

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2107 OF 2017

Shri Anand Ranganath Sarak	...	Petitioner
Versus		
Lokmanya Tilak General Hospital	...	Respondent

Mr. Sudhir N. Deshpande a/w Ms. Swarna P. Munshi and Ms. Nivedita S. Deshpande for the Petitioner.
Mr. Mayuresh D. Nagle a/w Ms. Oorja Dhond for the Respondent.

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CORAM : S.C.GUPTE, J.

DATE : 1 AUGUST 2018

P.C. :

Heard learned Counsel for the parties.

2 This petition challenges an order passed by the Labour Court at
Mumbai in a reference made to it under the Industrial Disputes Act.

3 The reference was made at the instance of the Petitioner herein (second party-workman). The Petitioner was in the employment of the Respondent hospital (first party), which is owned and run by the Municipal Corporation of Greater Mumbai. On 12 November 2009, he applied to the corporation for appointment by filling a prescribed form, which *inter alia* required him to disclose whether he was sentenced or subjected to any punishment and if so, particulars of such sentence or punishment. Since the Petitioner was not convicted or sentenced at any time, he answered the question in negative. He was thereupon employed

and worked as a wardboy in the Respondent-hospital. His appointment was made on 1 October 2011. On 17 October 2012, a show-cause notice was issued to him alleging that he, whilst filling up his application form, intentionally and deliberately did not refer to his punishment in a criminal case registered under Sections 325, 323, 504, 506 read with 34 of Indian Penal Code (Criminal Case No.39 of 2010). The show-cause notice was issued on the basis of a complaint made by one Prakash Punyawant Sarak, who is said to be a cousin of the Petitioner herein, upon registration of an FIR against the Petitioner for having assaulted the former. The Petitioner replied to the show-cause notice. After considering his reply, by an order passed by the Dean of the Respondent-hospital on 17 April 2013, the Petitioner's services were terminated forthwith. Being aggrieved, the Petitioner approached the Labour Commissioner, who referred the matter to the Labour Court at Mumbai (Reference No.97 of 2014) for adjudication. The Labour Court, by its impugned award, answered the reference in the negative.

4 What was alleged against the Petitioner in the show-cause notice and made the basis of his termination was non-disclosure of his sentence and punishment in his application form, though what was argued before the court and termed as misconduct was non-disclosure of registration of the crime and pendency of the criminal case to Chunabhatti Police Station, who issued a certificate of character in favour of the Petitioner. No such case was put to the Petitioner in the show-cause notice; the order of termination was not based on any such suppression. The Petitioner submitted his application for appointment on 12 November 2009 and was appointed on 1 October 2011. On the date of his application, there was no

criminal case against him, leave aside any conviction or punishment. No doubt, a certificate of character dated 5 September 2011 was issued by Assistant Commissioner of Police, Special Branch, Mumbai in favour of the Petitioner, by which time the criminal prosecution against the Petitioner had commenced. The Respondent corporation did act on that certificate before appointing the Petitioner. The Petitioner, however, was not anyway concerned with this certificate. The certificate was issued upon a requisition made by the Respondent to Assistant Police Commissioner of Special Branch in that behalf, and on that requisition, the commissioner certified that there was no adverse report against the Petitioner on the basis of the record maintained by the Police Station. Neither in the charge-sheet or termination nor in the documents produced before the court is there any suggestion that the Petitioner had misrepresented facts before the Police Station or caused a false character certificate to be issued in his favour. That is merely an allegation of the Respondent and for which there is no support in oral or documentary evidence. As noted above, no such case was ever put to the Petitioner before his services were terminated.

5 Learned Counsel for the Respondent submits that the Petitioner was not a permanent employee, when he was terminated; he was under a probation of three years at the date of his termination and accordingly not entitled to be absorbed in service. This case was urged by the Respondent even before the Labour Court, but did not find favour with it. The court held that the termination of the Petitioner's services was not on the ground that his work was found unsatisfactory during the course of his probation; the ground for termination was that he suppressed information about his conviction in the prescribed form whilst applying for appointment.

6 In the premises, the Labour Court, whilst making the impugned award, has clearly misdirected itself in law, causing failure of justice. The impugned award is on the basis of suppression of material fact. What is lost sight of by the court is that the fact itself did not exist when the representation was made by the Petitioner to the Respondent in his application for appointment, and as for the character certificate issued by Police, the Petitioner had no role to play. That the Petitioner suppressed material facts from the Police is at the highest *ipse dixit* and in the least, a speculation.

7 The impugned award of the Labour Court, in the premises, merits interference. Rule is, accordingly, made absolute by quashing and setting aside the impugned award and answering the reference in the affirmative and quashing and setting aside the termination order dated 17 April 2013. The Respondent-hospital shall reinstate the Petitioner with continuity of service. Considering, however, the facts and circumstances of the case as also want of any material before the court on gainful employment of the Petitioner or the want of it, back wages shall be restricted to 50 per cent. Such back wages shall be paid for the period between his termination, that is, 20 February 2012, and this date.

(S.C. GUPTE, J.)

Rajesh
Vasant
Chittewan

Digitally signed
by Rajesh
Vasant
Chittewan
Date:
2018.08.20
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