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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2151 OF 2015

Gangahdar s/o Rangnath Mane
Age 50 years, Occu. Nil,
R/o Plot No.23, Rajmata Colony,
Near Saras Nagar, Kapileshwar Nagar,
Ahmednagar - 414 001

... PETITIONER

VERSUS

1. The State of Maharashtra
Through G.P. High Court,
Bench at Aurangabad
2. The Secretary,
Finance Department,
Mantralaya, Mumbai – 400 032
3. The Director,
Finance & Statistics Department,
Administrative Building,
8th Floor, Govt. Colony,
Bandra (East), Mumbai – 400 051
4. District Planning Officer,
Ahmednagar, In the office of
District Collector, Ahmednagar ... RESPONDENTS

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Shri Ajay S. Deshpande, Advocate for petitioner
Shri P.S. Patil, A.G.P. for State

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**CORAM: PRADEEP NANDRAJOG, CJ &
R.G. AVACHAT, J.**

DATE: 23rd September, 2019

PER COURT :

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel for the parties.
2. The petitioner lost the battle when the Maharashtra Administrative Tribunal dismissed Original Application No.739/2007 filed by him. The date of the decision is 12/12/2014.
3. The petitioner was called upon to fill up the attestation form pursuant to his appointment to the post of Statistical Assistant. He did so in vernacular. The attestation form had various columns, seeking information. The form has been printed in Marathi script as also English. Vide Sr.No.11(a), the information sought in the attestation form recorded in English is as under :

“Have you ever been arrested, prosecuted, kept under detention, or bound down/ find/ convicted by a court of

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law for any offence or debarred/ disqualified by any Public Service Commission from appearing at its examinations/ selections or debarred from taking any examinations/ rusticated by any University or any other educational authority/ Institution?”

. Recorded in Marathi, it reads as under :

“ तुम्हाला न्यायालयाकडून कोणत्याही अपराधाबद्दल आतापर्यंत कधीही अटक करण्यात/ स्थानबद्ध करण्यात/ बद्ध करण्यात/ सिद्धदोशी ठरवण्यात आले आहे काय, किंवा लोकसेवा आयोगाकडून त्यांच्या परीक्षांना/ निवडींना बसण्यास तुम्हाला मनाई करण्यात आली आहे काय, किंवा अनई ठरवण्यात आले आहे काय, किंवा कोणत्याही विद्यापीठाकडून किंवा इतर कोणत्याही शैक्षणिक प्राधिकरणाकडून/ संस्थेकडून कोणत्याही परीक्षेस बसण्यास मनाई करण्यात आली आहे काय/ काढून टाकण्यात आले आहे काय ?”

4. The petitioner wrote “Nahee” in Marathi. Vide para 11(b), information sought for in English reads as under :

“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 ?”

. The same information sought in vernacular reads as under :

“हा साक्षांकन नमुना भरतेवेळी कोणत्याही न्यायालयात, विद्यापीठात किंवा इतर कोणत्याही शैक्षणिक प्राधिकरणात/ संस्थेत तुमच्याविरुद्ध कोणतेही प्रकरण प्रलंबित आहे काय ?”

5. Pertaining to some documents in the name of petitioner's wife, an F.I.R. came to be registered on 9th June 2001, naming the petitioner as accused for the offence punishable under Sections 420, 467, 468 of the Indian Penal Code. He was arrested on 10th June 2001 and was admitted to bail on 10th June 2001. The charge sheet was filed against the petitioner on 28th February 2005. The attestation form was filled on 5th July 2005. The date when the learned Magistrate taking cognizance of the charge sheet and summoned the petitioner to face a trial is not forthcoming on the record, but is admittedly much after when the petitioner filled up the enrollment form on 5th July 2005.

6. Above being detected, a show-cause-notice was issued to the petitioner on 17th October 2005 as to why his services be not terminated. He submitted an explanation on 28th October 2005. Another memorandum was issued to him on 19th August 2005 to which he replied

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on 15th September 2006. A show-cause-notice was reissued on 17th October 2006. He replied thereto, but his services were terminated on 4th October 2007. The charge was of concealing of the information relevant to character verification of the petitioner.

