

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

WRIT PETITION NO. 6156 OF 2015

PETITIONER :- Paresh Vinay Rangari, Aged 38 years,
Occupation : Private Job, R/o. 1331, Old
Pardi, Bhandara Road, Opposite Royal
Club, Nagpur.

...VERSUS...

RESPONDENTS :-

1. Airport Authority of India, Western
Region Headquarters, through its
Regional Executive Director, Chatrapati
Shivaji International Airport, Mumbai-
400099.
2. Deputy General Manager, Western
Region Headquarters, Chatrapati Shivaji
International Airport, Mumbai-400099.
3. Airport Authority of India, Raja Bhoj
Airport, Bhopal, through its General
Manager,

Mr. S.S. Dhengale & Mr. P. S. Khubalkar,
Advocates for the petitioner.
Mr. S.S.Ghate, Advocate for the respondents.

**CORAM : SUNIL B.SHUKRE &
ANIL S.KILOR, JJ.**

DATE : 09.08.2021.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

1. Heard.

2. The petitioner has challenged the legality and correctness of his termination order dated 02.03.2009. The petitioner was appointed as Jr. Attendant (Engineering-Electrical) by respondent No.2 vide his appointment order dated 18.06.2008. The appointment order was conditional. In paragraph No.3 of the order, it was stated that if the terms and conditions of the appointment were acceptable to the petitioner, the petitioner may report, on duty at the place mentioned therein. One of the conditions of the appointment order required the petitioner to give his declaration regarding any pending criminal case, in the attestation form. The other condition namely, condition no.3 stated that if any such declaration has been found to be false or if it is found that any information which a petitioner was required to disclose was suppressed by him, it would be held that the petitioner was not suitable for continuation in service and accordingly, his service shall be terminated.

3. The petitioner had been appointed on probation for a period of one year. Before his probation period could be satisfactorily completed, it was noticed by the respondents that the petitioner had suppressed material information regarding pendency of the criminal case, against him. This, criminal case was registered against the petitioner vide FIR No.126 of 2008 for the offence punishable under Sections 498-A and 506 of the Indian Penal Code on 20.05.2008. The attestation form in which this information was required to be disclosed, but was not disclosed, was submitted by the petitioner after he received the appointment order dated 18.06.2008. It is not the case of the petitioner that he was not aware of filing of a criminal complaint against him by his wife and registration of the aforesaid criminal offences on the basis of the complaint filed by his wife. But, the petitioner chose not to disclose pendency of criminal offence registered against him in his attestation form.

4. It is the contention of the learned counsel for the petitioner that later on, the offence so registered against the petitioner, came to be quashed and set aside by an order dated 24.06.2015 in

Criminal Application No. (APL) 262 of 2015 by the judgment and order dated 24.06.2015 by another Division Bench of this Court. The FIR was quashed and set aside on the basis of the compromise arrived at between the parties.

5. After quashing of the FIR against the petitioner, the petitioner approached this Court by filing this petition. Now, the contention of the learned counsel for the petitioner is that the employer, before exercising his discretion regarding termination of the service of a probationer, must examine the impact of the suppression made by the petitioner upon his service and his suitability as an employee. The learned counsel places his reliance upon the case of *Avtar Singh Vs. Union of India* reported in (2016)8 Supreme Court Cases, 471, *Ram Kumar Vs. State of U.P and ors.* reported in (2011) ALL SCR 2057 and *Jainendra Singh Vs. State of Uttar Pradesh through Principal Secretary, Home and ors.* reported in (2012) 8 SCC 748.

6. This petition is strongly opposed by Shri. Ghate, learned counsel for the respondents. He submits that appointment order

issued, to the petitioner itself was conditional and since, the petitioner has committed a breach of the condition, the consequence of termination has occurred in the present case. He invites our attention to the condition No.3, of the appointment order which states that if it is found by the employer that the appointee has suppressed any information, it would be held that the person is not suitable for appointment to the post in question and would be accordingly, remove from service. He submits that in the present case, the consequence for suppression of information which the petitioner was required to disclose as a part of the terms and conditions of the appointment order, has been stated in the appointment letter itself and so the petitioner now cannot say that the petitioner was also required to examine the impact of the suppression made by him on his suitability to the post or his fitness to continue in service. He also submits that legality of the condition No.3 of the appointment order has not been challenged in any manner by the petitioner.

