

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 171/2014**

Pravin Arjun Shetkar

son of Arjun Shetkar, aged 29 years, Indian
National, resident of House No.59,
Khairat, Manoshiwada, Revoda, Bardez,
Goa.

..... Petitioners.

V E R S U S

1. State of Goa, through its Chief
Secretary, having Office at Secretariat,
Alto Porvorim, Bardez-Goa

2. The Collector of North Goa District,
having Office at the Office of Collectorate
Building, Panaji, Goa.

..... Respondents.

Mr. D. Pangam, Advocate for the petitioner.

Mr. Vivek Rodrigues, Government Advocate for the respondents.

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

Date : - 16 OCTOBER 2015.

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

Heard Mr. D. Pangam, learned Counsel appearing for the
petitioner and Mr. Vivek Rodrigues, learned Government Advocate

appearing for the respondents.

2. Briefly, the facts of the case are as follows :

Pursuant to a duly conducted selection process, the petitioner was selected to the post of Lower Division Clerk (LDC) in the Office of the Collectorate of North Goa District, Panaji on 3rd June, 2010. The petitioner, accordingly, accepted the said post on 8th June, 2010, and joined the services on 29th June, 2010. In the meanwhile, the petitioner had also filled up an attestation form on 9th June, 2010, wherein in one of the clauses in such form, the petitioner did not disclose that when he was 14 years old, he was produced before the Juvenile Justice Board on account of a petty offence. Thereafter, on 26th November, 2010, the Additional Collector issued a Memo to the petitioner stating that the petitioner should submit an explanation in connection with the said case which the petitioner had suppressed whilst filling up the attestation form. An explanation with that regard was submitted by the petitioner, inter alia, contending that the petitioner was discharged by the Juvenile Justice Board and that he did not understand the exigencies of making such disclosure in such an attestation form. Ultimately, the Additional Collector wrote to the Mamlatdar of Bicholim stating that the petitioner is convicted in

Crime No. 146/99. It is further his contention that the Mamlatdar had wrongly informed the Collector that the petitioner was convicted in Crime No.146/99 when, on the contrary, he was duly discharged. Subsequently, on 7th March, 2012, the services of the petitioner were terminated on the ground that the petitioner had suppressed such information in his attestation form. A representation was made by the petitioner, but, however, the petitioner was informed by the Under Secretary that the petitioner's request is not accepted. As a subsequent representation was made by the petitioner, which did not find favour with the respondent, the petitioner filed the above writ petition, challenging the action of the respondents, terminating the services of the petitioner. The petitioner subsequently came to know from the information collected under the RTI that the Collector had recommended reinstatement of the petitioner in view of the fact that the case of the petitioner before the Juvenile Justice Board resulted in an acquittal. But, however, as there was no reconsideration of the decision of terminating the services of the petitioner and having no other alternative, the petitioner filed the above writ petition, inter alia, challenging the impugned order dated 7th March, 2012 terminating the services of the petitioner and seeking his reinstatement in the services of the respondents, together with back-wages.

3. The respondents filed their reply, inter alia, contending that suppression of the material aspect about the involvement of the petitioner in the criminal case itself justified the impugned order of termination of the services of the petitioner. Thereafter, the petitioner also filed a rejoinder disputing such contentions and other factual aspects as alleged by the respondents in their reply.

4. Shri D. Pangam, learned Counsel appearing for the petitioner has pointed out that the petitioner was allegedly implicated in the criminal case when he was merely 14 years and a juvenile and, as such, non-disclosure of such fact, by itself cannot result in suppression of material information in the attestation form. The learned Counsel has further pointed out that the petitioner was discharged by the Juvenile Justice Board as the petitioner was not involved in the alleged accusation made against the petitioner. The learned Counsel further submits that it is well settled that a juvenile cannot be arrested and, as such, the contention of the respondents that the petitioner was prosecuted for an offence is without any substance. The learned Counsel further points out that the respondents have relied upon erroneous information received from the learned Mamlatdar that the

petitioner was convicted for a crime when, on the contrary, material on record suggests that there no such conviction. The learned Counsel further points out that in any event, non-disclosure of some alleged acts during the period when the petitioner was a minor, would not, by itself, affect the right of the petitioner in securing employment in Government service. The learned Counsel further points out that admittedly, the petitioner had gone through the selection process and was duly selected for the post in which he had been duly appointed. The learned Counsel further points out that even assuming that there is non-disclosure of the fact with regard to the proceedings before the Juvenile Justice Board, that by itself would not materially affect the rights of the petitioner to be employed in Government service. The learned Counsel further points out that the petitioner was appointed as a LDC and for such services, the alleged accusation against the petitioner would not at all materially affect the duties which the petitioner would render in such post. In support of his submissions, the learned Counsel has relied upon a Judgment of the Apex Court reported in (2011) 4 SCC 644 in the case of ***Commissioner of Police and others vs. Sandeep Kumar***, as well as an unreported Judgment of a Division Bench of this Court in Writ Petition No.415/2015 dated 12th August, 2015 in the case of ***Ashish Anil Gaonkar vs. Sr.***

Superintendent Officer, Department of Post, Goa Division. In support his contention that there is no arrest of a juvenile, the learned Counsel has also relied upon the observations of the Apex Court in (2012) 9 SCC 750 in the case of ***Ashwani Kumar Saxena vs. State of Madhya Pradesh.*** The learned Counsel has, thereafter, taken us through the reply filed by the respondents to point out that merely because there was alleged suppression in the attestation form the respondents have terminated the services of the petitioner on unjustifiable grounds.

