

IN THE HIGH COURT OF BOMBAY AT GOA.**WRIT PETITION NO. 1150 OF 2018.**

Shri Shailesh Sadanand
Raut, Age 43 years, son of
Sadanand R. Raut, r/o. H.
No.189/5, Sal, Madhlawada,
Assonora, Bicholim Goa.

..... Petitioner.

Versus

1 State of Goa, Through
Chief Secretary,
Having office at
Secretariat, Porvorim,
Badez Goa.

2 Principal Chief
Engineer, PWD and Ex-
Office Additional
Secretary to the
Government Public
Works Department,
Altinho, Panaji Goa.

..... Respondents.

Mr. A. Bhobe, Advocate for the petitioner.

Mr. P. Faldessai, Additional Government Advocate for the respondent
nos.1 and 2.

**Coram:- M. S. Sonak &
Prithviraj K. Chavan, JJ.
Date:- 28th February, 2019.**

ORAL JUDGMENT (Per M. S. Sonak, J.)

Heard Mr. A. Bhobe with Mr. B. Thali, learned Counsel for the

petitioner and Mr. P. Faldessai, learned Additional Government Advocate for the respondents.

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

3. Mr. P. Faldessai, learned Additional Government Advocate waives notice on behalf of the respondent nos.1 and 2.

4. In the year 2014, the respondents issued an advertisement inviting applications for the post of Works Assistant, Public Works Department (PWD). Pursuant of the same, the petitioner, vide his application dated 16.10.2014 applied for consideration to the said post. The petitioner was permitted to appear at the written examination, in which, he was declared successful. Thereafter, the petitioner was informed that he has been selected for appointment to the post of Works Assistant and called upon to complete procedural formalities in relation to filling up various forms and giving of various declarations before any formal order of appointment could be issued. The petitioner filled in such forms and gave the required declarations on 18.7.2017. Thereafter, by appointment order dated 30.8.2017, the petitioner, was appointed to the post of Works

Assistant at the PWD.

5. After having put in service of about one year, however, the petitioner, vide order dated 30.8.2018 was terminated from service on the ground that the petitioner has furnished false information and had suppressed the factual information in the attestation form at clauses (a) and (b). This order, which is impugned in the present petition, states that upon verification of character and antecedents of the petitioner, it was reported that the petitioner was involved in crime registered at Bicholim Police Station under crime no.121/2016 under Sections 143, 147, 341, 352, 323, 427, 504, 379, 506(ii) read with Section 149 of IPC. Even a chargesheet vide charge sheet No.83/2017 dated 28.9.2017 was pending trial in the Court of learned Judicial Magistrate, First Class,(JMFC) Bicholim in Criminal Case no.112/S/2017/A.

6. The petitioner, upon receipt of impugned termination order dated 30.8.2018, addressed representation to the respondents. However, since such representation was not even considered or responded to, has instituted the present petition.

7. Mr. Bhobe, learned Counsel for the petitioner submits that as

on date of submitting the forms and giving declaration i.e. on 18.7.2017, the petitioner, had neither been arrested nor was he aware of any complaint or prosecution against him. He submits that though the FIR is dated 16.8.2016, the petitioner got knowledge about such FIR only when Chargesheet dated 5.10.2017 was served upon him on 27.11.2017. Mr. Bhobe, therefore, submits that this is not at all any case of suppression, much less any case of willful suppression of facts. Mr. Bhobe, submits that even otherwise, the offences alleged are extremely trivial and warrant no extreme action of termination from services. He relied on the ruling of Apex Court in the case of ***Avtar Singh Vs Union of India***¹ in support of his contention.

8. Mr. Phaldessai, learned Additional Government Advocate at the outset invited attention of this Court to the warning in the attestation form, which makes it clear that furnishing of false information or suppression of any factual information in the attestation form would be disqualification and would be likely to render the candidate unfit for employment under the Government. He then points out that if a candidate is detained, convicted or debarred etc., subsequent to this completion and submission of the form, the details should be communicated to the Union Public Service

¹ (2006) 8 SCC 471.

Commission or the Authority to whom the attestation form had been sent earlier as the case may be, failing which it will be deemed to be suppression of factual information. Mr. Phaldessai, also refers to memorandum, dated 5.7.2017 by which the petitioner was offered, appointment to the post of Works Assistant. In particular, he refers to clause (4) which provides that any declaration given or information furnished by the candidate is proved to be false or if the candidate is found to have willfully suppressed any material information; he/she will be liable for removal from services and such other action as Government may deem necessary. Mr. Phaldessai, submits that since it was found that criminal prosecution is pending against the petitioner and further since, the petitioner, did not immediately inform his appointing authority about the same, the impugned termination order came to be made. Mr. Phaldessai submits that there is absolutely no error in the approach of the respondents and therefore, the impugned termination order warrants no interference.