7. In the present case, we find that the facts of the present case, are quite different from the facts of the case of *Ram Kumar*

Vs. State of U.P and ors. (supra) and *Avtar Singh Vs. Union of India reported (supra)*. Insofar as the case of *Jainendra Singh Vs. State of Uttar Pradesh through Principal Secretary, Home and ors. (supra)* is concerned, we are of the view that this case having been already considered by the Supreme Court in the case of *Avtar Singh Vs. Union of India reported (supra)* there is no need to accord any separate consideration to this case.

8. Speaking about the differentiated nature of the facts of the present case, it may be said that, in case of *Ram Kumar Vs. State of U.P and ors. (supra)* the facts disclosed that Ramkumar was already acquitted of the criminal case, much before he filed his application for appointment to the post of constable. Then, there was a government order dated 28.04.1958 on the subject “Verification of the character and antecedents of government servants before their first appointment” and therefore, it was necessary for the candidate to disclose all the facts relating to his character and antecedents. Such disclosure of the facts was to enable the employer to examine the suitability of the candidate for appointment to the post in question. It was in the context of

these facts, the Hon'ble Supreme Court held that it was the duty of senior Superintendent of Police, Ghaziabad, as the appointing authority, to satisfy himself, on the point as to whether the appellant was suitable for appointment to the post of a constable in reference to the nature of suppression and nature of the criminal case. In the present case, disclosure that was required to be made by the petitioner was not before his appointment but, the disclosure was made in fulfillment of one of the conditions of the appointment subject to which the appointment was given to the petitioner and there being a case of breach of the condition of the appointment found by the employer that the service of the petitioner has been put to an end. Therefore, we do not think that case of *Ram Kumar Vs. State of U.P and ors. (supra)* , would help the petitioner in any manner.

9. As regards the law laid down by the Hon'ble Apex Court in the case of *Avtar Singh Vs. Union of India* reported (supra), there can be no second opinion about the same. The Hon'ble Apex Court has laid down a principle of law that once verification form requires certain information to be furnished, declarant is duty

bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of a candidature in an appropriate case.

10. However, the Hon'ble Supreme Court has also found that the power to terminate the service of an employee in such a case, is in the nature of discretion conferred upon the employer and therefore, it further held that employer would have to consider impact of suppression or giving of false information upon the suitability of an incumbent to be continued in service. It further held that in case the employer comes to the conclusion that suppression is immaterial and even if the facts had disclosed that it would not have affected adversely the fitness of the incumbent, then for the reasons to be recorded, the employer has the power to condone the lapse.

11. In the present case, an opportunity to examine the consequences of suppression of all the relevant facts relating to pendency of criminal case, it appears to us, was not afforded by

the petitioner, to the employer. Such an opportunity would certainly have been available for the employer respondents, had the petitioner made representation to the employer immediately after or within the period after the termination order dated 2.03.2009 was served upon him. The petitioner, however, chose to remain silent for six long years and he straightaway approached this Court only in September 2015. During the period from 02.03.2009 till the filing of this petition in September 2015, no attempt whatsoever was made by the petitioner to convince the employer that the criminal case, in respect of which information was not disclosed by him, was of such a nature that it would not have had any impact on his suitability or fitness to continue in service. Learned counsel for the petitioner submits that such an attempt was not made by the petitioner for the reason that the criminal case was pending and that it was only in the year 2015 that the criminal offence was quashed by the Division Bench of this Court on an application filed jointly by his wife under Section 482 of the Cr.P. C., after which this petition was filed by the petitioner. The explanation so given by the petitioner cannot be accepted for the reason that the case of the petitioner himself is

that the nature of criminal offence which was registered against him would not have had any impact upon the fitness and suitability of the petitioner to continue in the post for which he was appointed, no matter the result of the trial against him and that being so, the petitioner could have approached the employer or even this Court within a reasonable period after termination order was served upon him in March 2009. But, this petition has been filed after a long delay of six years and today, in the year 2021, period of almost 11 years has gone by. In this scenario, it would be very difficult for the employer, even if the employer chooses to exercise his discretion favourably, to accommodate the petitioner on a post which has been filled long back. Besides, today, the petitioner is aged about 45 years of age. All these facts and circumstances cumulatively, in our opinion, would not entitle the petitioner to agitate against the impugned order. The petition stands dismissed. No costs.

12. We however, grant liberty to the petitioner to approach the employer, by making a suitable representation within a period of two weeks from the date of the order and if such representation

is made, it may be decided, in accordance with law, within three months from the date of receipt of the representation.

13. Rule is discharged accordingly. No costs.

14. In view of dismissal of this petition, the pending application(s) if any, stand disposed of.

(ANIL S. KILOR,J)

(SUNIL B. SHUKRE,J)