

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD.**

ORIGINAL APPLICATION NO. 817 OF 2017

DISTRICT : LATUR

Dr. Vilas s/o Ramrao Musale,)
Age. 36 years, Occ. Service as,)
Assistant Professor Orthopedics,)
Government Medical College, Latur,)
R/o Latur, Taluka and Dist. Latur.).. **APPLICANT**

V E R S U S

1) The State of Maharashtra,)
Through the Principal Secretary,)
Medical Education & Drugs)
Department, Mantralaya,)
Mumbai.)

2) The Director,)
Medical Education & Research,)
Mumbai.)

3) The Dean, Govt. Medical College,)
Latur.).. **RESPONDENTS**

APPEARANCE :- Shri Shamsunder B. Patil, Advocate for
the applicant.

: 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)

RESERVED ON : **26.08.2024**
PRONOUNCED ON : **02.09.2024**

ORDER

[Per :- Vinay Kargaonkar, Member (A)]

1. Heard Shri Shamsunder B. Patil, learned counsel for the applicant and Shri V.R. Bhumkar, learned Presenting Officer for respondent authorities.

2. The applicant was selected and appointed as Assistant Professor in Orthopedics and posted in Government Medical College, Latur on probation for 2 years. The applicant was terminated from the service as he has not disclosed information about the criminal cases registered against him in his attestation form. Aggrieved by the termination order dated 11.10.2017 issued by the State Government, the applicant has filed the present Original Application before this Tribunal.

3. Pleadings and arguments by the applicant:

(i) The applicant was appointed on ad-hoc basis as Assistant Professor in Orthopedics w.e.f. 22.3.2012 to 26.3.2013 and was posted in Government Medical College at Solapur. After completion of above period the applicant was appointed as Assistant Professor in Orthopedics at Government Medical College and Hospital at Ambajogai on 26.9.2014. Though the native place of the applicant is Golegaonwadi, Tq. Loha, Dist.

Nanded, the applicant is not residing in his native place since 2000 due to his medical education and further due to his employment at various places. Wife of the applicant is also medical practitioner and is prosecuting her higher study at other place. The applicant and his wife are not residing along with their parents, brothers or any relatives since 2000.

(ii) The Maharashtra Public Service Commission invited applications for various posts of Maharashtra Medical Education and Research Services, Group-B by an advertisement published in the month of February, 2014. The applicant applied for teaching post in Medical colleges in the State. After completion of selection process, the MPSC recommended the name of the applicant to the State Government for the post of Assistant Professor in Orthopedics from the reserved category of Vimuta Jati-D. At the time of selection process and at the time of making recommendations by the MPSS to the State Government, the applicant was already working under the Government. On the basis of recommendations by the MPSC, the State Government appointed the applicant as Assistant Professor in Orthopedics and posted him at Government Medical College at Latur on probation for the period of 2 years vide order dated 20.4.2015. In the appointment letter there

were 14 terms and conditions on the basis of which the appointment was given. In the appointment order the name of the applicant appeared at sr. no. 15. The condition no. 14 states that the appointment of the candidate at Sr. nos. 2 to 10, 17, 18, 24, 25, 26, 28 to 30 and 34 is subject to verification of their present and past character. In this condition No. 14 name of the applicant does not appear.

(iii) One Dr. Mahadeo Manaji Ghuge was one of the candidates who had applied to the MPSC for the post of Assistant Professor. On merit said Dr. Ghuge was not appointed. Due to selection of the applicant said Dr. Ghuge was having grudge against the applicant and with the help of one Advocate Shri Dinesh Matole made a false complaint on 09.07.2015 to the State Government taking objection to the selection and appointment of the applicant as Assistant Professor. Based on this complaint the Desk Officer, Government of Maharashtra, Medical Education and Drugs Department, Mumbai had issued a memorandum dated 17.08.2015 asking the applicant to submit his explanation as to why the services of the applicant should not be terminated on the ground that the applicant has not given the information in his profile details in the verification form about pending criminal case against him in Nanded

