

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4979 OF 2016

Dadasaheb Laxman Thorat	...Petitioner
Versus	
The State of Maharashtra & Ors.	...Respondents

Mr. Sarthak Diwan for Petitioner.
Mr. N. C. Walimbe – AGP for State - Respondents.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 05 JULY 2018

ORAL JUDGMENT :

- 1] Heard the learned counsel for the parties.

- 2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

- 3] The challenge in this petition is to the judgment and order dated 9th January 2015 made by the Maharashtra Administrative Tribunal (MAT) dismissing the petitioner's Original Application No. 1071 of 2014 questioning the

orders dated 29th September 2014 and 27th June 2014, by which the petitioner's services as a peon came to be terminated.

4] Mr. Diwan, the learned counsel for the petitioner submits that in the show cause notice issued to the petitioner on 3rd March 2014, the charge levelled against the petitioner was that he had suppressed material particulars as regards pendency of criminal cases against him at the time of securing appointment as a peon on compassionate grounds. Mr. Diwan submits that there was no such suppression on the part of the petitioner because at no stage, was the petitioner, required to make any disclosures about such pending cases. The petitioner was instead required to give an undertaking that in case the character verification from the police authorities is reported to be adverse to the petitioner, then, the petitioner will not object to the termination of his service. Mr. Diwan submits that such an undertaking was submitted by the petitioner. He however submits that this is totally different from alleged suppression of any material facts by the petitioner, which is the basis for the show cause notice. He submits that since

there was no suppression, the show cause notice ought to have been discharged.

5] Mr. Diwan further submits that ultimately, the petitioner has been acquitted from the criminal cases pending against him under the Gambling Act. He relies on the ruling of this Court in ***Arvind Sakharam Jagdhani vs. The State of Maharashtra & Anr. (Writ Petition No. 816 of 2015) decided on 26th February 2016*** and the ruling of the Hon'ble Supreme Court in ***Avtar Singh vs. Union of India & Ors. (2016) 8 SCC 471***, to submit that termination of services in such circumstances is totally unjustified and unsustainable.

6] Mr. Walimbe, the learned AGP for the respondents – State submits that the petitioner, was duty bound to disclose details which have a bearing on his character and antecedents at the time of securing an appointment and furnishing the undertaking. Mr. Walimbe submits that in terms of the appointment order as also the subsequent undertaking furnished by the petitioner, it is clear if adverse report as regards character and antecedents is received

from the police authorities, then, the State will have a right to terminate the services of the petitioner and further, the petitioner, has undertaken not to question termination on such grounds. Mr. Walimbe submits that the MAT has correctly appreciated the material on record and there is no warrant to interfere with the impugned judgment and order.

7] Rival contentions now fall for our determination.

8] In this case, the petitioner was appointed as a peon on compassionate basis, since, his father, who was working as a Aval Karkun in Irrigation Department died in harness. The appointment order dated 17th October 2012 had clearly stated that it shall be the responsibility of the petitioner to obtain police verification certificate. The appointment order further states that pending receipt of such police verification certificate, the petitioner will be appointed on provisional basis since, such appointment, will depend upon the police verification certificate. The appointment order also states that in case the police verification certificate is found to be adverse to the petitioner, then, the services of the petitioner are liable to

be terminated even without any notice. The appointment order requires the petitioner to furnish an undertaking as regards the acceptance of this condition at the time of joining duties.

9] The petitioner, not only accepted the aforesaid condition in the appointment order dated 17th October 2012 but further, in pursuance thereof, submitted an undertaking which is a part of the record. The undertaking clearly records that the petitioner is aware that his appointment is subject to police verification report and in case the police verification report is found to be adverse then, the petitioner's services are liable to be terminated without any notice and in case, this is done, the petitioner, will have no complain about the same.

10] The police verification report dated 6th December 2013 states that there were four criminal prosecution pending against the petitioner under the Gambling Act. The information states that the petitioner was in fact arrested in connection with such prosecutions and that the prosecutions are pending before the competent courts of

law.

11] Upon receipt of the police verification reports, legal opinion was sought for by the department and the communication dated 3rd January 2014, by which such opinion was sought for has been placed on record by the petitioner at Exhibit 'E' at page 19. This letter very clearly makes reference to condition in the letter of appointment issued to the petitioner and the undertaking submitted by the petitioner in the matter of police verification.

