

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

WRIT PETITION NO. 6701 OF 2016

The State of Maharashtra and anr. ...Petitioners
Versus
Shri. Rahim J. Tundiwale ...Respondent

Mr. N.C. Walimbe, AGP for the State/Petitioners.
Mr. B.A. Bandiwadekar and Mr. Gaurav A. Bandiwadekar for
the Respondent.

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

DATE : 19.06.2018.

ORAL JUDGEMENT:

1] Heard learned counsel for the parties.

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

3] The challenge in this petition is to the judgment and
order dated 2.12.2015 made by the Maharashtra
Administrative Tribunal (MAT), Mumbai allowing the
respondent's O.A. No. 352 of 2014 and directing the
petitioners to consider the case of the respondent for
appointment as Police Constable within a period of four
weeks.

4] Mr. Walimbe, learned AGP for the petitioners, submits that admittedly there were two criminal cases instituted against the respondent. He submits that even though, the respondent had been acquitted in the two cases, at least in one of the case where the respondent has charged for having committed offences under sections 323,324, 504 and 506 read with section 34 of I.P.C. The acquittal was not a clean acquittal, but on account of benefit of doubt.

5] Mr. Walimbe submits that the High Power Committee has considered the case of the respondent and concluded that since there were two prosecutions launched against the respondent, the respondent would be said to have a tendency to commit crimes and such a respondent, will not be suitable for appointment. Mr. Walimbe submits that the MAT, ought not to have interfered with the decision of the High Power Committee in a matter of this nature. He submits that Government Resolution (GR) dated 13.06.1988, in terms provides that the appointment may be offered only when there is a clean acquittal as apposed to an acquittal on account of benefit of doubt. Learned AGP submits that since this aspect has not been considered by

the MAT, the impugned judgment and order warrants interference.

6] Mr. Gaurav Bandiwadekar, learned counsel for the respondent, submits that the respondent had very clearly disclosed particulars regarding pending and disposed of the prosecutions in the prescribed column of the application form. He points out that one of the prosecutions was for causing a simple hurt to an Auto-rickshaw driver and the other prosecution was for theft under section 379 of the IPC. He submits that both the prosecutions ended in acquittal of the respondent. He submits that learned AGP's interpretation of the GR dated 13.06.1988 is not at all correct and in any case, the latest GR on the subject dated 26.08.2014, very clearly states that prosecution for grave hurt or theft can be taken into consideration to deny appointments only where such prosecutions have ended in conviction. Mr. Bandiwadekar relies upon the decision of the Hon'ble Supreme Court in case of **Commissioner of Police and ors vs. Sandeep Kumar - (2011) 4 SCC 644** as well as other decisions which have been referred to in the impugned judgment and order.

7] Mr. Bandiwadekar points out that in case of Shri. Vinod Salunkhe, the petitioners offered him appointment even though, there was a criminal prosecution launched against him for offences under Indian Penal Code. For all these reasons, Mr. Bandiwadekar submits that this petition may be dismissed.

8] In the present case, there is no dispute that the respondent had very clearly disclosed information as regards the two criminal prosecution in his application seeking appointment to the post of Police Constable. On the basis of such application, the respondent was permitted to take part in the selection process and there is no dispute whatsoever that the respondent cleared all tests and oral interview successfully. Preceding actual appointment, the respondent once again disclosed information with regard to the two prosecutions and pointed out that he was acquitted in both the prosecutions.

8] At this stage, the case of the respondent was referred to High Power Committee, which has opined that since two cases were registered against the respondent, he showed

tendency to commit offences repeatedly and therefore, recommended against his appointment. The petitioners by communication dated 14.03.2014 informed the respondent that since the respondent showed the tendency of committing crime repeatedly, he could not be appointed.

9] The respondent challenged the communication dated 14.03.2014 before the MAT by instituting O.A.No.352 of 2014, which came to be allowed by the impugned judgment and order. Hence, the present petition.

