

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2327 OF 2019

Shri. Anil Shivaji Sapkal

Age : 32 years, Occ.: Nil

R/o : Palod, Tal. Sillod, Dist. Aurangabad ...Petitioner

V/s.

1. State of Maharashtra

Through the Secretarial Home
Department, Mantralaya,
Mumbai - 400 032

2. The Superintendent of Police,
Raigad, Alibagh

...Respondents

Mr. Abhinandan Vagyan i/by Mr. Manoj Patil for
petitioner.

Mr. B.V. Samant, AGP for State.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE: SEPTEMBER 14, 2022

P.C.:

1. Dismissal of Original Application No. 908 of 2017 by the Maharashtra Administrative Tribunal, Mumbai by an order dated 5th October, 2018 has given rise to this writ petition.

2. Filtering out unnecessary facts, what emerges is that the petitioner had offered his candidature for the post of Police Constable by responding to an advertisement dated 29th April, 2014. While filling up the attestation form, the petitioner had answered question no. 11(a) in the negative. Question no. 11(a) reads as follows:

BHALCHANDRA
GOPAL
DUSANE

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2022.09.17
11:00:58 +0530

"11(a) Have you ever been arrested/prosecuted/kept under detention, or bound down/fined/ convicted by a court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examinations/selections or debarred from taking any examination/rusticated by any university or any other educational authority/Institution."

3. The petitioner in fact was an accused in Crime No. 59 of 2009, registered with Sillod Police Station (Aurangabad District) under section 65(e) of the Mumbai Prohibition Act. It is further not in dispute the petitioner was arrested in course of investigation thereof and later on released on bail. Also, it is undisputed that the petitioner was tried by the Judicial Magistrate First Class, Sillod in connection with Regular Criminal Case No.470 of 2009 and acquitted by an order of the said magistrate dated 28th May, 2013. Evidently, the answer of the petitioner to question no. 11(a) in the negative was a false information.

4. Be that as it may, the appointing authority considered the claim of the petitioner for appointment and though he was selected, he was refused offer of appointment as a Constable on the ground of non-disclosure of relevant information with regard to the prosecution that was launched against him, though ultimately he stood acquitted. Such decision of the appointing authority was the subject matter of challenge in the original application.

5. In paragraph 6.5 of the original application, the petitioner had stated as follows:

"6.5. Then on 14.07.2017, the Applicant filled in the attestation form in which he had stated that there is no case pending against him in any court because at the relevant time no court case was pending against the Applicant and he was already acquitted from the criminal case in the year 2013 itself i.e. much prior to the publication of the advertisement. Hereto annexed and marked as "**Exhibit C**" i.e. true copy of the attestation form dated 14.07.2014."

6. Paragraph 6.5 of the original application was dealt with by the respondents by filing a reply-affidavit. Paragraph 6 thereof reads as follows:

"6. With reference to contents of Paragraph no. 6.5 of Original Application, I say that Applicant is conveniently stated that he had stated no to whether any case is pending against him at sr. no. 11(c) of the attestation form. Whereas it is pertinent to note that Sr. no. 11(a) in attestation form specific question asked as –

"Have you ever been arrested / prosecuted/ kept under detention, or bound down/fined/ convicted by a court of law for any offence or debarred / disqualified by any Public Service Commission from appearing at its examination / selections or debarred from taking any examination / rusticated by any university or any other educational authority/ institution. "

and applicant had answered this question as "**No**". It is pertinent to note that the Applicant was arrested and prosecuted under Sec. 65(kh) of Mumbai Prohibition Act, in Sillod Police Station, Aurangabad C.R. Register No. 59/2009. Applicant should have provided this information in attestation form but despite providing correct information applicant has provided false information in attestation form."