District. The applicant submitted detailed reply on 30.10.2015 to the said Government memorandum. The applicant submitted that he has not concealed any information from the Government. Regarding his residential address the applicant had given his permanent and present residence at Pune. As regards criminal pending cases the applicant has submitted that this criminal case is relating to his brother's wife. Wife of brother of the applicant has filed a complaint under Section 498-A of the IPC and in this case not only the applicant and his wife but all other relatives are falsely implicated. In relation to this case the applicant had already obtained anticipatory bail and he was never arrested even for a single minute. Dr. Ghuge is below the applicant in the select list from the concerned reserved category and only to get Government service by removing the applicant, Dr. Ghuge has filed this false complaint against the applicant. The applicant submitted that he has not concealed any information and he has filled in all the columns in the attestation form. As a matter of fact, the applicant and his wife are residing separately since prior to marriage of his brother. So there is no question of committing any offence under Sections 498-A of the IPC.

(iv) In the termination order dated 11.10.2017 there is mention of Crime No. 221/2008 registered for the offences punishable under Sections 307, 324, 394, 147, 148, 149 of the IPC. The applicant submitted that FIR in the said crime No. 221/2008 is already quashed and set aside as against the applicant by the Hon'ble High Court by an order dated 23.10.2012 passed in criminal application No. 5196/2011.

(v) By an application dated 15.05.2017 the applicant had requested respondent No. 1 that before taking any action against the applicant the applicant should be given personal hearing in the matter.

(vi) By an application dated 19.06.2017 the applicant requested respondent No. 2 to declare the applicant as successfully completed the probation period.

(vii) Without considering the past service record of the applicant and without considering the detailed explanation given by the applicant and without giving personal hearing to the applicant the State Government by an order dated 11.10.2017 terminated the services of the applicant as Assistant Professor, Group-B (Orthopedics), Government Medical College, Latur. The termination order is totally illegal, bad in law and

without application of mind and hence, liable to be quashed and set aside. The applicant is in Government service though ad-hoc/ temporary basis right from the year 2012 i.e. much prior to filing of FIR in Crime No.117/2014 under Section 498-A of the IPC. Thus, as per the provisions of Maharashtra Civil Services Rules, the appointment made in the year 2012 is to be treated as the initial date of appointment in Government service. It is not the case that appointment of the applicant by order dated 20.04.2015 is the initial appointment.

(viii) As regards, Crime No. 221/2008 it is already quashed and set aside by the Hon'ble High Court, so that criminal case has no bearing on the service of the applicant.

(ix) The main allegation against the applicant that he has concealed the material information while not filling the particular paragraph of attestation form is not correct. From perusal of the attestation form shows that the applicant kept the entire page blank. This act of the applicant cannot be termed as intentional concealing the facts. Given the language in paragraphs 10 and 11, the applicant sincerely believed that this information was not necessary.

4. **Pleadings and arguments by the respondents:**

(i) The MPSC held examination for the post of Assistant Professor, Group-B, in the subject of Orthopedics as direct recruitment in the year 2014. After receiving the recommendations from the MPSC the State Government scrutinized the documents regarding qualification, caste certificate and validity; etc. Thereafter attestation forms of the applicants were sent to concerned Police authorities for their character verification report as per the residence in last 5 years. As per the residential address of the applicant for last 5 years the character verification letters were sent to the Police Commissioners at Mumbai, Nagpur and Solapur. The character verification reports were received from the Police Commissioners, Solapur, as well as, Nagpur in which the applicant's character was found satisfactory. In the report of Commissioner of Police at Mumbai it was revealed that the applicant is not residing at the address mentioned in the attestation form.

(ii) According to character verification reports the applicant was found fit for appointment to the post of Assistant Professor. Considering all these facts the appointment order dated 20.4.2014 was issued collectively in favour of the applicant.

The applicant joined on the post of Assistant Professor, Group-B (Orthopedics) at Government Medical College, Latur.

