

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.

ORIGINAL APPLICATION NO. 608 OF 2021

DIST. : AHMEDNAGAR

Pawansing s/o Ratansing Bighot,)
 Age. 25 years, Occu. Nil,)
 R/o at Ekbhurji Waghhalgaon,)
 Post Ranjangaon (Pol),)
 Tal. Gangapur, Dist. Aurangabad.).. **APPLICANTS**

V E R S U S

1. **State of Maharashtra & Ors.,**)
 Through its Principal Secretary,)
 Food, Civil Supplies and)
 Consumer Protection Department,))
 M.A., Mantralaya, Mumbai – 32.)
2. **The Divisional Commissioner,**)
 Nashik, Divisional Commissionerate,))
 Nashik Division, Nashik,)
 (supply Branch),)
 Central Administrative Building,)
 Oppo. Bharat Pratibhuti Mudranalaya,))
 Nashik Road, Tal. & Dist. Nashik.)
3. **The District Supply Officer,**)
 Ahmednagar, Collector Office,)
 G.P.O. Road, Hatampura,)
 Ahmednagar.)
4. **The Tahsildar, Shevgaon,**)
 Tahsil Office, Shevgaon,)
 Dist. Ahmednagar.).. **RESPONDENTS**

 APPEARANCE :- Shri Avinash S. Deshmukh, learned
 Advocate for the applicants.

: Shri V.R. Bhumkar, 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 : **02.05.2024**

O R A L - O R D E R

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

1. Heard Shri Avinash S. Deshmukh, learned counsel for the applicants, Shri V.R. Bhumkar, learned Presenting Officer for respondent authorities.

2. The present applicant was selected for appointment to the post of Supply Inspector after having undergone through the selection process. Vide order dated 18.02.2019 he was appointed and posted as Supply Inspector in Tahsil Office at Shevgaon District Ahmednagar. Accordingly the applicant joined the duties of the said post. On 12.08.2020, show cause notice was issued to the applicant by the District Supply Officer, Ahmednagar for not submitting the information as about the pending criminal case against him. The notice to the applicant was also issued by the Tahsildar, Shevgaon on 02.09.2020, requiring him to explain about the criminal case pending against him. The applicant submitted his explanation to the

District Supply Officer, Ahmednagar, as well as, the Tahsildar, Shevgaon respectively on 21.8.2020 and 17.09.2020.

3. On 10.11.2020 a memorandum of charge was served upon the applicant under the signature of respondent no. 2. The applicant gave his reply to the said memorandum also. The allegation against the applicant was that though a criminal case was pending against him for the offences punishable u/ss 420, 419 r/w 32 of the I.P.C., while entering into the Government service he did not disclose the said information. According to the respondents, the conduct of the applicant was of unbecoming of a Government servant. As against it, it was the submission of the applicant that he was never asked to submit the particulars of criminal case pending against him. It was his further contention that he did not submit any false information. It was his further contention that in the criminal case pending against him he was accused no. 2 and was falsely impleaded in it. Applicant has challenged the order of termination dated 7.1.2021 on various grounds. The applicant has alleged that when the respondents had decided to conduct the enquiry against the applicant under rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (for short the Discipline & Appeal Rules) that is for imposing major

punishment and have also served upon him the statement of charge, the respondents have abruptly passed the impugned order, thereby cancelling his appointment that too for wrong reasons and without giving any opportunity of hearing to the applicant. The applicant has further alleged that a stigmatic order is passed against him by respondent no. 02 that too without giving any opportunity of hearing to him.

4. The applicant has bluntly denied the allegation against him of not disclosing the pendency of the criminal case against him while entering into the Government service. The applicant has specifically averred in para 6(iv) of his O.A. that in his online application form he has provided all the necessary information. It is his further contention that he could not secure the copy of his online application. However, it is his contention that he did not suppress any material fact. In the same paragraph therefore the applicant has sought direction against the respondents and more particularly respondent No. 2 to produce the application form submitted by the applicant in pursuance of advertisement dated 26.05.2018. The applicant in premise of the facts as above, has prayed for setting aside the order dated 07.01.2021 issued against him. During pendency of the present O.A. the departmental appeal filed by the

applicant against the order of punishment was dismissed by the Appellate Authority vide order passed on 24.02.2023. The applicant brought on record said amendment and also prayed for quashment of the order dated 24.02.2023.