9. Mr. Phaldessai, submits that it is the discretion of the respondents whether or not to continue the person like the petitioner in service after it is discovered that there was pending prosecution against such person. He submits that discretion, in the present case,

has been exercised fairly and in accordance with law and, therefore, this petition is liable to be dismissed.

10. The rival contentions now fall for our determination.

11. The petitioner, has come out with the specific case that as on date he filled in attestation form and gave necessary declaration contained therein on 18.7.2017, he was not at all aware that any FIR has been registered against him or that any prosecution is pending against him.

12. In the aforesaid regard, the petitioner, has made following averments at paragraphs 10 to 13 of the memo of the petition.

"10. The Petitioner states that apparently on 16/08/2016 the Bicholim police had registered an FIR bearing no. 121/16 on an alleged complaint filed by one Mr. Nageshkumar Bhairu Shinde under Sections 143, 147, 341, 352, 323, 427, 504, 379, 506(ii) r/w 149 of IPC on the allegations as made in the said FIR. The Petitioner states that the Petitioner is neither involved in any offence nor has the Petitioner committed any offence as alleged in the said FIR no. 121/2016. The Petitioner states that the alleged complaint filed by Mr. Nageshkumar Bhairu Shinde is a truncated complaint.

11. The Petitioner states that the Petitioner was neither notified of said FIR no.121/2016 nor was the Petitioner aware of any such FIR being filed as against the Petitioner up to 27/11/2017 i.e. the date when the Petitioner was served with the

summons issued by the Court of the learned Judicial Magistrate First Class at Bicholim in Criminal Case no. 112/S/2017/A, apparently on the basis of a charge sheet bearing no.83/2017 dated 28/09/2017 filed by the Bicholim Police Station.

Annexed hereto and marked as Annexure 'F' is the copy of the summons dated 24/11/2017 alongwith the copy of the Chargesheet.

- 12. The Petitioner states that the Petitioner had no knowledge of the filing of the above said FIR bearing no. 121/2016 and the subsequent proceedings. The Petitioner states that at no point of time after filing of the said FIR was the Petitioner called by the Bicholim police station for any inquiry or investigation. The Petitioner was oblivion of the filing of the said Criminal proceedings till the receipt of the said summons in Criminal Case no. 112/S/2017/A.*
- 13. The Petitioner states that as the Petitioner had no knowledge of the above said proceedings, the Petitioner had answered and/or furnished the information as "No" in Para no.12(a) & (b) of the Annexure-I, which information on the said date was correct and to the best of the Petitioner's knowledge and belief."*

13. Shri Uttam Parsekar, Principal Chief Engineer, (PWD) has filed an affidavit in response to the petition. Affidavit purports to respond para-wise to the averments in the petition. However, there is no specific response to the averments in paragraphs 10 to 13. Applying the rules of pleading therefore, this is case of non-traverse and we will have to proceed on the basis that there is absolutely no material on record or absolutely no material with the respondents to indicate

that the petitioner was aware of the FIR or pending prosecution on the date when he filled up attestation form and gave necessary declarations prescribed therein.

14. As noted earlier, the petitioner has made categorical and clear averments in the petition as regards absence of knowledge on the date he filled in the attestation form and gave necessary declarations. These averments have not at all been denied by the respondents. Therefore, we are satisfied that this is really not at all a case of suppression, much less, a case of any willful suppression.

15. Since, there is a reference to clauses 12(a) and 12(b) of the attestation form in the impugned order of termination, it is only appropriate that these entries are quoted verbatim for reference of convenience. Clause 12(a) and 12(b) read thus:-

“12(a) Have you ever been arrested, prosecuted, kept under detention or bound down/lines/ convicted by a Court of Law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examination/selection or debarred from any examination rusticated by any University or any other educational Authority/Institution?

N.A.

12(b) Is any case pending against you in any Court of Law, University or any other educational authority/institution, at the time of filing up this attestation form. If the answer to (a) or (b) is “Yes” full particulars

of the case, arrest, detention, fine, conviction, sentence etc and the reasons of the case pending in the Court/university at Educational Authority etc. at the time of filling up this for, should be given.

N.A.”