7. With reference to the fact how he had understood and filled up the attestation form, the petitioner highlighted that vide para 11(a), the information sought for proceeded with reference to the words "तुम्हाला न्यायालयाकडून". The petitioner understood it to mean whether he was ever arrested pursuant to an order passed by a Court and since he was arrested not on an order passed by a Court, he answered the information sought in the negative. Pertaining to para 11(b), he stated that since no summons were received by him pursuant to the charge sheet filed and the information sought was : whether any case was pending in the Court of law, he answered in negative.

8. On this contention, the finding written by the Tribunal read as under :

“The learned P.O. also invited our attention to the charge

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sheet filed by the Police against the applicant, which is at Exhibit R-4 (Page 56-58). In the charge sheet it has been mentioned that accused – applicant was arrested on 10.06.2001 at 10.00 a.m. and was sent in Police Custody Remand till 16.06.2001. Even, for the sake of arguments, if it is accepted that the applicant has misunderstood condition No.11(a) to the effect that he was not arrested by the Court still it will be clear that the applicant was produced before the Magistrate on 16.06.2001 in Crime No.68/2001 for the offences punishable under various sections of IPC. Applicant was produced before the Court of Magistrate and the Magistrate sent him in PCR till 16.06.2001. Thus, in any case, the applicant was in Police Custody as per the order of the Magistrate. Thus, only for the sake of arguments if it is accepted that applicant has given declaration under the wrong impression as mentioned in his various representations before the competent authorities, he definitely concealed the fact that he was an accused in a crime which was registered against him and that he was prosecuted and was kept under detention as per the order of the Magistrate Court. Thus, it is evident that he has concealed the material fact/s while filling in the Attestation Form.”

9. The reasoning of the Tribunal is that, notwithstanding the

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possibility of the petitioner being misled by the language of the entry at Sr.No.11(a) of the attestation form, it was clear that he was produced before the Magistrate on 16th June 2001. He was aware of the fact that a criminal case was pending against him.

10. Now, this finding overlooks the fact that, pursuant to F.I.Rs. registered, closure reports can be filed and if filed, an accused would not know the fate of the F.I.R. Further, a person would be an accused before a Court only when a Court takes cognizance of the charge sheet filed and after forming a prima facie opinion that case is made out to proceed against the accused, summons the accused.

11. This explains the possibility of the petitioner not only being misled, as accepted by the Tribunal, but the consequence of the same being the petitioner not intentionally withholding any relevant information.

12. All that can be said would be that the petitioner should have been more vigilant.

13. Be that as it may, we need not take this point to a logical conclusion. The petitioner has since been acquitted of the charge framed

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against him on 21st August 2014 and that as per the law declared by the Supreme Court in a catena of authorities, the competent authority has to relook into the issue by considering the acquittal of the petitioner. If the acquittal is honourable, then the consequences have to follow. The consequences are that the petitioner is to be reinstated in service.

14. The latest decision on the point is reported in **(2016) 8 Supreme Court Cases 471** *Avtar Singh Vs. Union of India & ors.*

15. Thus, we dispose of the petition, directing as follows :

ORDER

- (i) Within a week from today, the petitioner would apply for a certified copy of the judgment acquitting the petitioner of the charge framed against the petitioner.
- (ii) The representation would be made to the respondent No.3 Director, Finance and Statistics Department, Mumbai.
- (iii) The Director, Finance and Statistics shall decide the representation in light of the law declared by the Supreme Court in Avtar Singh's case (supra).
- (iii) If the decision is in favour of the petitioner, that would be the

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end of the matter, for the reason, he would be in the job.

- (iv) If the decision is against the petitioner, he would be entitled to challenge the same.

Rule made absolute in above terms.

(R.G. AVACHAT, J.)

CHIEF JUSTICE

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