

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 415/2015**

Ashish Anil Gaonkar,
27 years of age, married,
Indian National, r/o.H.No.355,
Takwada, Revora, Bardez, Goa

..... Petitioner.

V/s.

Sr. Superintendent Officer,
Department of Post, Goa Division,
Mapusa, Bardez, Goa.

..... Respondent.

Mr. Joaquim Godinho, Advocate for the petitioner.

Mr. Mahesh Amonkar, Central Govt. Standing Counsel for the respondent.

**CORAM :- F.M. REIS &
K.L. WADANE, JJ.**

Date : - 12th August, 2015.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Mr. J. Godinho, learned Counsel appearing for the petitioner, and Mr. M. Amonkar, learned Central Govt. Standing Counsel appearing for the respondent.

2. Rule. Heard forthwith, with the consent of the learned

Counsel. Learned Counsel appearing for the respondent waives service.

3. The above petition, *inter alia*, prays for a writ, direction, or order to quash and set aside an order dated 15th May, 2015 bearing No. B-II/AAG/MMS/Driver/Termination/15-16 .

4. Briefly, the facts of the case, as stated by the petitioner, are that the petitioner, who has studied Xth Standard, received summons from the Court of the Judicial Magistrate, First Class, Bicholim in respect of a case No.IPC. Criminal Case No.6/S/2013/C for committing offences punishable under Sections 279 and 337 of the Indian Penal Code (IPC). The petitioner, accordingly, attended the proceedings on 20th March, 2014 before the learned Magistrate, wherein, being a minor motor accident, the petitioner pleaded guilty and paid a fine of Rs.1,000/- for the offence punishable under Section 279 and a fine of Rs.1,000/- for the offence punishable under Section 337 of the IPC. The petitioner was not aware of the consequences of making such a statement though, according to the petitioner, the incident involved was a minor accident, whereby the motorcycle of the petitioner dashed against another motorcycle near Lake, Revora, Bardez, Goa. It is also

contended by the petitioner on oath that he did not understand the consequences of taking such a stand. The respondent had issued a public notice in June, 2014 for the post of Mail Motor Service Driver in a local newspaper in Goa for which the petitioner submitted his application. By a letter of appointment dated 20th November, 2014, the petitioner was informed of his provisional appointment as a temporary Mail Motor Service Driver and consequently, the petitioner was asked to furnish an attestation form to be filed by the petitioner furnishing all the necessary details referred to therein.

On 9th March, 2015, the respondent issued a notice to the petitioner informing the petitioner that his attestation form was forwarded to the District Magistrate, Panaji for verification of character and antecedent and that the same was returned with an adverse remark that the petitioner was involved in Mapusa Police Station Crime No.287/2012 under Sections 279 and 337 of the IPC. It was further contended that as the petitioner has not disclosed this fact in the attestation form, based on which the petitioner came to be recruited, the respondent sought explanation from the petitioner. A reply was sent by the petitioner to such allegations and by a notice dated 28th April, 2015, the respondent pointed out to the petitioner that he had failed to disclose the correct facts at point No.12 in the attestation form.

Consequently, the petitioner was directed to show cause as to why his services should not be terminated for suppressing the factual aspects in the attestation form. A reply was filed by the petitioner on 11th May, 2015, bringing to the notice of the respondent that he had acted in good faith and he had no deliberate intention to suppress any information. By the impugned Order dated 15th May, 2015, the petitioner was terminated from services.

5. The respondent filed their reply, *inter alia*, contending that the appointment of the petitioner on temporary basis was under the CCS (Temporary Services) Rules, 1965. It was further contended that the attestation form submitted by the petitioner was forwarded to the District Magistrate who had submitted an adverse report in view of the said criminal case referred to hereinabove. It was also contended that the petitioner has suppressed the material facts and that the order of termination of service is issued by following sub-Rule(1) of Rule 5 of the CCS (Temporary Services) Rules, 1965. It was further pointed out that as such, the petition deserves to be rejected.