(iii) Advocate Dinesh Matole made a complaint vide letter dated 9.7.2015 regarding selection and appointment of the applicant as the applicant had concealed the information about the criminal cases pending against him and these cases were not mentioned in the attestation form by the applicant. After receipt of the complaint an enquiry report was called from the Superintendent of Police, Nanded. In the said enquiry report it was found that 2 criminal cases were registered against the applicant. First criminal case no. 221/2008 registered against the applicant for the offences punishable u/s 307, 324, 294, 147, 149 of the IPC. The charge sheet was filed on 12.12.2009. Second criminal case no. 117/2024 was registered against the applicant for the offences punishable u/s 498-A, 313, 354, 494 and 34 of the IPC. The charge sheet was filed in this criminal case on 22.09.2014. After getting police enquiry report a show cause notice was issued vide Govt. letter dated 17.8.2015. It was revealed that the applicant had not given information in the attestation form regarding pending case against him at Nanded in Bhagyanagar Police Station. The applicant had deliberately concealed the information regarding the criminal case pending

against him, which was revealed only after receiving the complaint from Advocate Shri Dinesh Matole.

(iv) In the attestation form at sr. no. 1 it was made clear to the candidates that furnishing a false information or suppression of any information in the attestation form would disqualify the candidate and render him unfit for employment under the Government. The warning in the attestation form is very clear. In spite of crystal clear position, the applicant had deliberately concealed the information regarding criminal case registered against him and succeeded in securing the Government job.

(v) The applicant was appointed for the period of 2 years on probation by the order dated 20.4.2015 and his service was discontinued w.e.f. 10.11.2017. The probation period can be extended or service of the applicant can be terminated as stated in the appointment order. As per the provisions of circular dated 12.10.1993 if the candidate submits false information at the time of appointment and he is on probation, such candidate can be terminated. If the candidate is permanent then the enquiry should be conducted as per the provisions of the Maharashtra Civil Services Rules. In this case the applicant is not permanent employee and he was on probation. Hence according to the provisions of Circular dated 12.10.1993, as

well as, warning mentioned in the attestation form, the service of the applicant was terminated.

(vi) The Hon'ble Supreme Court in the case of Secretary, Technical Education, Uttar Pradesh vs. Lalit Mohan Upadhyay, 2007 (25CCL & S41) held that in termination of a temporary employee, regular enquiry is not required. Further the Hon'ble Supreme Court in the case of Omprakash Maun Vs. Director of Education and Ors, 2006 (AIR) SC weekly 4548 held that an opportunity of hearing is not required in the case of temporary employee. Although show cause notice is not required, in the present case an opportunity was given to the applicant by giving show cause notice dated 10.8.2015.

(vii) The applicant had requested to complete the probation period vide letter 19.6.2017. However, since serious criminal case was pending against the applicant, as per the rules it was not feasible to complete the probation period of the applicant. There is no merit and substance in the present Original Application.

Reasoning and Conclusions:

1. The present matter involves the dismissal of the applicant, an Assistant Professor at a Medical College, on the

grounds of non-disclosure of criminal cases in the attestation form. Two criminal cases were registered against the applicant:

1. Criminal Case No. 221/2008 :

The applicant was charged under Sections 307, 324, 294, 147, and 149 of the Indian Penal Code (IPC).

A charge sheet was filed on 12th December 2009.

The FIR in this case was quashed by the Honourable High Court on 23rd October 2012.

The quashing occurred before the applicant submitted his attestation form on 18th December 2014.

2. Criminal Case No. 117/2014:

The applicant was charged under Sections 498(A), 313, 354, 494, and 34 of the IPC.

A charge sheet was filed on 22nd September 2014.

The applicant was subsequently acquitted by the Sessions Court on 24th March 2022.

2. The primary issue concerns the applicant's non-disclosure of these criminal cases in the attestation form submitted on 18th December 2014. It is essential to consider the following points:

- Quashed FIR (CR No. 221/2008): Since the FIR in CR No. 221/2008 was quashed by the High Court before the attestation form was submitted, quashing the FIR nullifies the charges, and the applicant's record is effectively cleared of this case.
- Pending Case at the Time of Attestation (CR No. 117/2014): Although the applicant did not disclose CR No. 117/2014, which was pending at the time of submission, the applicant was ultimately acquitted in this case. The acquittal indicates that the charges lacked merit, and the applicant's non-disclosure can be seen in a more lenient light.