5. Respondent Nos. 1 & 2 have filed joint affidavit in reply. Respondent Nos. 3 & 4 also have filed their joint affidavit in reply. It is the contention of the respondents that the applicant intentionally and deliberately did not supply true information to the respondents' office, as well as, cheated the respondents. The respondents have denied all the allegations and objections raised by the applicant in his O.A. Respondents have further contended that respondent No. 2 has taken appropriate and conscious decision in respect of termination of the applicant under the provisions of law and no interference is warranted in the order so passed. It is the further contention of the respondents that only few days after his appointment, the applicant has been terminated on the ground of suppressing information of having Criminal Case pending against him. When it was noticed by the respondents that the applicant did not disclose the information as about the criminal case against him, a show cause notice was duly served upon the applicant. According to the respondents, the applicant being appointed

temporarily and on probation period, no detailed enquiry was necessary. The respondents have placed reliance on G.R. dated 12.10.1993 which speaks about action against the Government servants to be taken if they are later found ineligible or unqualified for their initial recruitment. For all above reasons the respondents have prayed for dismissal of the Original Application.

6. Shri Avinash Deshmukh, learned counsel appearing for the applicant criticized the order of termination issued against the applicant on several grounds. The learned counsel submitted that the applicant has been terminated in utter violation of the principles of natural justice. Learned counsel further submitted that in O.A. the applicant has specifically stated that in the application filled online by the applicant he has provided all the necessary information. Learned counsel further submitted that to the averments as above taken by the applicant in his O.A., the respondents have not submitted any specific denial in their affidavits in reply. Learned counsel further submitted that the respondents have also not produced on record the application form submitted by the applicant in which according to the respondents applicant has suppressed the material information. Learned counsel cited the judgment

of Hon'ble Supreme Court delivered on 02.05.2022 in case of **Pawan Kumar Vs. Union of India & Anr., Civil Appeal No(s). 3574/2022.** Learned counsel submitted that identical facts exist in the present matter which existed before the Hon'ble Supreme Court. In the circumstances, according to learned counsel, the ratio laid down in the aforesaid judgment of the Hon'ble Supreme Court would squarely apply to the facts in the present matter. Learned counsel invited our attention to paragraph 13 of the said judgment to support his argument. According to learned counsel, the order passed against the applicant impugned in the present O.A. is stigmatic order and hence, cannot be sustained. Learned counsel further submitted that the respondents have utterly failed in bringing on record any evidence substantiating the allegation raised against the applicant that he intentionally suppressed the fact of criminal case pending against him. Learned counsel further argued that passing of impugned order is arbitrary exercise of power by the respondents. Learned counsel submitted that the criminal case pending against him has been decided by the Trial Court and the applicant has been acquitted from all the charges leveled against him.

7. Learned Presenting Officer supported the impugned order. Learned P.O. further submitted that in the advertisement dated 26.05.2018 in pursuance of which the applicant applied for the subject post in clause 32 thereof it has been specifically explained that the appointment of the candidate will depend upon his character and antecedents and if any adverse information is received the appointment of such candidate will be cancelled. Learned P.O. submitted that the Police verification report specifically revealed that the criminal case was pending against the applicant about which the applicant did not disclose any information to the respondents. Learned P.O. submitted that the very conduct of the applicant at the time of entering into Government service was of unbecoming of the Government servant and in the circumstances the services of the applicant have been rightly terminated by respondent no. 02. He, therefore, prayed for dismissal of the application.

8. We have duly considered the submissions made on behalf of the applicant, as well as, the State authorities. After having considered the pleadings in the O.A., as well as, in the affidavits in reply filed on behalf of the respondents and the arguments advanced on behalf of the applicant, as well as, the

respondents, the question which arises for our determination is whether the respondents could have terminated the services of the applicant vide order dated 07.01.2021 impugned in the present O.A.

9. We deem it appropriate to reproduce herein below the last paragraph in the impugned order, which reads thus:-

“ज्याअर्थी पी.आर. बिघोल, यांचे पुरवठा निरीक्षक पदावरील पदस्थापना संदर्भात पुरवठा निरीक्षक संवर्ग सरळसेवा भरती - २०१८ जाहिरातीतील अट क्रं. ३२, तसेच इकडील नियुक्ती आदेश दि. १८.०२.२०१९ मधिल अटी व शर्तीचा त्यांनी भंग केला आहे. महाराष्ट्र नागरी सेवा (शिस्त व अपिल) नियम - १९७९, (वर्तणुक) नियम - १९७९ नुसार बिघोल यांची वर्तणुक व गुन्ह्याची माहिती दडवण्याची कृती ही अशोभनीय व शासन सेवेतील सचोटी व कर्तव्य परायणता राखणारी नाही. त्यामुळे उक्त क्रं. २ शासन निर्णय दि. १२ ऑक्टो. १९९३ विचारात घेता, पी. आर. बिघोल यांची पुरवठा निरीक्षक पदावरील तात्पुरती पदस्थापना या आदेशाच्या दिनांकापासून समाप्त करण्यात येत आहे.”

