

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5608 OF 2012

Gnyanoba Tejrao Hake,
Age: 29 Years, Occ: nil,
R/o. Near Dal Mill,
Sardar Patel Road, Jalna,
Tal: and Dist: Jalna.

PETITIONER

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Home Department,
State of Maharashtra,
Mantralaya, Mumbai
- 2] The Director General of Police,
State of Maharashtra,
Mumbai
- 3] The Commandant,
State Reserve Police Force,
Group No. III, Jalna,
Tal. and Dist. Jalna.

RESPONDENTS

...
Mr. V.D.Gunale, Advocate for the Petitioner
Mr. P.P.More, AGP for Respondent – State.
...

**CORAM: S.S.SHINDE &
P.R.BORA, JJ.**

Reserved on : 25.03.2015
Pronounced on: 18.04.2015

JUDGMENT: [Per S.S.Shinde, J.]:

- 1] Heard.

2] Rule. Rule made returnable forthwith heard with the consent of the parties.

3] This Petition takes an exception to the Judgment and Order passed by the Maharashtra Administrative Tribunal, dated 06.05.2011, in Original Application No.270/2011, and also to the termination order dated 03.02.2004 issued by the respondent No.3 and the impugned communication dated 26.09.2008 issued by the respondent No.1, with further prayer for reinstatement in service with continuity of service from the date of termination and pay petitioner all the consequential benefits as per the seniority. It is also alternatively prayed that, the respondents be directed to act upon the directions issued by the respondent No.1, to the respondent No.3 dated 31.08.2005 and the petitioner be appointed afresh without giving him the benefit of his past service with the respondent No.3.

4] It is the case of the petitioner that, he has passed H.S.C. Examination. The respondent No.3 issued an advertisement in the Year 2001 to the post of Armed Police

Constable in the State Reserve Force at Jalna District. In pursuance to the said advertisement, the petitioner applied to the said post. He was called for physical test by the respondent No.3 at Aurangabad. He was found fit in the said test. Thereafter, he was called for written test, and he was successful in the said test. On the next day, he was called for oral interview, and after conducting interview, he was declared successful and consequently selected to the post of Armed Police Constable, and was appointed by an appointment order dated 02.02.2002 on the said post. Immediately he joined the duties. After his joining, he was sent for training for 9 months at Daund, District Pune. He had successfully completed the training of 9 months. After completion of the said training, he was posted at Jalna in State Reserve Force. He was discharging his duties sincerely and honestly.

5] It is the further case of the petitioner that, without notice and without providing any opportunity of being heard to the petitioner, all of a sudden, the respondent No.3 issued order of termination to the petitioner on 03.02.2004. The termination order did not disclose reason for termination, and it is only mentioned

that, the petitioner's services are no more required and he is discharged from the services. The petitioner approached the respondent No.3 to find out the reasons for termination of his services. He was orally told that, one crime was registered against the petitioner under Section 12-A of the Bombay Prevention of Gambling Act and at the time of submitting the application, which was in prescribed form in the column. The petitioner was supposed to disclose information in said column about registration of aforementioned crime, however, in said column, 'No' was written by the petitioner. It is the further case of the petitioner that, when the alleged offence was registered against him on 22nd January, 2002, at that time he was minor. He was not on the spot where the police raided the place. There was marriage ceremony and for attending the said marriage, some youths gathered, and they were playing the cards, the petitioner was present there but was not playing cards. Somebody informed the police, and police has raided the said place and caught hold the petitioner and others. The petitioner was present there for attending the marriage. The petitioner has no concerned with such crime, nor he committed the said crime, but the fact remains that the crime was registered against the

petitioner and other boys. He was acquitted from the said offences subsequently.

6] The petitioner approached the Minister of Home, Government of Maharashtra and requested to consider his case by taking sympathetic view, and restore his services. However, there was no response. The petitioner made various representations. However, on 31st August, 2005, he was told to approach the respondent No.3 to look into his grievance. The assurance was also given by the respondent No.1 that, he will be reappointed in the service, but will not be entitled for monetary and consequential benefits of his previous service rendered by him with the respondent No.3. He approached the respondent No.3, and shown his willingness to accept reappointment and to give up all the previous service benefits. However, the respondent No.3 did not follow the directions of the respondent No.1. However, respondent No.3 told that, he has forwarded the file to the respondent No.2 for opinion and necessary guidance. The petitioner waited for considerable time, however, there was no response from the respondent No.3 and all of sudden on 21st July, 2008, he received a communication that, his

request for reappointment / reinstatement cannot be considered. Again, he approached to the respondent No.1, however, by communication dated 21st October, 2008, petitioner was informed that, his request cannot be considered.