16. Further, since, Mr. Phaldessai, learned Additional Government Advocate places reliance upon warnings at the beginning of this attestation form, it is also appropriate that such warnings are quoted verbatim for reference of convenience.

- 1. The furnishing of false information or suppression of any actual information in the Attestation Form would be disqualification and is likely to render the candidate unfit for employment under the Government.*
- 2. It detained, convicted, debarred etc., subsequent to this completion and submission of the Form, the detail should be communicated immediately to the Union of Public Service Commission or the Authority to whom the attestation form has been sent earlier as the case may be failing which it will be deemed to be suppression of factual information.*
- 3. If the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice at any time during the service of a person, his services should be liable to be terminated.”*

17. Memorandum dated 5.7.2017 by which the petitioner was offered appointment, in its clause (4) also provides that if any declaration given or information furnished by candidate proves to be false or if the candidate is found to have willfully suppressed any material information, he/she will be liable for removal from services

and such other action as Government may deem necessary.

18. As noted earlier, this is clearly not a case of suppression or willful suppression of material particulars. Mr. Phaldessai, however, submits that according to the petitioner's own case, the petitioner was served with the chargesheet dated 5.10.2017 on 27.11.2017. However, the petitioner, did not choose to communicate these material fact to his appointing Authority immediately, as was required of under second warning in the attestation form. Mr. Phaldessai, submits that therefore, this is a case of deemed suppression of factual information.

19. In order to consider the aforesaid submissions of Mr. Phaldessai, Mr. Bhole on this aspect, reference is undoubtedly necessary to the ruling of the Hon'ble Apex Court in case of **Avtar Singh** (supra).

20. In **Avtar Singh** (supra), the three Judge Bench of the Hon'ble Apex Court was constituted to resolve the conflicting opinions in the various decisions of the Division Benches of the Apex Court on the precise question of effect of suppression of information or submitting false information in the verification column, when it comes to public

employment. The Apex Court, noted that it cannot be disputed that the whole idea of verification of character and antecedents is to determine whether the person is suitable for appointment to post in question. It is one of the important criterion, necessary to be fulfilled, before appointment is made. An incumbent should not have antecedents of such a nature which may adjudge him unsuitable for the post. Mere involvement in some petty kind of case would not render a person unsuitable for the job.

21. The Apex Court quoted its earlier ruling in ***State of M.P. Vs Ramashanker Raghuvanshi***,² and observed that the whole business of seeking Police report about the political belief and association of the past political activities of a candidate for public employment is repugnant to the basic rights guaranteed by the Constitution. The Apex Court also referred to its earlier three Judge Bench decision ***T. S. Vasudavan Nair Vs. Vikram Sarabhai Space Centre***³, where, it had considered the case of an employee who had suppressed the fact that during emergency he had been convicted in a case registered under the Defence of India Rules for having shouted slogans on one occasion. In that case Apex Court held that cancelling the offer of appointment due to such non-disclosure was

² (1983) 2 SCC 145

³ 1988 Supp SCC 795

illegal and the employer was directed to appoint him as a Lower Division Clerk.

22. The Apex Court also took into consideration its earlier ruling in the case of ***In Secretary, Department of Home Secy, A.P. & Ors. vs. B. Chinnam Naidu***⁴ which pertains to suppression of material information and/or giving false information in the attestation form. In the attestation form, the respondent had not mentioned about his arrest and pendency of a case against him. The Apex Court, noted that as per the relevant column of the attestation form the candidate was required to indicate whether he has been convicted by a court of law or detained under any State/Central preventive detention laws. There was no requirement to disclose whether he had been arrested or whether any case was pending against him. In view of the relevant column in the form it could not be said that the candidate had made false declaration or had suppressed material information. As such, the Apex Court held that the action of the employer in not permitting the candidate to join the training due to suppression of facts in the attestation form, was not sustainable.

23. The Apex Court, after consideration of several earlier decisions

4 (2005) 2 SCC 746

on the subject, finally, summarised its conclusions in paragraph 38, which read 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 recourse 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."

(Emphasis supplied)

24. Accordingly, contentions raised in the present petition will have to be adjudged on the basis of conclusions and the reasoning reflected in ***Avtar Singh***(supra).

