

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO.309 OF 2011

Anil s/o Narsingrao Khule,
R/o Dadham, Post Ridhora, Tah. Balapur, Dist. Akola
-vs-
Assistant Commissioner, Food and Drugs Administration,
Jatharpeth, Akola, Dist. Akola

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S. A. Pathak, Advocate for appellant.
Smt S. Jachak, Assistant Government Pleader for respondent.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

DATE : August 23, 2021

The challenge raised in this Letters Patent Appeal is to the judgment of learned Single Judge dated 11/10/2010 in Writ Petition No.3341/2010. By that judgment the order passed by the Labour Court in the complaint filed by the appellant under Section 28 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short, the Act of 1971) dismissing the same which was subsequently confirmed by the Industrial Court in exercise of revisional jurisdiction has been upheld.

2. The appellant came to be appointed purely on temporary basis on the post of Sampling Assistant at the Food and Drug Department of State of Maharashtra. The order of appointment dated 22/12/1994 indicates that the appointment is purely of temporary nature and the services could be put to an end at any time without notice. After his appointment the appellant was required to fill in an attestation form by disclosing factual

information including the pendency of any criminal proceedings against him. The appellant in that form stated that no proceedings in any Court of law were pending against him. The respondent then sought verification of the information submitted by the appellant and on 09/05/1995 the Superintendent of Police submitted his report in which it was stated that three criminal proceedings were pending against the appellant. Offence under Sections 163 and 164 of the Maharashtra Village Panchayat Act, 1959 was registered against appellant, similarly offence under Sections 294, 504 and 506 of the Indian Penal Code was also registered against the appellant. Proceedings under Sections 107, 116(3) of the Criminal Procedure Code, 1973 were also initiated against him. After receiving the aforesaid communication the respondent on 20/07/1995 terminated the services of the appellant.

3. The appellant being aggrieved by the aforesaid order of termination filed complaint under Section 28 of the Act of 1971 challenging the same. The parties led evidence before the Labour Court and by judgment dated 04/01/2000 the learned Judge of the Labour Court held that the appellant had suppressed relevant information while submitting the attestation form. The appointment was purely on temporary basis and hence no fault could be found in the order of termination. The complaint was accordingly dismissed. The Industrial Court in exercise of revisional jurisdiction maintained the order of dismissal. By the judgment dated 11/10/2010 the learned Single Judge confirmed the orders of Labour Court and Industrial Court and dismissed the writ petition. Hence this

appeal.

4. Shri S. A. Pathak, learned counsel for the appellant submitted that no opportunity of hearing was granted to the appellant before terminating his services. Considering the fact that the appellant was appointed on 22/12/1994 and was holding the post of Sampling Assistant it was necessary for the respondent to have granted such opportunity before terminating his services. It was further submitted that after his services were terminated the appellant was acquitted in two of the three criminal proceedings and the third proceeding under the Code of Criminal Procedure came to be terminated. Placing reliance on the decision of the Honourable Supreme Court in ***Avtar Singh vs. Union of India and ors. AIR 2016 SC 3598*** and especially paragraph 30 thereof it was submitted that a sympathetic view of the matter ought to be taken in the light of the fact that the offences in question were petty in nature and that the appellant was duly acquitted therein. On these counts it was submitted that the impugned judgment was liable to be set aside.

5. Ms S. Jachak, learned Assistant Government Pleader supported the judgment of the learned Single Judge. It was submitted that considering the suppression of material information regarding pending criminal proceedings the appointment of the appellant which was temporary in nature was rightly put to an end. There was no question of granting any opportunity of hearing in view of the admitted position that the aforesaid offences were registered against the appellant. Hence the appeal was liable to be dismissed.

6. On hearing the learned counsel for the parties and on perusal of material on record we do not find any reason to take a different view than the one taken by the Labour Court and affirmed by the Industrial Court and thereafter by the learned Single Judge. It is an admitted position that the appointment of the appellant was purely temporary in nature. The Attestation form submitted by the appellant and the suppression of information about pending criminal proceedings is not in dispute. Further fact that there were criminal proceedings pending against the appellant when the attestation form was filled is also undisputed. In these facts granting of an opportunity of hearing would have been nothing but an empty formality. The fact that this information that was required to be disclosed by the appellant was not so disclosed would not have been altered by granting such opportunity of hearing. Hence the entire premise for challenging the order of termination dated 20/07/1995 is without any basis. Coming to the decision in case of *Avtar Singh* (supra), the Honourable Supreme Court has by way of illustration given various instances as to the course to be adopted in such matters. In cases that are trivial in nature it is up to the employer to ignore such suppression of fact or false information by condoning the lapse.

In the present case offence under Sections 294, 504 and 506 of the Indian Penal Code cannot be said to be trivial in nature. Similar is the case with regard to offence under provisions of Maharashtra Village Panchayat Act, 1959. We find that the employer has considered the nature of appointment which was purely temporary in nature and has thereafter proceeded to discontinue the services of the appellant. This

discretion having been accepted by all the Courts we do not find any reason to take any different view.

7. In view of aforesaid we do not find any merit in the Letters Patent Appeal. It is accordingly dismissed leaving the parties to bear their own costs.

JUDGE

JUDGE