7] Being aggrieved by the refusal of the respondents to reappoint / reinstate the petitioner, petitioner filed Original Application No.270/2011 under Section 21 of the Administrative Tribunal Act, challenging the order of the respondent No.3 as well as the respondent No.1. Said Original Application was dismissed. Hence this Writ Petition.

8] The learned counsel appearing for the petitioner submits that, in spite of assurance by the respondent No.1 to give reappointment on condition that, petitioner will not claim benefits of the previous service, and when the petitioner was willing to give up such benefits, the respondent Nos. 1 and 3 have wrongly rejected the application of the petitioner for reappointment / reinstatement. It is submitted that, the delay in filing Original Application before the Maharashtra

Administrative Tribunal was neither intentional nor deliberate, which was caused due to lack of legal advice and legal knowledge. It is submitted that, the observations of the Maharashtra Administrative Tribunal that, the petitioner's service was on temporary basis are erroneous. The petitioner has completed more than two years of service and his probation period, and therefore, he was deemed to be permanent employee and his services could not have been terminated without conducting an enquiry as contemplated under the provisions of the Maharashtra Civil Services [Discipline and Appeal] Rules, 1979. The termination order was without assigning any reasons and without issuing any show cause notice to the petitioner. The said order was totally in violation of the principles of natural justice so also in violation of the provisions of the Maharashtra Civil Services [Discipline and Appeal] Rules, 1979, and therefore, the Maharashtra Administrative Tribunal ought to have allowed the Original Application filed by the petitioner. It is submitted that, mere registration of crime when the petitioner was not involved in playing the card, would not attract criminality, and therefore, sympathetic view ought to have taken by the respondents. It is submitted that, similarly situated employees who have

not given information of registration of crime in the attestation form, their cases are considered by the respondent No.3 sympathetically by issuing them fresh appointment orders on the condition that, they should give up the claim of their past service, however, the case of the petitioner is not considered from that angle. The learned counsel submits that, one Shri Sunil Vitthal Bhigot and Bhalchandra Jagannath Nikam are in service of the respondents, who were given fresh appointments. It is submitted that, even if clause No.11-A is read as it is from the application, which was supposed to be filled in by the candidate, information which was asked for was in respect of whether the petitioner was arrested / detained / confined / fined / convicted and it was not necessary to mention about the registration of offences against the petitioner. Therefore, the learned counsel appearing for the petitioner submits that, Petition deserves to be allowed.

9] One Santosh Jagannathrao Joshi, working as a Police Wireless Inspector [Engineering] in the office of the Commandant SRPF, GR.III, Jalna, has filed affidavit in reply. It is stated in the said reply that, the recruitment process for the post of Armed Police Constable was initiated in the

Year 2001. An appointment order was issued on 02.02.2002. It is stated in para No.5 of the affidavit in reply that, the action of discharging the petitioner from service without any notice is correct, and said action had been taken as per the instructions issued in the appointment order wherein it was stated that, the appointment is on temporary basis and in case of violation of any condition, the services will be terminated without any notice or prior intimation. The relevant conditions of appointment have been mentioned in the affidavit in reply. It is stated in the affidavit in reply that, after enquiry it was noticed by respondent No.3 that, the crime is registered against the petitioner vide CR No. 3013/2000 under Section 12 (A) of the Bombay Prevention of Gambling Act on 22.01.2000. It is further stated that, this clearly shows that, the petitioner has purposely hidden the said fact in the "Sakshankan Namuna Form". It is further stated that, petitioner was on probation for 3 years, he did not complete three years period, and therefore, it was not necessary to disclose any reason for his termination. It is stated in para No.7 that, an offence was registered against the petitioner in Police Station Sadar Bazar, Jalna, vide C.R.No. 3013/2000 under Section 12-A of the Prevention of Bombay Gambling Act

dated 22.01.2000 and the charge sheet was filed against the petitioner vide S.T.C.No. 1053/2000 in JMFC Court, Jalna and the matter was pending in JMFC Court. When the petitioner was recruited on 02.02.2002, he had hidden the said fact while joining the duties. The Judgment was delivered by JMFC, Jalna on 07.05.2003. All these facts are purposely hidden by the petitioner while joining his duties.