25. We have already noted that this is not a case of suppression, much less, a case of willful suppression of any material particulars. This finding is consistent with the conclusion recorded at paragraph 38.11 of ***Avtar Singh*** (Supra). In so far as Mr. Phaldessai's contention based upon the second warning in the attestation form is concerned, we have to advert to the conclusion recorded by the Apex Court in paragraph 38.10 of ***Avtar Singh***(supra). The Apex Court has held that for determining suppression or false information attestation/verification form has to be specific and not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant and 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. Besides, reference is also necessary to the conclusion recorded in paragraph 38.11 which states that before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.

26. In the present case, though, Mr. Phaldessai is right in his contention that it would have been appropriate for the petitioner to have disclosed the factum of FIR or pendency proceedings against him no sooner he was served with summons on 27.11.2017, we cannot, say that this is a case of any breach of second warning to the Attestation form, in the peculiar facts and circumstances of the present case. Second warning refers to detention, conviction or debarment. No doubt, this is followed by “etc” As noted earlier, the Hon'ble Apex Court has in precisely matters of this nature, categorically held that for invoking the clauses which permit action on basis of suppression or furnishing of false information, the attestation form has to be specific and not vague. On the basis of “etc” it is not possible to hold that there was any legal obligation upon the petitioner to have made disclosure of the FIR or the

proceedings consequent upon issue of summons on 27.11.2017 upon him. No doubt it would have been appropriate course of action for the petitioner to adopt. However, the circumstance that the petitioner has not adopted such a course, cannot, give rise to case of either suppressio veri or suggestio falsi, atleast in the peculiar facts and circumstances of the present case.

27. Besides, in the matter of this nature, reference is also appropriate to the nature of the offence alleged against the petitioner. In this case, perusal of the chargesheet would indicate that the petitioner and several others, possibly, his relatives have been charged with obstructing the complainant whilst he was proceeding to Sal, Bicholim Goa. There is allegation that the petitioner and several others hurled abuses at the complainant, assaulted him with fist blows and slaps, formed an unlawful assembly, threatened the complainant with dire consequences and Accused no. 3 (not the petitioner) committed a theft of complainant's mobile phone and cash of Rs.1500/- which had fallen down from the complainant's pocket. Chargesheet states that the motive behind the crime is previous enmity over property dispute.

28. In our opinion, though, the nature of the offence and the impact

thereof on the government service is basically a matter which will have to be left to be decided by government itself, in the peculiar facts of the present case, we cannot but observe the nature of the offence alleged against the petitioner was certainly not of such a nature as would render him unsuitable for continuing to work as Works Assistant in PWD.

29. In ***Avtar Singh*** (supra), the Apex Court at conclusion at 38.6 has recorded that in a case when a 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.*”

30. According to us, this is a fit case where impugned termination order be set aside and petitioner be directed to be reinstated to the post of Works Assistant subject to decision of the case pending trial before the Judicial Magistrate First Class Bicholim in Criminal case No. 112/S/2017/A. In the peculiar facts and circumstances of present case, such a course of action will be consistent in the interest of justice, particularly since, such a course of action, will be quite consistent with the presumption of innocence which the petitioner

presently enjoys. Accordingly, we quash and set aside the impugned termination order dated 30.8.2018 and direct the respondent to reinstate the petitioner w.e.f. 1.3.2019. The Order for reinstatement to make it clear that such reinstatement and continued appointment in pursuance thereof is subject to outcome/result of case pending before the learned JMFC Bicholim in Criminal Case No.112/S/2017/A. It shall be the duty of the petitioner to intimate the respondents the outcome/result of this pending prosecution, irrespective of whether or not petitioner chooses to appeal such result, in the event the result is adverse to the petitioner. The petitioner who is present in court, tenders an undertaking that he shall do so. The same is accepted as an undertaking to this Court.

31. We further direct that the period between 30.8.2018 and 1.3.2019 may be taken into consideration for the purpose of continuity of service and other benefits. However, the petitioner, will not be entitled for any salary for this period. Mr. Bhobe, learned counsel for the petitioner, on the basis of instructions from the petitioner who is present in the Court states that the petitioner makes no claim for salary during this period. Even otherwise, according to us, such salary is not required to be paid for atleast two reasons. First is that though the petitioner may not be bound to but

yet, it would have been appropriate if the petitioner reported the factum of FIR and pending of case to his appointing Authority atleast after he was served with the summons on 27.11.2017. Secondly, during this period, the petitioner, has not actually worked and, therefore, principle of no work and no pay will also apply.

32. Accordingly, we make rule absolute to the aforesaid extent. There shall be no order as to costs.

33. All concerned to act on the basis of authenticated copy of this order.

PRITHVIRAJ K. CHAVAN,J.

M. S. SONAK, J.