

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5862 OF 2023

Gopal Kachru Bamnawat,
age 31 yrs, Occ. Nil,
R/o At Pachpeerwadi, Tq. Divshi Pimpalgaon,
Nashik Highway, Tq. Gangapur,
Dist. Aurangabad.

.. PETITIONER

VERSUS

1. The Registrar General,
Bombay High Court,
Fort, Mumbai - 32.
2. The Principal District Judge Aurangabad
and Disciplinary Authority,
District and Sessions Court,
Aurangabad, Dist. Aurangabad.

.. RESPONDENTS

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Mr. C.R. Thorat, Advocate for petitioner

Mr. C. K. Shinde Advocate for respondent Nos.1 and 2.

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**CORAM : MANGESH S. PATIL AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 5 JUNE, 2023

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ORDER : [S.G. CHAPALGAONKAR, J.] :-

1. The petitioner approaches this Court under Article 226 of the Constitution of India and impugns the order dated 29.5.2020 passed by the Principal District Judge Aurangabad and Disciplinary Authority, terminating his services from the post of 'Peon'.

2. In response to an advertisement dated 28.3.2018 inviting applications for various posts on the establishments of the District and Sessions Court, Aurangabad, the petitioner had submitted his candidature for the post of Peon. An online application was filled in as

per the instructions provided under advertisement dated 28.3.2018. Pertinently, clause no.20 in the instructions Brochure states as under :-

“Candidates may note that their eligibility would be assessed on the information furnished by them believing that the information is true. If any candidate is found to have given false, wrong or incorrect information, such candidate would not only be disqualified but may also face prosecution. Such candidates would be debarred from appearing in any examination for applying for any posts under the High Court or District Courts.”

3. Since the candidature of the petitioner was found suitable, based on contents of his online application, he was permitted to appear for the written examination and thereafter he was interviewed. A final merit list was published on 26.11.2018. Name of the petitioner figured at serial no.39 in the final selection list. Respondent No.2-the Principal District Judge, Aurangabad issued appointment order dated 28.11.2018 in his favour.

4. The petitioner was served with a show cause notice dated 12.11.2019 issued by the respondent no.2 stating that the petitioner had suppressed the fact that criminal proceeding was pending against him vide RCC No.103 of 2016 for the offences punishable under sections 143, 147, 148, 326, 504, 506 r/w section 149 of the Indian Penal Code and section 37(1)(3) of Bombay Police Act. It is further stated that the petitioner had signed a declaration, which was integral part of his application submitted in response to the advertisement inviting applications for the recruitment. Show cause notice stipulated that since conduct of the petitioner attracted clause no.20 of the instruction brochure, he was liable to be disqualified for appointment to the post of Peon. Further, the conduct of the petitioner was contrary to the Maharashtra Civil Services (Conduct) Rules, 1979, particularly, Rule 3(I) (III). The petitioner was called upon to show cause as to why further

action should not be taken against him. The petitioner replied the show cause notice and offered explanation that there was no specific clause in the online application calling information regarding pendency of the criminal proceeding. Although, declaration contained statement regarding the criminal proceeding, it did not provide any option to respond in 'Yes' or 'No'. According to the petitioner, lapse on his part was unintentional and due to his ignorance and claimed to be pardoned. The explanation tendered by the petitioner was placed before the Advisory Committee. In a meeting dated 29.5.2020 unanimous Resolution to terminate the services of the petitioner was passed. Consequently, the respondent no.2 Principal District Judge, Aurangabad issued impugned order dated 29.5.2020, thereby terminating the services of the petitioner with immediate effect.

5. We have heard the learned advocates appearing for the respective parties, at length. With their assistance, we have perused the record.

6. Mr. Chandrakant Thorat, learned advocate appearing for the petitioner would submit that the petitioner was appointed against the post of Peon. The contents of the online application form nowhere solicited specific information regarding pendency of a criminal case. He would submit that in absence of such column in the application form, the petitioner could not have been blamed of intentional suppression of material fact. He would further submit that the petitioner has been acquitted subsequent to his appointment vide judgment and order dated 19.9.2022 passed in Criminal Appeal No.1 of 2021. Mr. Thorat, learned advocate relying upon the judgment of the Supreme Court of India in the matter of **Avtar Singh Vs. Union of India** reported in "**AIR 2016 SC 3598**" submitted that the employer has to act prudently on due consideration of nature of the post and duties to be rendered. For higher officials/higher

posts, the standard has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post, however, such standard cannot be applied in cases of appointment of a Peon or a Hamal. He would submit that mere pendency of the criminal proceeding was not a bar for appointment. The petitioner has been already acquitted, therefore, lenient view ought to have been taken and petitioner ought to have been continued in service.