10] It is further stated in para No.12 that, the request of the petitioner is not reconsidered by the respondent No.1. It is further stated in para No.13 that, the respondent No.3 has taken action as per DIGP SRPF Circular dated 24.07.1998. It is further stated that, petitioner was appointed on probation for three years, and therefore, it was not necessary to initiate departmental enquiry. It is further stated that, the Maharashtra Administration Tribunal has given sufficient and cogent reasons for rejecting the Original Application of the petitioner, therefore, Petition may be dismissed.

11] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, and the learned AGP for the respondent – State,

with their able assistance, perused the pleadings in the Petition and annexure thereto, reply filed by the respondents, and the Judgment and Order passed by the Maharashtra Administrative Tribunal rejecting the prayer of the petitioner for setting aside the order of termination of services. The Maharashtra Administrative Tribunal has given sufficient reasons to hold that, application filed by the petitioner was barred by limitation.

12] The Maharashtra Administrative Tribunal has also considered the case of the petitioner on merits and held that, prayer for reinstatement cannot be considered favourably, and order of termination passed by the respondents, needs no interference.

13] We have independently considered the case of the petitioner in the light of the material placed on record, it is evident from the perusal of the averments in the affidavit in reply filed on behalf of the respondents that, probation period of the petitioner was for 3 years and before expiry of the said period, services of the petitioner were terminated. Since the appointment letter of the petitioner stipulated conditions, and it was communicated

that on breach of such conditions, services of the petitioner will be terminated, there is no substance in the contention of the learned counsel appearing for the petitioner that, the Departmental Enquiry should have been conducted by the respondents. As already stated, at the relevant time, petitioner was on probation and secondly, on breach of conditions mentioned in the appointment letter, it was not necessary to hear the petitioner before order of termination was passed by the respondent Authority. The petitioner, at the time of the appointment, did not place on record information that, the crime was registered against him vide C.R.No. 3013/2000 under Section 12-A of the Bombay Prevention of Gambling Act. At the time of the appointment of the petitioner, case i.e. STC No. 1053/2000 was pending before the Judicial Magistrate First Class, Jalna. The said vital information was suppressed by the petitioner. The contentions of the petitioner that, he was not involved in the said offence or he is acquitted from the said offence, deserves no consideration. When the petitioner was obliged to fill in the information about pendency of criminal case, if any, he was bound to disclose about the registration of crime and pendency of the criminal case before the Judicial Magistrate First Class. At the entry point of the

services, conduct of the petitioner not to disclose and conceal / suppress about registration of crime and pendency of criminal case against him, goes to the root of the matter, and it shows attitude of the incumbent while entering in the service as Armed Police Constable.

The contention of the petitioner that, due to lack of the legal advise and knowledge, he could not approach Maharashtra Administrative Tribunal within limitation, deserves no consideration. Since the petitioner is an educated person, and there were no good reasons placed on record to explain inordinate delay in taking exception to the order of termination, which was passed in the Year 2003, the Maharashtra Administrative Tribunal has rightly held that, Original Application was time barred. There is considerable force in the argument of the learned AGP that, since the appointment order was on certain condition, on breach of condition, no reasons were required nor notice was contemplated before terminating the services. The contention of the learned counsel appearing for the petitioner that, probation period was of two years, deserves no consideration, in view of the reply filed by the respondent that, the period was of 3 years. The person,

who is entering into the service as Armed Police Constable, is expected to place on record all true and correct information before his appointment. Petitioner deliberately suppressed information about the registration of crime and pendency of the criminal case against him, at the time of recruitment, and therefore, no leniency can be shown while considering the case of the petitioner. Petitioner, who suppressed the material information, cannot claim right to continue in service. Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character / antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

14] For the reasons aforesaid, in our considered view, Petition deserves no consideration, and hence same stands rejected. Rule discharged.

Sd/-
[P.R.BORA]
JUDGE

Sd/-
[S.S.SHINDE]
JUDGE