargaonkar,
Member (A)

DATE : **25th July, 2024**

O R A L - O R D E R

[Per :- Justice P.R. Bora, V.C.]

1. Heard Shri K.B. Jadhav, learned counsel for the applicant and Shri V.G. Pingle, learned Presenting Officer for respondent authorities.

2. Applicant was appointed on the post of Clerk-cum-Typist on compassionate ground in the year 2022 i.e. on 27.5.2022. Accordingly the applicant resumed the duty on 30.5.2022. His services have been terminated by respondent no. 2 vide his order dated 13.2.2023 on the ground that the applicant violated the terms and conditions incorporated in the order of his appointment and suppressed the fact of criminal case pending against him at the time of his entry in the Government service. As is revealing from the record, when the applicant was appointed vide order as aforesaid, a criminal case was pending against him vide C.R. No. 114/2013 for the offences punishable U/ss 354, 341, 143 of I.P.C. r/w section 7

of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO Act). It is now the case of the applicant that in the aforesaid case he has been now acquitted by the competent Court. In the circumstances, the applicant has filed the present Original Application for the following reliefs:-

- A) This original application may kindly be allowed*
- B) To quash and set aside the impugned termination order dtd. 13.2.2023 issued by the respondent no. 2.*
- C) To direct the respondents to continue the applicant to work on the post of Clerk Typist*
- D) To direct the respondent no. 2 consider the case of the applicant as per the provisions of the GR dtd. 26.8.2014 and place the case of the applicant before the Hon'ble Minister for reconsideration.*
- E) Any other equitable and appropriate relief to which the applicant is found due and entitled in the facts and circumstances of the case may kindly be granted in favour of the applicant."*

3. Learned counsel for the applicant submitted that before cancellation of the appointment the respondents did not give any show cause notice to the applicant or any opportunity of hearing. According to the learned counsel, the order of cancellation of appointment of the applicant can be set aside on this count alone. Learned counsel relying on the judgment in the case of **Commissioner of Police, Delhi Vs. Dhaval Singh, 1999 (1) SCC 246** submitted that the respondents before cancellation of appointment of the applicant must have scrutinized the

criminal case against him and should have taken conscious decision. However, the said procedure has not been followed by the respondents. Learned counsel has also referred to the Government Resolution dated 26.08.2014 to buttress his contention that the procedure as was required before cancellation of appointment of the applicant has not been followed. Learned counsel has also relied upon the following judgments:-

- (1) Commissioner of Police & Ors Vs. Sandeep Kumar, 2011 ALL SCR 1410,
- (2) Ram Kumar Vs. State of U.P. and Ors., AIR 2011 SC 2903,
- (3) State of Haryana Vs. Dinesh Kumar, SCC 2008 3 222,
- (4) Order passed by this Bench of the Tribunal in the case of Rajendra s/o Madhukar Chavan, Vs. the State of Maharashtra & Ors., O.A. No. 314/2015 on 09.03.2016,

4. Learned counsel for the applicant submitted that in the concerned Criminal Case applicant was not the main accused but was accused no. 03 and the charges leveled against the applicant were not attributing any over-act on part of the applicant. Ultimately the applicant has been acquitted. It is the contention of the learned counsel for the applicant that the respondents must have considered that the applicant has been appointed on compassionate ground and in such circumstances

some considerate view must have been taken by the respondents. In the circumstances, learned counsel has prayed for setting aside the order of cancellation of appointment of the applicant passed by respondent no. 02 on 13.02.2023.

5. Learned Presenting Officer opposed the submissions made on behalf of the applicant. Learned P.O. submitted that there was specific clause in the appointment order of the applicant i.e. clause no. 10 specifying that in the character verification, if any adverse fact is noticed against the applicant and if it is found that he was involved in a criminal offence, without giving any notice to him his appointment will be cancelled and subject to that verification the appointment was given to the applicant. Learned P.O. submitted that in the police verification it was noticed that the applicant did not disclose the fact of criminal prosecution pending against him for the offences punishable U/ss 354, 341, 143 of I.P.C. r/w section 7 of POCSO Act. Learned P.O. submitted that when it was quite evident from the record that the criminal case was pending against the applicant and he did not disclose the said fact, he lost his right to be continued in employment and was liable to be terminated or his appointment was liable to be cancelled in view of the terms in the appointment order.

Learned P.O. submitted that the offences against the applicant were of heinous nature. Learned P.O. also submitted that the authorities relied upon by the learned counsel may not apply to the case of the present applicant. Learned P.O. submitted that after acquittal, the applicant did not approach any authority for the relief claimed in the present O.A. and directly approached this Tribunal. No case is made out for causing any interference in the order passed by the respondents. The learned P.O. therefore prayed for rejecting the Original Application.

6. We have duly considered the submissions made on behalf of the applicant, as well as, the respondents. We have also gone through the documents produced on record by the parties. It is not in dispute that the applicant did not disclose the fact about pendency of criminal case against him. It is further not in dispute that the applicant was facing prosecution for the offences punishable U/ss 354, 341, 143 of I.P.C. r/w section 7 of POCSO Act. From the nature of the offences, it is evident that he was involved in the crime, which can be termed as a heinous crime. After having come to know that the applicant suppressed the aforesaid fact while joining the duties, the respondent authorities have issued the impugned order against the applicant.

7. Having considered the aforesaid facts, it does not appear to us that, any error has been committed by the respondents in cancelling the appointment of the applicant. Now though the applicant has been acquitted from the said offences, cancellation of the appointment order of the applicant is of the earlier period. The said aspect was never for consideration before the appointing authority and the event, which has subsequently happened; could not have been otherwise considered by the appointing authority. In the circumstances, the only course open for the applicant is to approach the respondent authorities in view of his acquittal by the competent court in the Criminal Appeal. Learned counsel for the applicant at this juncture submitted that such application has been submitted by the applicant, however, till date it is pending with the respondent authorities.

8. In the above circumstances, no relief can be granted by this Tribunal as has been prayed by the applicant. However, we deem it appropriate to dispose of the present Original Application with direction to respondent no. 02 to decide the application of the applicant submitted on 27.05.2024 in

premise of the legal pronouncements within six weeks from the date of this order.

9. The Original Application stands disposed of in the aforesaid terms, however, without any order as to costs.

10. Needless to state that even thereafter if any dispute subsists, it would be open for the applicant to approach this Tribunal.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 25th July, 2024