7. Per contra, Mr. C.K. Shinde, learned advocate appearing on behalf of respondent nos.1 and 2 would submit that online application contained a declaration with the statement that no criminal proceeding was pending against the applicant. The petitioner had cautiously signed such declaration. Printout of application form signed by petitioner was submitted alongwith documents to the office of respondent no.2. Accepting the contents of said declaration to be true and correct, the candidature of the petitioner was considered. However, after appointment of the petitioner, it was revealed that RCC No.103 of 2016 is pending against him in the Court of Judicial Magistrate First Class, Gangapur, District Aurangabad for the offences punishable under sections 143, 147, 148, 326, 504, 506 r/w section 149 of the Indian Penal Code and section 37(1)(3) of Bombay Police Act. The petitioner was, therefore, served with the show cause notice. Reply submitted by the petitioner to the show cause notice was placed before the Advisory Committee. Advisory Committee, after considering the stand taken by the petitioner and the material on record proposed termination of the services. The respondent no.2 has accordingly passed the impugned order, which is just and proper.

8. Admittedly, petitioner submitted his candidature through online application for the post of Peon under the establishment of respondent no.2 Principal District Judge, Aurangabad. The recruitment

was carried out through Central Online process. The information brochure was made available to the candidates. Clause no.20 in the information brochure clearly stipulated that eligibility of the candidate would be assessed on the information furnished by him believing it to be true. It further stipulate that if any candidate was found to have given false or incorrect information, his candidature would be disqualified and he might also face the prosecution. The copy of the online application form submitted by the petitioner is placed at Exhibit 'C' on record of this petition, which contains a declaration, which states as under :-

DECLARATION

I, the applicant do hereby affirm that all the details filled up in the application are true and correct as per my knowledge. If any information is found to be false/incorrect, I will be liable to be disqualified from the process of selection and if selected/appointed my services would be liable to be terminated without any notice. I further declare that there is no criminal prosecution pending against me or I am not convicted by a Criminal Court or held guilty or facing disciplinary inquiry.

I am aware that, if any total number of living children are more than two due to the children born after 28th March, 2006, I am liable to be disqualified from the same post.

signature
(Gopal Kachru Bamnawat)

9. The acknowledgment receipt generated after submissions of the form further stipulates as under :-

"I the applicant do hereby affirm that all the details filled up in the application are true and correct as per my knowledge. If any information is found to be false/incorrect, I will be liable to be disqualified from the process of selection and if selected/appointed, my services would be liable to be terminated without any notice. I further declare that there is no criminal prosecution pending against me or I am not convicted by a Criminal Court or held guilty or facing disciplinary inquiry."

10. The signature of the petitioner appears below declaration which is integral part of his online application alongwith the acknowledgment receipt. The petitioner has candidly admitted that he

has signed such declaration, however, with a caveat that there is no specific column in the application form soliciting information regarding pendency of a criminal case, hence, suppression of the fact cannot be attributed to him. We are unable to accept the contention of the petitioner, particularly when the petitioner had cautiously signed the declaration, which stated that no criminal prosecution was pending against him. Admittedly, at the time of submission of the application, a criminal case in RCC No.103 of 2016 was pending before the J.M.F.C., Gangapur against petitioner. Apparently, petitioner is guilty of signing false declaration soliciting action as stipulated in clause no.20 of information brochure, as has been initiated against him.

11. It is trite that an employer would be justified in not appointing or if appointed to terminate services of the employee who has suppressed the material fact that could have rendered him unfit for an appointment. The pendency of the criminal case against the applicant would have been material consideration for the employer while assessing his suitability to the appointment. The subsequent acquittal of the petitioner would have no bearing in such case. In our considered opinion suppressing the material information or giving false declaration in an application form itself is sufficient to render the applicant unfit for continuation in the service. The consequences of giving false declaration were very well known to all the aspirants as indicated in the information brochure as well as the acknowledgment receipt generated online after submission of the form. Apparently, petitioner had knowingly made false declaration and secured the job. The respondent no.2 /Principal District Judge, Aurangabad /Disciplinary Authority is therefore justified in terminating the services of the petitioner.

12. The Supreme Court of India in the matter of **Avtar Singh Vs. Union of India** reported in (2016) 8 SCC 471 (*supra*) observed in paragraph no.32 thus :-

“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.”

13. Applying the aforesaid ratio to the facts of the present case, we have no hesitation to hold that non-disclosure of material fact or submitting false declaration assumes significance in facts of present case and was sufficient to cancel candidature or to terminate the services of the petitioner.

14. The Supreme Court of India in yet another case in the matter of **X-constable/Dvr Mukesh Kumar Raigar Vs. Union of India** and others reported in **2023 SCC online SC 27** as well as in the matter of **Union of India Vs. Dilip Kumar Mallick** reported in **2022 SCC online SC 1370** reiterated that where suppression of relevant information is not a matter of dispute, there cannot be any legal basis for the Court to interfere in the decision of the employer or entertain the submissions seeking to invoke the sympathy or leniency in favour of the candidate.

15. In view of the aforesaid legal and factual aspect, no case is made out for interference in writ jurisdiction of this court under Article

226 of the Constitution of India. Consequently, the Writ Petition fails and is dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

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