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

WRIT PETITION NO. 1135 OF 2015

**ASHOK RAMAKANT SAMBRE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**...
Advocate for Petitioner : Dhongade Suresh D.
AGP for Respondents:Mr.D.R.Kale for R.1 to 3.**

**...
CORAM : S.V.GANGAPURWALA &
MANGESH S. PATIL,JJ.**

DATE : 31/08/2017

PER COURT :-

The petitioner pursuant to the selection process, was appointed as a Clerk with respondent, in May 1997. Considering the fact that the petitioner suppressed the pendency of a criminal case against him, the respondents terminated the services of the petitioner. The petitioner filed Original Application before Tribunal. Initially interim relief was granted in favour of petitioner, the petitioner was reinstated. Thereafter, interim relief stood vacated in the year 2004 and the petitioner was terminated. The Original Application filed by the petitioner in the year 1997 bearing Original Application No.586/1997 came to be dismissed in default on 17/12/2004. The petitioner filed restoration application in the year 2012 bearing Miscellaneous Application No.150/2012. The same was dismissed under order dated 23/8/2013 and the petitioner was given liberty to

file application for reinstatement on account of his acquittal. The said application for reinstatement was not considered. The petitioner filed Original Application on 10/12/2014 bearing Original Application No.75/2014, challenging his termination and non consideration of his request for reinstatement. The said Original Application is dismissed. Aggrieved thereby, the present Petition.

2] Mr.S.D.Dhongade, learned counsel submits that character of the petitioner was not relevant for the post on which the petitioner was appointed. The disclosure of a criminal case is required, if a person seeks appointment in a police department. According to the learned counsel, in the application form, the petitioner did not say no against the column meant for disclosure of any criminal case pending against him. He had only drawn a line, as such it would not be a case of a suppression. The learned counsel further submits that the Sessions Court has acquitted the petitioner of the charges. As clean acquittal has been granted, the petitioner is entitled to be reinstated. The learned counsel relies on the judgment of the Apex Court in the case of Avtar Singh V/s Union of India and others passed in Special Leave Petition No.20525/2011 dated July 21, 2016.

3] Mr.D.R.Kale, learned AGP supports the order.

4] The petitioner subsequent to the advertisement had filled in the application seeking appointment. Pursuant to the advertisement and undergoing selection process, the petitioner was appointed as a Clerk with respondent on 5/6/1997. Thereafter the petitioner is required to fill in the form immediately stating pendency of criminal case if any. It is a matter of record that criminal case was filed against the petitioner for offence punishable u/ss. 354, 506, 509 of IPC and the petitioner was arrested for the said offences on 10/01/1997 i.e. much prior to the filling in the form, wherein he was required to disclose about pendency of the criminal case. In the form the petitioner did not disclose the pendency of the criminal case against him. The offence against the petitioner was of a serious nature being offence u/s 354 of IPC i.e. outraging the modesty of a woman. It also appears from the record that the petitioner was convicted for the said offence by the JMFC. The petitioner was terminated from service on the ground that the petitioner did not disclose the pendency of criminal case against him.

5] The acquittal by Sessions Court would not inure to the benefit of the petitioner.

6] It was duty of the petitioner to truly and faithfully disclose the pendency of the criminal case against him, particularly when the

criminal case against him involved the offence of moral turpitude. It is a case of a deliberate suppression of a fact of pendency of criminal case against him. That tantamounts to misleading the employer in securing the employment. The form specifically required the petitioner to disclose the information of pendency of criminal case, if any. The petitioner, with a view to suppress the fact, did not disclose the factum of pendency of a criminal case. The petitioner had the knowledge of the pendency of the said criminal case, as he was arrested in the said criminal case much prior to filling in the said form.

7] Considering the aforesaid, Tribunal has not committed any error in passing the impugned order.

8] The Writ Petition as such, is dismissed. No costs.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)

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