7. The petitioner did not file any rejoinder affidavit dealing with the reply affidavit.

8. Upon consideration of the rival claims, the Tribunal was critical of the lack of candour on the part of the petitioner in not disclosing in the attestation form that he was arraigned in a criminal case, notwithstanding the fact that he had been acquitted after a full-fledged trial. Referring to the authorities that were cited before it as well as a Government Resolution dated 19th April, 2017, the Tribunal was of the view that since the petitioner did not disclose the fact of his prosecution and which led to the trial before the magistrate, the respondents' decision not to offer appointment to him on the ground of suppression of fact was not one which required interference; hence, the original application stood dismissed.

9. Appearing in support of the writ petition, Mr. Vagyani, learned advocate has made a valiant effort to persuade us hold that the decision of the respondents in refusing to offer appointment to the petitioner despite his selection and, a *fortiori*, the order of the Tribunal declining to interfere with such decision of the respondents, are patently erroneous.

10. Mr. Vagyani argues that the petitioner was not proceeded against for commission of any heinous offence of moral turpitude and that having regard to his acquittal and particularly in the light of the law laid down by the Supreme Court in its decisions in **Avtar Singh Vs. Union of India and Others**, reported in (2016) 8 SCC 471, **Mohammed Imran Vs. State of Maharashtra & Ors.**, reported in (2019) 17 SCC 696), **Joginder Singh Vs. Union Territory of**

Chandigarh & Ors., reported in (2015) 2 SCC 377, and **Union of India and Others Vs. Methu Meda**, reported in (2022) 1 SCC 1, the Tribunal ought to have granted him relief. Next, he urges that the petitioner did not suppress any material fact or information. He was tried but acquitted. In such circumstances, answering question no. 11(a) in the negative should not have been seen as a ground for cancelling his candidature. It is also contended by him that other candidates, who had similarly suppressed material information about their complicity in crime, were appointed but the petitioner was singled out. This, according to him, amounts to discrimination.

11. Mr. Samant, learned Additional Govt. Pleader appearing for the respondents, contends that the petitioner was clearly guilty of providing false information. Part of question no. 11(a) seeks information about arrest and detention in custody. According to him, the petitioner was arrested during the course of investigation and having been detained in custody, could not have answered the relevant question in the negative.

12. The parties have been heard, the materials on record perused and the decisions cited considered.

13. The decision in **Avtar Singh** (supra) was rendered upon a reference being made to a larger Bench in view of cleavage of opinion in various decisions of Benches of lesser strength of the Supreme Court as noticed in the decision in **Jainendra Singh v. State of Uttar Pradesh**, reported in (2012) 8 SCC 748. We consider it appropriate to extract below paragraphs 32 to 35 and 38 of such decision:

"32. No doubt about it 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 candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non-disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

33. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran's case (supra), it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

34. No doubt about it that verification of character and antecedents is one of the

important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

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."

14. A bare reading of the aforesaid extract would reveal that submitting false information may by itself be a ground for an employer either to cancel the candidature of an empanelled

candidate or to terminate the service of an employee if, at the time of appointment, such empanelled candidate/employee had either not disclosed the relevant information or had given false information or had suppressed a material information.

15. At this stage, it may not be inapposite to state that the requirement of an aspirant for a post pertaining to public service to provide information about his character and antecedents serves a salutary purpose. Such purpose includes seeking information to ascertain the character and antecedents of the aspirant and to assess whether he is suitable for the post. It does not admit of any doubt that the aspirant has to answer the questions honestly and truthfully, and should there be any misrepresentation or suppression or false statement by him, that by itself would demonstrate a conduct or character unbefitting for a uniformed security service. In such an event, the appointing authority may well consider the aspirant unfit for the post. Such a decision, if taken, is not to be ordinarily disturbed.

16. In the present case, we have found that the petitioner was arrested in connection with investigation of the crime and the order of acquittal recorded by the magistrate dated 28th May, 2013 also reveals that he was being discharged from the bail bond. Once the petitioner was arrested and kept in detention and there being no claim of ambiguity which prevented the petitioner from comprehending what was required of him, he could not have answered question no. 11(a) in the negative. It is, therefore, clear that the petitioner attempted to secure public employment by deceit. On that ground alone, we feel that the decision of the appointing

authority not to offer appointment to the petitioner is justified.

