

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1649 OF 2022

Shubham s/o Himmatlal Pali

-- Petitioner/s

Vs.

State of Maharashtra & Anr.

-- Respondent/s

Mr. V.R. Deshpande, Advocate for the Petitioner.

Mr. A.A. Madiwale, A.G.P. for Respondent No.1/ State.

Mr. Abhay Sambre, Advocate for Respondent No.2.

CORAM : NITIN JAMDAR &
ANIL L. PANSARE, JJ.

DATE : 1 APRIL 2022.

P. C. :

The Petitioner is aggrieved by the order dated 24 February 2022 passed by the Respondent – Principal District and Sessions Judge, Akola, discontinuing the services of the Petitioner as ‘Junior Clerk’.

2. The Petitioner was appointed pursuant to an advertisement issued on 28 March 2018 with the Respondent - Administration on the post of ‘Junior Clerk’ on a temporary basis. This appointment was subject to the verification of the information given by the Petitioner pursuant to the advertisement. While submitting the attestation form in the column, the Petitioner had to disclose whether he had ever been prosecuted in

the past, wherein the Petitioner specifically wrote 'No'. Not only 'Yes' word in Marathi and English was scored off, but by hand, the Petitioner wrote 'No'.

3. A notice came to be issued to the Petitioner by Respondent No.2 upon receiving a confidential report submitted by the Police Authority, Akola, on 31 December 2021 that a crime bearing No. 308/2019 was registered against the Petitioner at the Police Station, Balapur for the offence punishable under Sections 279, 338 and 304A of the Indian Penal Code read with Section 184 of the Motor Vehicles Act. That the Petitioner thereafter was acquitted on 17 October 2019 and was also arrested for the said offence on 26 September 2018.

4. The Petitioner submitted a reply on 17 January 2022 and accepted that he was prosecuted for the offence from which he was acquitted. The Petitioner accepted that he had specifically written 'No' in the column regarding whether he was prosecuted or had ever been arrested. The Petitioner sought indulgence from the Respondent authorities. The Respondent – Principal District and Sessions Judge sent the papers to the Advisory Committee of the District Court, Akola. The Committee held a meeting wherein the Advisory Committee members examined the matter and opined that the Petitioner could not be continued in service. His active suppression of material facts about being prosecuted renders in untrustworthy for the post in Court establishment. Accordingly, by

the impugned order dated 24 February 2022, the Principal District and Sessions Judge discontinued the services of the Petitioner.

5. Learned Counsel for the Petitioner submitted that though it is correct that the information was not disclosed, the nature of the offence was trivial and that it could not have affected the credentials of the Petitioner. Learned Counsel submitted that in any case, the Petitioner was acquitted of the offence. Learned Counsel further submitted that perusal of the decision of the learned Magistrate acquitting the Petitioner would show that the Petitioner was only driving a two-wheeler, and there was a dash between two two-wheelers. Learned Counsel for the Petitioner has relied upon the decision of three learned Judges of the Hon'ble Supreme Court in the case of *Avtar Singh Vs. Union of India And Others*¹ to contend that the case is of trivial nature and that there is discretion in the employer to condone the non-mentioning of the factum of earlier prosecution, the discretion has not been properly used in the present case.

6. As stated earlier, not only the Petitioner has scored off pre-existing options 'Yes' or 'No' but specifically written 'No' by his hand regarding the factum of arrest and prosecution. A clear, deliberate option was exercised by the Petitioner providing the information which it is established was false.

1 (2016) 8 SCC 471

7. As regards the decision in the case of *Avtar Singh (supra)*, the Hon'ble Supreme Court has not diluted the principle that the incumbent should disclose the antecedents, as the whole idea of verification for character and antecedents is to ascertain that the person is suitable for the post, and therefore, the information must be true and there is no suppression. After reiterating this basic principle, the Hon'ble Supreme Court has recognized that the employer has the discretion to terminate or otherwise condone the omission. While exercising discretion, the employer may consider the nature of the conviction, if it is trivial; whether it involves moral turpitude or a serious nature; is it a case of clean acquittal or technical acquittal or benefit of reasonable doubt is given, and after considering these aspects, discretion has to be used. While referring to the triviality of the conviction, the example that is given by the Hon'ble Supreme Court is of shouting slogans at a young age or a petty offence, which would not render an incumbent unfit for the post in question. The Hon'ble Supreme Court has also stated that the nature of employment and the nature of the establishment, where the employee has sought employment are also of material consideration.

8. In the present case, the order of acquittal is on record. It shows that the accident was not trivial. The complainant's son died in the accident has been established. A perusal of the decision of the learned Magistrate shows that the witness, who gave information, did not support the prosecution, and on the benefit of

the doubt, that acquittal was rendered. Apart from the merits of the acquittal, what is pertinent to note is that had this position been disclosed, how the employer would have exercised its discretion. The Petitioner has applied for a post in the Court establishment. The offence lodged against the Petitioner was for causing death by driving negligently.

9. Learned Counsel for the Respondents has drawn our attention to the recent decision of the Hon'ble Supreme Court in the case of *Rajasthan Rajya Vidyut Prasaran Nigam Limited And Another Vs. Anil Kanwariya*² whereafter considering various decisions, including that of *Avtar Singh (supra)*, the Hon'ble Supreme Court has observed as under :

“14. The issue/ question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and/ or trustworthiness of such an employee who at the initial stage of the employment i.e. while submitting the declaration/ verification and/ or applying for a post made false declaration and/ or not disclosing and/ or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels

that an employee who at the initial stage itself has made a false statement and/ or not disclosed the material facts and/ or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice/ option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and/ or continue to be in service as a matter of right.”

10. Noting the deliberate suppression of the prosecution which cannot be considered as of trivial nature, establishing a Committee and considering all aspects of the matter, if the Respondents have used the discretion not to condone the factum of suppression and hold the Petitioner accountable for the suppression, it cannot be considered that the discretion is used in a perverse manner.

11. In light thereof, no case is made out by the Petitioner for interference, and the Writ Petition is accordingly rejected.

[ANIL L. PANSARE, J.]

[NITIN JAMDAR, J.]