

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12127 OF 2015

The Joint Director of Vocational Education and Training	.. Petitioner
Vs.	
Shri Ashish Sadashiv Lohar	.. Respondent

Mr.O.M. Kulkarni, AAGP for the Petitioner.
Mr.Bhushan A. Bandiwadekar, for Respondent.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

DATE : 24th JANUARY, 2018

ORDER (PER M.S.KARNIK, J.) :

1. The challenge in this Petition is to the judgment and order dated 10/08/2015 passed by the Maharashtra Administrative Tribunal, Mumbai (for short 'Tribunal') in OA No. 647/2013. The Tribunal by the impugned order was pleased to allow OA filed by the respondent. The Tribunal directed the petitioner to reinstate the respondent.

2. The petitioner by order dated 06/07/2013 dismissed

the respondent from service which order was challenged before the Tribunal. The respondent joined the service of the petitioner - State Government on 09/09/2012 as a Craft Instructor. He participated in the selection process and was selected. He started working in the office of ITI, Ratnagiri. On 15/05/2013 the Principal of the College where respondent was working issued a show cause notice to him asking him to explain as to why action should not be taken against him for suppressing fact of criminal prosecution pending against him.

3. It is not in dispute that in the attestation form which was filled in by respondent at the time of his selection is as under:

11(a)	Have you ever been arrested/prosecuted/kept under detention, or bound down/ fined /convicted by a court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examinations/ selections or debarred from taking any examination/ rusticated by any university or any other educational authority/Institution ?	No
11(b)	Is any case pending against you in any court of law, University or any other educational authority / Institution at the time of filling up this attestation form ?	No

11(c)	Whether he/she is facing any criminal prosecution in any court and if yes, state the details thereof such as case number, in which court the case is pending under which section etc.	No
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4. In the attestation form it is provided that if the answer to 11(a), 11(b) or 11(c) is “Yes”, particulars of the case arrest, detention, fine, conviction, sentence etc. and the nature of the case pending in the Court etc. at the time of filling up attestation form should be given. Below clause 11, Note mentions “Please also see the 'Warning' at the top of this attestation form”. The warning in attestation form mentions about the furnishing of false information or suppression of any factual information in the attestation form would be disqualification and is likely to render candidate unfit in employment under the Government.

5. For offence under sections 279 and 337 read with 34 of IPC which took place on 14/04/2010 FIR was registered against the respondent. The incident for which the offence was registered pertains to a motor accident for which the respondent

was being prosecuted. The order of appointment dated 05/09/2012 provides for terms and conditions. In the said order it is clearly mentioned that if the character present or past is found to be unsatisfactory, the service will be brought to an end immediately.

6. By show cause notice dated 15/05/2013, the respondent was asked to show cause as to why action should not be taken against him in respect of a report received about the pending prosecution against the respondent. The respondent prayed for some time to submit his explanation. His service came to be terminated by order dated 11/06/2013. However, as the authority which terminated the service of the respondent was not competent to effect termination, the termination order was withdrawn. By the impugned order dated 06/07/2013, the respondent was terminated by the Competent Authority.

7. Learned Counsel for the respondent pointed out that the prosecution initiated against the respondent was quashed as

controversy was amicably resolved between the complainant and respondent. Criminal prosecution was quashed by this Court on 28/06/2013. The Tribunal was of the opinion that factum of concealment or suppression may but need not necessarily bring in its wake the loss of job. The course of action would depend upon the facts of each case. The Tribunal was of the opinion that offence alleged against the respondent was minor without there being moral turpitude. The Tribunal therefore allowed the OA and directed to reinstate the respondent.

8. Heard learned Counsel. We are unable to agree with the Tribunal's view. In the attestation form, the respondent has clearly mentioned that he is not facing any criminal prosecution in any Court. The attestation form is very specific. The warning on the top of the attestation form clearly mentions that furnishing of false information or suppression of any factual information in the attestation form would be disqualification and is likely to render the candidate unfit for employment under

the Government. Even terms and conditions in the order of appointment itself mentions that the respondent is liable for termination of service if it is found that the character report is unsatisfactory.

9. It is clear that the respondent has suppressed the factum of pending criminal prosecution against him. It is only after the petitioner enquired that a report came to be submitted about the criminal proceedings against the respondent. Even the criminal prosecution was compounded by an order of this Court dated 28/06/2013 which is after issuance of the show cause notice dated 15/05/2013.

10. In our opinion, this is a clear case of suppressing material information while seeking employment. The offence under sections 279 and 337 read with 34 of IPC cannot be said to be so minor that such a suppression or concealment can be ignored.

11. In the show cause notice it has been clearly stated about adverse report received against the respondent about pending criminal prosecution. If on account of the concealment of this material fact, the petitioner proceeded to terminate the service of the respondent, we do not find the action untenable or unreasonable.

12. In this view of the matter, the order passed by the Tribunal calls for interference. The impugned order dated 10/08/2015 passed by the Tribunal is quashed and set aside. Writ Petition is allowed with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)