The criminal case in question was filed under Section 498(A) of the Indian Penal Code (IPC), with the complainant being the wife of the applicant's brother.

The applicant was acquitted in 498(A) by the Sessions Court on 24th March 2022, which underscores the lack of merit in the charges against him. The acquittal suggests that the case may have been frivolous or motivated by reasons other than genuine harassment. At the time of submitting the attestation form on 18th December 2014, the case was still

pending. The applicant, however, did not disclose the pending case.

3. Issue of non-disclosure of criminal cases in the attestation form has been covered in detail by the Apex Court in **Avtar Singh Vs Union of India & Ors (Special Leave Petition (Civil) No 20525 of 2011)**. Relevant part of the judgement is reproduced below:

“Termination of employee on the ground of misrepresentation or suppression of material information in the verification – Held – Merely because there is a power to terminate services or cancellation of offer of appointment, it does not follow that a person should be removed outrightly – Various aspects have to be considered and the discretion so used should not be arbitrary or fanciful – It has to be guided on certain principles for which purpose verification is sought.”

“27. 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.”

“29. 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.

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."

4. The dismissal of the applicant from service on the sole ground of non-disclosure of criminal cases in the attestation form appears to be a disproportionate punishment. The respondents seem to have acted without fully considering the nuances and specific circumstances surrounding the criminal cases registered against the applicant.

1. Context of Criminal Cases

The criminal cases in question involve charges that were either quashed or resulted in the applicant's acquittal. The first case was quashed by the High Court, and in the second, the applicant was eventually acquitted. These outcomes significantly weaken the argument that non-disclosure constituted a grave offense deserving of dismissal.

Furthermore, a case was registered under Section 498(A) IPC, which has been acknowledged by the Supreme Court as a provision that is frequently misused, particularly against non-cohabiting relatives. The respondents have not demonstrated that they gave due consideration to this aspect or to the eventual resolution of the cases before deciding on the applicant's dismissal.

2. Proportionality of Punishment

The principle of proportionality requires that the punishment imposed should be commensurate with the gravity of the misconduct. In this instance, while non-disclosure of a pending criminal case might warrant some disciplinary action, outright dismissal seems excessive, particularly when the applicant was subsequently acquitted in one case and the other was quashed.

The Supreme Court has emphasized in various rulings that while employers have the power to terminate service for non-disclosure, this power should be exercised judiciously. Simply having the authority to dismiss an

employee does not mean that it should be done without considering the full context and potential mitigating factors.

3. Failure to Consider Relevant Factors

The respondents have not adequately considered the criminal case against the applicant and the quashing of the charges. These outcomes suggest that the charges were either unsubstantiated or motivated by reasons other than genuine criminal intent. Ignoring these factors in the decision-making process reflects a lack of fair assessment.

Moreover, the respondents did not consider whether the non-disclosure was intentional or whether the applicant believed the charges were no longer relevant due to the quashing of FIR and that he was granted anticipatory bail by the court in another matter. This oversight further underscores the disproportionate nature of the punishment.

5. In light of the above, the decision to dismiss the applicant appears to be an overreach, given the circumstances. The punishment does not align with the principle of proportionality, and the respondents failed to account for crucial factors that should have been considered before making such a consequential decision. Therefore, the dismissal order should be reconsidered, as it represents a disproportionate response to the alleged misconduct.

6. The applicant's non-disclosure, viewed in light of his subsequent acquittal and the surrounding circumstances, does not justify dismissal from service. Therefore, we feel that quashing the dismissal order is consistent with principles of fairness and proportionality. The applicant is also accountable for the non-disclosure of facts in the attestation form. As the applicant did not work during the period from the date of his dismissal until now, he will not be entitled to salary for this intervening period.

Hence following order:

ORDER

- (i) Order dated 11th October 2017 is quashed and set aside. Respondents shall reinstate the applicant as Assistant Professor, Orthopedics, Government Medical College, Latur with continuity of service, however without back wages, within 8 weeks from the date of this order.
- (ii) OA is allowed in aforesaid terms without any order as to costs.

MEMBER (A)

VICE CHAIRMAN

Place : Aurangabad

Date : 02.09.2024