As alleged by the applicant, the impugned order having averments as aforesaid is stigmatic and hence could not have been passed without conducting a regular D.E. against the applicant and without giving him the due opportunity of hearing. As against it, the State has taken a stand that the impugned order is strictly in terms of the condition/clause no. 32 of the advertisement dated 26.05.2018 in pursuance of which the applicant applied for the subject post and got selected. Clause no. 32 in the advertisement reads thus:-

“३२. शासकीय सेवेत संबंधित उमेदवाराची नियुक्ती त्याची पुर्वचारित्र व वर्तणुक (पोलीस चौकशी) यांच्या समाधानकारक तपासणी अहवालावर अवलंबून राहील व तसा तपासणी अहवाल आक्षेपार्ह असल्यास संबंधित उमेदवाराची नियुक्ती रद्द करण्यात येईल. अशा प्रकरणी सामान्य प्रशासन विभाग, शासन परिपत्रक क्रमांक चा अप-१०१२/प्र.क्र.

६३/१६-अ, दिनांक २६ ऑगस्ट २०१४ नुसार गठीत केलेल्या समितीच्या निर्णयानुसार व परिपत्रकातील मार्गदर्शक सुचनांनुसार कार्यवाही करून योग्य तो निर्णय घेतला जाईल. तसेच यापूर्वीच संबंधित उमेदवारास नियुक्ती दिली असल्यास कोणतीही पूर्वसुचना न देता सेवेतून काढून टाकरण्यात येईल..”

10. The point of controversy is that the respondents have held the applicant guilty of suppressing the material information about the criminal case pending against him while entering into the Government service. As against it, the applicant has raised the bold stand in the O.A. itself that he did not suppress any fact from the respondents. In para 6(iii) of the O.A. the applicant has specifically averred thus:-

“6(iii) Applicant says that in response to the aforesaid advertisement he had duly submitted his candidature for the post of Supply Inspector through the VJ-A (General) category by submitting online application form on the website ‘www.mahapariksha.gov.in’. It is most pertinent & relevant to note here that in said online form which was submitted by him, the applicant had specifically answered a question concerning his involvement, if any, in any offence or prosecution in the affirmative. This is to say, while answering said question the applicant had kept in mind the fact that his name was (falsely) implicated in an offence registered at C.R. No. 717/2016 registered at the CIDCO (Aurangabad City) P.S. U/Ss 420, 419, 34 of the IPC. Applicant therefore emphatically says and submits that at the first available opportunity he had conveyed the true position and had not suppressed the same.”

11. In para 6(iv) the applicant has stated that he does not possess the copy of his online form and has therefore called upon the respondents to produce the same on record. Now it

will be useful to see how the respondents have answered the averments in para 6(iii) of the O.A. reproduced hereinabove.

12. In the joint affidavit in reply filed on behalf of the respondent nos. 3 and 4 in paragraph 4 & 5 they have dealt with the averments taken in para 6(iii) and 6(iv) of his application. We deem it appropriate to reproduce herein below the relevant portion of the said paragraph:-

“04. As regards to the contents of Para 6(i to iii) of the Original Application, I say and submit that the contentions raised by the applicant are in respect of advertisement dated 26.05.2018 issued by the Government for the post of Supply Inspector. That, as per the advertisement issued by the Government the applicant has applied from VJA (General) category and he has submitted form on the website. And other contentions raised by the applicant are denied by the present deponent.

05. As regards to the contents of Para No. 6(iv to vii) of the Original Application, I say and submit that the contentions raised by the applicant are denied by the present respondents. I most humbly say and submit that, while fill up the application form applicant has not mentioned that, the offence is registered against the applicant which is mandatory as per the clause no. 19 onwards of the said advertisement. I further humbly say that, applicant was temporarily appointed on 18.02.2019 on the pay scale of Rs. 5200-20200 GP 2800/-. That, appointment of the applicant is issued by laying down condition no. 1 to 22 and in the said conditions, condition no. 16 specifically applicable to the applicant. That, the appointment of the applicant will be continued after verification of the police record and his character.”

13. In view of the plea raised by the applicant in his O.A. asserting therein that he has disclosed the fact as about the criminal prosecution pending against him while submitting online application form and in view of the answer to the said

contention given by the respondent nos. 03 & 04 in their affidavit in reply stating that the applicant had not mentioned while filling of the application form that the offence is registered against the applicant, the respondents were under an obligation to file on record the copy of the application form submitted by the applicant more so when the applicant has called upon the respondents to place the same on record. The respondents have not placed on record the copy of the online application form submitted by the applicant though they have annexed certain other documents with their affidavit in reply. It is not the contention on behalf of the respondents that they do not possess the application form submitted by the applicant in digital or print form. To negate the plea raised by the applicant that in his online application he has disclosed the fact of criminal prosecution pending against him, the best mode for the respondents was to submit the copy of the online application submitted by the applicant by taking a print thereof. Admittedly, that has not been done. Secondly, while joining the duties the new entrants are required to fill the attestation form, wherein also the new incumbent has to state that no criminal prosecution is pending against him or he was never involved in any criminal case. As is revealing from the record, no such attestation form was got executed by the applicant.