5. On the other hand, Shri V. Rodrigues, learned Government Advocate appearing for the respondents has submitted that non-disclosure of material aspect about the criminal record of a candidate, would entitle the respondents to terminate the services of the incumbent. The learned Government Advocate has thereafter taken us through the attestation form signed by the Petitioner to point out that the column where the petitioner was supposed to disclose whether he was arrested or prosecuted in a criminal case, was left blank. The learned Counsel further points out that this, itself, would show that the petitioner has deliberately suppressed the material fact which compelled the respondents to terminate the services of the Petitioner.

The learned Government Advocate further submits that it is well settled that non-disclosure of a material aspect would disentitle a candidate from being appointed to Government service and, as such, entitle the respondents to terminate services of the petitioner. The learned Government Advocate further points out that merely because the petitioner was a minor when he was prosecuted for a criminal offence would, itself, not be a reason to hold that there is no suppression of a material fact by the petitioner. The learned Government Advocate as such, points out that the petition be rejected.

6. We have given our thoughtful consideration to the rival contentions and with the assistance of the learned Counsel, we have also gone through the relevant records and the concerned Rules. It cannot be disputed that non-disclosure of a material circumstance which would influence a selection process would, itself, be a ground for recalling of a letter of appointment to a candidate. But, however, in the present case, we have to examine whether merely because the petitioner was called before the Juvenile Justice Board in connection with some accusation made against the petitioner when, admittedly, he was a minor of 14 years would itself justify or create any impediment in his appointment in Government service. In this

connection, we will take note of the provisions of Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2000. Section 19 reads thus :

“19. Removal of disqualification attaching to

conviction.—

(1) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

(2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.”

7. Taking note of the said provision and the admitted facts in the present case, we find that mere non-disclosure of the alleged accusation during the period when the petitioner was a minor would not, be a disqualification of being appointed to Government service.

8. In this regard, the Apex Court in the case of *Commissioner of Police and others* (supra), has observed at paras 8, 10, 11 and 12, thus :

“ 8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

10. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book *Due Process of Law*. It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. They came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed:

“ I come now to Mr Watkin Powell’s third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was no concern of theirs. It

was necessary for the Judge to show—and to show to all students everywhere—that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land—and I speak both for England and Wales—they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done? The law has been vindicated by the sentences which the Judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this Court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards—of the poets and the singers—more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong—very wrong—in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed.” (*Vide Morris v. Crown Office 1(1970) 2 AB 114*, QB at p. 125C-H.)

In our opinion, we should display the same wisdom as

displayed by Lord Denning.

11. As already observed above, youth often commits indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter”

9. Taking note of the well settled principles referred therein by the Apex Court and applying them to the facts of the present case, we find that merely non-disclosure of the alleged accusation, when the petitioner was a juvenile, would not by itself result in suppression of a relevant information in the attestation form.

10. Apart from that, the petitioner had left the answer in the said column blank and, as such, it prima facie cannot be said that there was suppression of fact. The respondents could have called upon the petitioner, if they so desire, to fill up such a column. It is also not

in dispute that the petitioner had been selected in a regular selection process. The eligibility of the petitioner is also not in dispute. The fact that he had been duly appointed in a regular selection process has also not been disputed. As such, non-disclosure of the alleged accusation during the period when he was a minor of 14 years age, cannot be treated to be a disqualification which would affect his appointment to Government service. The punishment of termination imposed by the respondents on the petitioner, in such circumstances, is shockingly disproportionate to the alleged lapse on the part of the petitioner in not disclosing the subject accusation in the attestation form. For such a lapse, the petitioner would have to forgo any claim for back-wages. In such circumstances, we find that the respondents were not justified to pass the impugner order, terminating the services of the petitioner. As such, the impugner Order dated 7th March, 2012 deserves to be quashed and set aside.

11. With regard to the relief which can be granted to the petitioner in the facts and circumstances of the case, we find that the impugned Order dated 7th March, 2012 needs to be quashed and set aside and the petitioner be reinstated notionally as on the date of termination. The petitioner would thus be entitled for continuity of services, without any back wages. The petitioner shall also be entitled for all other benefits, in accordance with law.

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

(I) The impugned Order dated 7th March, 2012 is quashed and set aside.

(II) The petitioner shall be reinstated as on the date of such impugned order notionally, with continuity of service and other benefits in accordance with the Rules, without any back-wages, within two months from today.

(III) Rule is made absolute in the above terms. No costs.

K.L. WADANE, J.

F.M. REIS, J.

ssm.