6. Mr. J. Godinho, learned Counsel appearing for the petitioner has pointed out that the offence for which the petitioner was

implicated was only a technical offence and, as such, merely because such information was not furnished to the respondent, that by itself would not be a ground for termination of services of the petitioner. The learned Counsel has further pointed out that the petitioner was employed to drive a motor vehicle and the alleged incident was in the course of driving a motorcycle and it was a case wherein there was a dash between two motorcycles and there were no injuries suffered by any one. The learned Counsel further points out that the petitioner has not intentionally suppressed any material and consequently, the impugned order passed by the respondent is unjustified and that there is no lapse on the part of the petitioner. It is further pointed out that the petitioner has always acted in good faith and there is no complaint with regard to the services rendered by the petitioner for the respondent since the time he was employed in the services of the respondent. Mr. Godinho, in support of his submissions, has relied upon a Judgment of the Apex Court reported in (2010) 14 SCC 103 in the case of ***Daya Shankar Yadav vs. Union of India and others.***

7. On the other hand, Mr. M. Amonkar, learned Central Govt. Standing Counsel appearing for the respondent has submitted that the petitioner has successfully undergone the recruitment process and was

duly selected by complying with all the formalities. The learned Counsel further points out that the petitioner had suppressed the fact that he was involved in a motor accident, which fact was not disclosed in the attestation form and, as such, the impugned order passed by the respondent is justified. The learned Counsel as such, submits that the petition be rejected.

8. We have considered the submissions of the learned Counsel and we have gone through the records. The only ground on which the petitioner, who was duly selected after following the requisite process as a driver in the Office of the respondent, was terminated is because in the attestation form the fact of the minor motor accident in which no one was even injured, was not disclosed. The petitioner, at para 6 of the petition, has an explanation to contend that he had not suppressed any fact, as he was under the impression that the incident in which he was involved was merely technical in nature in the context of a minor accident which occurred between two motorcycles and was exonerated on payment of a fine. On perusal of the appointment letter of the Petitioner dated 21.11.2014, we find that the Petitioner was selected in the recruitment process to the post of Mail Motor Service Driver in Goa Postal Division in the Pay Band

of Rs.5200-20200+Grade pay of Rs.1900/- on provisional basis on probation and he stood at serial no. 1. Only after his appointment, an attestation form was required to be filled up by the Petitioner. When such form was forwarded to the District Magistrate, Panaji, for verification, it revealed that the Petitioner was involved in a minor motor accident and convicted by imposing a fine, which occurred on 13.11.2012. On the ground of such incorrect information, the impugned Order of termination of service was passed by the Respondents. The purpose of requiring an employee to furnish such information in the attestation form was to verify his character and antecedent for the purpose of his employment and continuation in the services.

9. In the present case, mere involvement in a motor accident which resulted in some minor injuries to the pillion rider of the other motor vehicle would not, by itself, be an impediment or affecting the character of the employee. This would not mean that the Petitioner was not supposed to furnish such information. But, in the present case, the Petitioner has clearly stated in his reply to the notices issued by the Respondents that he was the only bread winner and had children to support and unmarried sisters who were all dependent on him. The

Petitioner has also given an explanation that he did not understand the exigencies of particulars sought in the said attestation form. As such, we find that incorrect information with that regard would not necessarily have a bearing on his fitness of suitability to the post for which he was selected in the recruitment process. Even on perusal of the Order of termination, we find that there is nothing to suggest that the authorities came to the conclusion that not furnishing such incorrect information would affect the suitability of the Petitioners to the services for which he was selected.

10. On perusal of the records, we find that the respondent was not justified to refuse to accept such explanation and pass such a drastic order of termination. The averments at para 6 of the petition have not been disputed by the respondent in his reply. Apart from that, the fact that the petitioner was not sufficiently educationally qualified nor that he did not understand the consequences of the stand taken in the proceedings initiated due to the motorcycle accident can also weigh on the respondent whilst taking a decision whether there is suppression of facts by the respondent. The fact that the petitioner has acted bonafide, has also not been disputed. In such circumstances, as the petitioner was found qualified for the job of driving the motor

vehicle in the Office of the respondent and passed the driving test, we find that merely because of his involvement in a minor motorcycle accident would not, in any way, disqualify the petitioner from continuing in the services of the respondent. The impugned order of termination, as such, is shockingly disproportionate to the breach committed by the petitioner. As such, we find that the impugned order dated 15th May, 2015 of termination cannot be sustained and deserves to be quashed and set aside. Needless to say that the petitioner would not be entitled for wages for the period for which he was not allowed to work with the respondent. But, however, this period would be treated for the purposes of considering his continuation of service.

11. In view of the above, we pass the following Order :

Rule is made absolute in terms of prayer clause (a), subject to the observations made herein above.

K.L. WADANE, J.
ssm.

F.M. REIS, J.