17. However, since other decisions of the Supreme Court have been referred to by Mr. Vagyani, we now proceed to consider each one of them.

18. In **Mohammed Imran** (supra), we find that the petitioner had truthfully and honestly disclosed his prosecution and acquittal by the Sessions Court, Sangli in the attestation form. It is, on consideration of such circumstance as well as the observations made in **Avtar Singh** (supra), that the Court proceeded to hold that although mere empanelment does not create any right of appointment, equally there could be no arbitrary denial of appointment after empanelment. The Court also held that that consideration of the candidature of the appellant and its rejection were afflicted by a myopic vision, blurred by the spectacle of what had been described as moral turpitude, reflecting inadequate appreciation and application of facts also, as justice may demand. It is in such circumstances, that the matter was remitted to the respondents for fresh consideration of the candidature of the appellant. Considering the fact that there had been a truthful and honest disclosure of prosecution and acquittal by the appellant, we have failed to see how the decision in **Mohammed Imran** (Supra) can be of any assistance to the petitioner.

19. Paragraphs 9 and 20 of the decision in **Joginder Singh** (supra) would also reveal that the appellant in the case before the Supreme Court was not guilty of concealment of fact. In fact, he had honestly disclosed in his verification application

submitted to the selection authority that there was a criminal case registered against him and that it ended in an acquittal on account of compromise between the parties involved in the criminal case. In such a circumstance, the Supreme Court held that the alleged past conduct of the appellant in relation to the criminal case should not be a factor for debarring or disqualifying him for the post of Constable for which he was successfully selected. Once again, the factual similarity of this case dissuades us from applying the law laid down to the case of the petitioner.

20. The last decision is **Methu Meda** (supra). Here also, we find from paragraph 2 of the decision of the appellant having clearly specified in the attestation form, registration of the criminal case and acquittal from the charges in a trial by the competent court. After considering the decision in **Avtar Singh** (supra) as well as the decision in **State vs. Meher Singh**, reported in (2013) 7 SCC 685, the Court was of the view that the employer had the right to consider whether the offer of appointment should be given to an empanelled candidate, who did not obtain an honourable acquittal from the trial Court. For the reasons set out in the decision, the appeal was allowed and the impugned orders of the Division Bench as well as the Single Bench of the relevant High Court was set aside.

21. We are not required to examine as to whether the petitioner was honourably acquitted. The decision on this writ petition does not hinge upon whether the petitioner is entitled to an appointment on the ground of his acquittal in the criminal case. What we are essentially required to decide is

whether the petitioner's conduct while filling up the attestation form was such, which would warrant taking a lenient view in his favour bearing in mind the fact of his acquittal.

22. As has been observed above, the petitioner furnished false information that he had never been arrested or detained in custody. Regard being had to the observations made in paragraph 32 of the decision in **Avtar Singh** (supra), such wrong information would by itself be a factor for cancellation of the candidature of the petitioner who has been dishonest while seeking employment in the police force.

23. It is now the time to consider the other argument of Mr. Vagyanthi that other candidates, who had similarly not disclosed correct information about their involvement in criminal trials were granted appointments. We have been invited to take note of the case of one David Aniruddha Chaudhari.

24. Even if the said David Aniruddha Chaudhari has been offered appointment wrongfully, we are of the view that the same does not afford any right to the petitioner to claim the same treatment. As is well settled, the equality clause in Article 14 is a positive concept and cannot be applied in a negative manner. One wrong cannot justify another as in life so also in employment.

25. Also, an order passed by an administrative authority does not constitute a precedent which has to be followed by another administrative authority, far less a judicial forum. It is only the law laid down by the superior courts in judicial orders that would constitute a precedent for the courts subordinate thereto in the hierarchy. If any authority is required, one may

profitably refer to the decision of the Supreme Court in **Chandigarh Administration Vs. Jagjit Singh**, reported in AIR 1995 SC 705.

26. We, therefore, see no reason to accept any of the contentions of Mr. Vagyani. There is no merit in the writ petition and the same is dismissed.

27. No costs.

(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)