10] Admittedly, the respondent has been acquitted in both the prosecutions. In the prosecution for offence under sections 323 and 324 of IPC, the charge was that the respondent assaulted the Auto-rickshaw driver. However, since the Auto-rickshaw driver who was alleged to have been assaulted himself turned hostile, the Chief Judicial Magistrate (CJM) at Jalna acquitted the respondent vide judgement and order dated 20.07.2012. In paragraph 11 of this judgment and order, no doubt, the CJM, Jalna has observed that since the charge could not be established with the help of concrete proof, benefit of doubt is due to

the respondent. However, if the entire judgment and order dated 20.07.2012 is perused, the acquittal is mainly because the driver/complainant, who is alleged to have been assaulted by the respondent, himself turned hostile. The CJM, Jalna has in fact, observed at paragraph 10 that the prosecution examined only one witness, i.e., the complainant/driver and since he has turned hostile, there is no merit in the case of the prosecution. At another place, in paragraph 10 itself, the CJM has observed that the prosecution has totally failed to establish the guilt of the respondent. Therefore, if the judgment and order dated 20.07.2012 is construed in its entirety, then, it cannot be said that the respondent's acquittal is not a clean acquittal or that it is an acquittal only on the basis of benefit of doubt, merely because there is reference to this phrase in paragraph 11 of the said judgment and order. Besides, the offences for which the respondent is acquitted was not some serious offence in terms of the GR of the petitioners themselves.

11] Insofar as the second prosecution is concerned, there is no dispute that the acquittal of the respondent was a

clean acquittal.

12] GR dated 13.06.1988, upon which, learned AGP has placed reliance states that where the prosecution is for offences involving moral turpitude or violence, convicted candidates should not be offered appointment. However, there can be no objection to offer of appointment to others. This GR also states that appointment should be offered where the acquittal is on merits (clean acquittal). This GR also states that appointment can be offered where prosecution is pending and if thereafter, there is a conviction recorded for offences involving moral turpitude or violence, then, such appointees can be terminated in accordance with Maharashtra Civil Services (Discipline and Conduct) Rules. Thus, in the facts and circumstances of the present case, there is nothing in the GR dated 16.06.1988 on the basis of which, the respondent could have been denied appointment.

13] Mr. Bandiwadekar has referred to a later GR dated 26.08.2014, which deals with the issue in considerable details. Annexure-A, lists the various crime head and

provides situations and criteria on basis of which the candidature should be rejected. Insofar as the offence of theft is concerned, candidature can be rejected upon conviction. Similarly, insofar as the grave offences are concerned, candidature can be rejected upon conviction. There are certain categories of the offences, where candidature can be rejected, even pending trial.

14] The MAT has relied upon number of rulings of both this court as well as the Hon'ble Supreme Court. The rulings suggest that in similar cases, employment has not been denied. We may also refer to the ruling in ***Avtar Singh vs. Union of India and ors - (2016) 8 SCC 471***, delivered by the Hon'ble Supreme Court after the impugned judgement and order made in the present case. Therein, the Hon'ble Supreme Court was concerned with the issue of termination of services for furnishing wrong/incorrect information or for suppressing the material information particularly in relation to pending prosecutions, convictions and acquittals. In this ruling, the Hon'ble Supreme Court has summarised the position in such matters. At paragraph 38 of the Supreme Court Cases Reporter, which reads as

follows:

“38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4 In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted : -

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is

not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to 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 basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

15] As noted earlier, in the present case, the respondent had truthfully disclosed all particulars relating to his prosecutions and acquittal, the several rulings referred to by the MAT in the impugned judgment and order also, assist the case of the respondent. There is at least one instance pointed out by the respondent where the petitioners did not reject the candidature of Shri. Vinod Salunkhe, who was in a position not very different from that of the respondent.

16] Upon cumulative consideration of the facts and circumstances on record, we see no good ground to interfere with the impugned judgment and order made by the MAT. This petition is, therefore, dismissed. Rule is discharged. The interim relief, if any, stands vacated. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)