14. As noted hereinabove, the show cause notices were initially issued by the District Supply Officer, Ahmednagar and the Tahsildar, Shevgaon, Dist. Ahmeednagar respectively on 12.08.2020 and 02.09.2020. To the said notice of the District Supply Officer, Ahmednagar the applicant has given his reply on 21.08.2020. In the said reply the applicant has specifically stated that since he has not suppressed any information from the Government, no action shall be taken against him. The said contention is reiterated by the applicant while replying to other notices, as well as, the statement of charge against him. The documents on record further reveal that the case of the applicant was referred to the Committee headed by the collector, Ahmednagar and the said committee in its meeting dated 22.02.2020 has considered the same. The minutes of the said meeting are filed on record by the applicant. Perusal of the said minutes reveal that while joining the duties though the applicant was required to undertake in writing that the terms and conditions incorporated in the order of appointment dated 18.02.2019 are admitted to him and binding upon him, nothing further was required to be given by him in writing and no attestation form was got executed by the applicant. The

minutes of the meeting further reveal that the said committee has recommended show cause notice to the then Tahsildar, Shevgaon calling upon him as to why he did not call for the character and antecedents report from the Police and why attestation form was not got executed from the applicant.

15. From the documents on record it appears to be a fact that a criminal case for the offences punishable U/ss 420, 419 r/w 32 of the IPC was pending against the applicant in the Court at Aurangabad. As per the contention raised on behalf of the respondents, the fact of criminal prosecution pending against the applicant was revealed to them through the police verification report. As against it, as we have noted hereinabove, it is the contention of the applicant that he has disclosed the said fact in the online application form submitted by him. In premise of the facts as aforesaid it is not understood as on the basis of which evidence or document the respondent no. 02 has recorded a finding holding the applicant guilty of suppressing the material information from the Government while entering in the Government service.

16. The respondents have terminated the services of the applicant on the ground that he suppressed the fact of criminal prosecution pending against him while joining the Government

job. As such, what was to be established in the present matter was the fact that the applicant suppressed the relevant fact. The respondents have not placed any material with their affidavit in reply to substantiate their allegation that the applicant either suppressed the fact of criminal prosecution pending against him or gave a false information that no criminal prosecution is pending against him. In the instant matter the issue is not whether a criminal case was pending against the applicant when he entered into the Government services. The issue is 'whether the applicant suppressed the said fact while entering into the Government service'. The respondents have utterly failed in substantiating their contention that the applicant is guilty of suppressing the material fact of criminal case pending against him. As such, the impugned order passed against the applicant holding the applicant guilty of said misconduct cannot be sustained and deserves to be set aside.

17. Considering the facts as aforesaid, we find substance in the contention raised on behalf of the applicant that the impugned order is attaching stigma on him. Though it is well settled that in general the probationer does not acquire any substantive right to the post and cannot complaint if his service is terminated at any time during his probation i.e. before

its confirmation, but the termination would be illegal if it is brought to punish the employee for the misconduct or if termination cast a stigma on him.

18. In fact, the respondents have issued memorandum of charge contemplating the enquiry against the applicant under Rule 8 of the Discipline and Appeal Rules. Why the respondents did not proceed further in conducting the departmental enquiry against the applicant and chose to put an end to his appointment vide the impugned order, is nowhere explained by the respondents. Considering the averments in the impugned order, it is difficult to accept the contention raised on behalf of the respondents that it is a simpliciter termination of the services of a probationer. Had the respondents passed an order without attaching any stigma on the applicant perhaps we may not have caused any indulgence in the said order. However, after having considered the entire facts and circumstances involved in the present matter the impugned order cannot be held to be an order of termination simpliciter. It's stigmatic order and could not have been passed by the respondents without conducting regular enquiry into the alleged misconduct of the applicant. The impugned order,

therefore, cannot be sustained and deserves to be set aside. In the result the following order is passed: -

ORDER

(i) The order dated 07.01.2021 passed by respondent No. 2 and order dated 24.02.2023 passed by respondent No. 1 are quashed and set aside.

(ii) The applicant be reinstated in service within a period of four weeks from the date of this order. The respondents are however, not precluded from conducting the departmental enquiry against the applicant on the charges leveled against him vide notice dated 10.11.2020.

(iii) The Original Application stands allowed in the aforesaid terms.

(iv) There shall be no order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 02.05.2024