12] Based upon the communication dated 3rd January 2014, the District Government Pleader opined that action can be taken in terms of the condition in the letter of appointment as also the undertakings furnished by the petitioner.

13] It appears that the correspondence between the department and the District Government Pleader along with the police verification certificate were forwarded to the petitioner so as to afford him opportunity to respond in the matter. The petitioner, on 10th March 2014, submitted his

response stating that four cases are merely pending against him and that he has not yet been convicted, fined or sentenced in the matter. By communication dated 28th March 2014, the petitioner was informed that his reply was not satisfactory and on 28th March 2014, a charge sheet was issued to the petitioner. In the statement of imputation in support of the charge, once again, there is a detailed reference to the correspondence between the department and the District Government Pleader as well as police verification certificate concerning the petitioner. The petitioner, submitted his response on 5th April 2014 and upon consideration of the same, the services of the petitioner, came to be terminated by order dated 24th June 2014. The petitioner, appealed against the termination order, which appeal, came to be dismissed by order dated 22nd September 2014.

14] The petitioner, cannot take advantage of the manner in which articles of charge has been described in the charge sheet. The article I of the charge sheet states that the police verification report is adverse to the petitioner and the petitioner, despite knowledge, failed to bring this aspect to

the notice of the appointing authority. Article II of the charge states that the petitioner, by not disclosing the fact that criminal prosecution was pending against him has misdirected / cheated the State. The petitioner, however ignores that article II of the charge sheet very clearly speaks about action in terms of condition no. 4 of the appointment order as well as the undertaking furnished by the petitioner in pursuance to such condition.

15] The statement of imputation in support of the articles of charge is very clear and leaves no scope for any ambiguity. This statement of imputations clearly makes reference to the correspondence between the department and the District Government Pleader. This statement, make reference to not only the conditions in the appointment letter but also the affidavit cum undertaking furnished by the petitioner that he will not complain if his services are terminated on account of adverse police verification report.

16] In fact, in case of this nature, there was no necessity of serving any charge sheet upon the petitioner. The termination could have been effected on the basis that the

petitioner's appointment was clearly provisional and subject to receipt of title verification report. The petitioner had himself given an undertaking that he will not object to such termination in case, the police verification report is adverse. The fact that the charge sheet was given and the charge sheet, in addition to making reference to the conditions in the appointment letter and the affidavit, also makes reference to suppression of material particulars, cannot be construed as some sort of an escape root by the petitioner. The petitioner's appointment was subject to police verification. The issuance of charge sheet and the furnish of opportunity to the petitioner, was only in compliance with principles of natural justice, even though, appointment of the petitioner, was only provisional and the petitioner had himself stated that his services are liable to be terminated even without notice in case the police verification is found to be adverse.

17] In this case, the petitioner was appointed on 17th October 2012 and terminated on 24th June 2014. Upon our query, Mr. Diwan states that the petitioner was acquitted in two of the cases on 13th October 2016 and in balance two

cases on 23rd February 2018. This is much after the date of termination and even after the date on which the Original Application was instituted by the petitioner came to be dismissed by the MAT. Such subsequent acquittals do not improve the case of the petitioner.

18] The MAT, has correctly appreciated the facts, circumstances and the legal position. There is really no jurisdictional error so as to warrant interference.

19] The facts in *Arvind Jagdhani* (supra) are by no means similar to the facts and circumstances of the present case. The petitioner in the said case was a not a provisional appointee on the date of issuance of the termination order. The temporary appointment of the petitioner had already been regularized consequent upon his producing the caste validity certificate. The decision in *Avtar Singh* (supra) states that if information not asked for but is relevant and comes to the 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 the basis of suppression or submitting false

information as to a fact which was not even asked for. Further, *Avtar Singh* (supra) also states that in a case where the employee has made declaration during trial of a concluded criminal case, the employer still has a right to consider the antecedents and cannot be compelled to appoint a candidate. In the present case, the State, cannot be said to have acted arbitrarily in taking the view that they do not need to appoint a peon, who had four criminal prosecutions pending against him.

20] For all the aforesaid reasons, we see no good reason to interfere with the impugned judgment and order. This petition is therefore dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA