

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

WRIT PETITION NO.10460 OF 2025

Jayesh Bandu Limje

.. Petitioner

Vs.

The State of Maharashtra,

Through Law & Judiciary Department and Ors.

.. Respondents

Mr. Vijay Kurlle with Mr. Vikas Pawar, Ms. Sonal Manchekar and Mr. Jayendra Manchekar, Advocates for the Petitioner.

Mr. P.P. Kakade, Additional Government Pleader with Ms. Nisha Mehra, Assistant Government Pleader for Respondent No.1.

**CORAM : SHREE CHANDRASHEKHAR &
MANJUSHA DESHPANDE, JJ**

DATE : 31ST JULY 2025

Per, Shree Chandrashekhar, J. :

Being aggrieved by the communication dated 9th June 2025 informing him that his name has been struck off from the Select List for the post of Clerk-Typist, the petitioner has approached this Court.

2. An advertisement was published on the official website of the City Civil & Sessions Court, Greater Bombay and in the leading newspapers on 4th December 2023 vide Advertisement No.CCO/01/2023 for appointment on various posts in the Civil Court. Pursuant thereto, the petitioner submitted his online application for the post of Clerk-Typist. The petitioner states that he was declared successful in the written examination conducted on 7th February 2024, Marathi typing test held on 9th November 2024 and English typing test held on 15th November 2024, and then called for interview on 25th November 2024. The final list of successful candidates was published on 11th December 2024 on the official portal of the City Civil & Sessions Court, Greater Bombay and the petitioner's name was included at Sl. No.141 out of a total of 229 selected persons. He was issued an appointment letter on 21st May 2025 which contained several stipulations and was required to submit a declaration

(Form-A) under Rule 4 of the Maharashtra Civil Services (Small Family Declaration) Rules, 2005. He was also required to submit the Attestation Form before reporting for duty within 30 days. He filled up the Attestation Form admitting that he was convicted and fined Rs. 300/- for committing the offence under section 12A of the Bombay Prevention of Gambling Act, 1887. Simultaneously, he submitted an apology letter to the District and Sessions Judge on 5th June 2025 taking a plea that it was a mistake on his part which may be condoned and he be given appointment. But within next 5 days, the petitioner's appointment was canceled and he was informed by the communication dated 9th June 2025 that his name has been struck off from the Select List. In paragraph no. 1 under the caption " Facts leading to the case", the petitioner has pleaded that he is a law abiding citizen and he has no criminal antecedent. The petitioner states that the respondents are expected to act fairly, transparently and in accordance with law while exercising public powers and discharging statutory functions. According to him, the impugned communication dated 9th June 2025 suffers from vice of arbitrariness and non-application of mind.

3. While challenging the communication dated 9th June 2025, the learned counsel for the petitioner referred to the decision in the "*Commissioner of Police & Ors. vs. Sandeep Kumar*" (2011) 4 SCC 644 wherein the Hon'ble Supreme Court observed that the indiscretions committed by young people should be condoned so that they are not branded as criminals for the rest of their lives. The decision in "*Avtar Singh Vs. Union of India & Ors.*" (2016) 8 SCC 471 has been referred to submit that the respondent-Authority was required to take a reasonable view in the matter and could not have issued the impugned communication striking off his name from the Select List without hearing and affording an opportunity to the petitioner to explain his conduct. The learned counsel for the petitioner, therefore, submits that the communication dated 9th June 2025 issued in breach of natural justice is liable to be interfered by this Court.

4. In the online application form, there were columns relating to registration of a criminal case, arrest/detention in a criminal case and conviction/acquittal in a criminal case. There were explicit columns such as; (i) whether any FIR or criminal case is registered? (ii) whether the candidate was ever charged and convicted or acquitted in criminal case? (iii) whether the candidate was ever tried and convicted or acquitted by Court of law ? (iv) whether the candidate had ever executed any bond for keeping peace/good behavior under security proceedings of the Code of Criminal Procedure? (v) whether the candidate was ever proceeded against by any school/college/university in case of any unfair means or any charges? (vi) whether the candidate was still facing any criminal proceedings in any Court of law in India (vii) whether any departmental inquiry/Court inquiry was pending against him?. The afore-mentioned questions under different columns in the online application are quite clear and unambiguous and the petitioner provided information to such queries as “No”. In the online application form, the applicant was required also to give a declaration to the effect that the information supplied by him are true and correct to the best of his knowledge and belief. The applicant was required to give a further undertaking that his candidature may be canceled and no claim whatsoever may be entertained for appointment if any information furnished by him was found to be false or incomplete or any material information was concealed by him. The declaration to be submitted by the applicant was to the effect that if the documents uploaded by the candidate are found fake/forged then appropriate order including the order of discharge/dismissal from service may be passed and/or a criminal proceeding may be taken against him. There was a separate paragraph under the said declaration to the effect that all statements made in the application form were complete and correct and the candidature may be canceled or action can be taken against the candidate if any information was found false or incorrect or any ineligibility was detected at a later stage.

5. In this writ petition, the petitioner has pleaded that in a summary proceeding under section 12A of the Bombay Prevention of Gambling Act, 1887 he was imposed a fine of Rs. 300/-. The learned counsel for the petitioner submits that the offence committed by the petitioner under section 12A was a petty offence and he was let off on compounding by imposing fine of Rs. 300/- on him and, therefore, the mistake committed by him while filling up online application form could not have been made a ground to cancel the petitioner's appointment.

6. This is necessary for the employer to verify the character and antecedents of the candidate who may be appointed on a particular post. The antecedent of a candidate, past or present, is required to be examined to find out his suitability for the post. The employer has discretion to give appointment to a candidate having regard to the nature of offence committed by the candidate and nature of the duty to be performed by the candidate. A candidate who suppressed a material information or was involved in a criminal case cannot have unfettered right for appointment or to continue in service. In *"Kendriya Vidyalaya Sanghathan & Ors. Vs. Ramratan Yadav"* (2003) SCC 437, the Hon'ble Supreme Court observed that the character, conduct and antecedent of a prospective employee or the employee who has been taken in service shall have impacts on the nature of employment. In *"Sandeep Kumar"*, the selected candidate was 20 year old and he had applied for the post of Constable. It was in that context that Hon'ble Supreme Court considered the social and stigmatic impact on a young boy likely to be branded as criminal for whole of the life. In *"Avatar Singh"*, a 3-Judge Bench of Hon'ble Supreme Court held that in a case of trivial nature in which the allegation was of shouting slogans and the candidate/employee was of young age or where the candidate was involved in a petty offence then such criminal antecedent or suppression of information for such offence should not be made a ground not to appoint him or to terminate him from service.

7. In *"Avtar Singh"*, Hon'ble Supreme Court considered the previous decisions

of the Court and summarized the law in paragraph no.38 of the reported judgment as under :-

- 38.** We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise 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 recourses 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.

8. What is most relevant to note in this case is that it was only when the appointment letter was issued to the petitioner on 21st May 2025 and he was required to fill up Attestation Form then he supplied the information in affirmative to Clause 11(a) which reads 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 examinations. There can be no manner of doubt that the petitioner suppressed the material information in online application and only when he was selected for the post of Clerk-Typist, he supplied correct information in the Attestation Form which had contained the warnings that (i) the furnishing of false information or suppression of any factual information in the Attestation Form would be disqualification and is likely to render the candidate unfit for employment under the Government (ii) if detained, convicted, debarred, etc, subsequent to the completion and

submission of this form, the details should be communicated immediately, to the Maharashtra Public Service Commission or the authority to whom the attestation form has been sent earlier, as the case may be and failure to do so will be deemed to be suppression of factual information (iii) if the fact that false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice at any time, during the service of a person, his service would be liable to be terminated. In our opinion, had there been no requirement to submit the Attestation Form, the employer could not have even known the past criminal history of the petitioner. By suppressing his involvement in the gambling activity and punishment of fine, the petitioner committed breach of the undertaking submitted by him along with online application and rendered himself unfit for employment. The petitioner while tendering his undertaking had made the following declarations :-

“I, JAYESH BANDU LIMJE, hereby declare and confirm that all the information submitted by me in the Application Form is true and correct to the best of my knowledge and belief. I undertake that, in case any information furnished by me is found to be false or incomplete or any material information is found to be concealed by me, my candidature may be cancelled and I understand that no claim, whatsoever shall be entertained in this regard afterward.

I JAYESH BANDU LIMJE, certify that the documents uploaded by me along with this Application Form are genuine and in case any of the documents are found to be fake/forged, appropriate Departmental (including Discharge/ Dismissal from service) and/or Criminal proceedings may be initiated against. me. I undertake to abide by the general Rules and Regulations governing the recruitment process and I will also abide by the instructions/commands given by the staff conducting the recruitment process.

I JAYESH BANDU LIMJE, hereby declare that all the statements made in this application form are true, complete and correct to the best of my knowledge

& belief. In the event of any information being found false or incorrect, or any ineligibility being detected at any time during or after the selection process, my candidature may be cancelled and action can be taken against me by Bombay High Court/District Court.

I JAYESH BANDU LIMJE, have read the advertisement and the relevant Service Rules related to this recruitment carefully and I hereby undertake to abide by them. I fulfill all the conditions of eligibility regarding age limit, educational qualifications etc. prescribed in the advertisement and relevant Rules.

I JAYESH BANDU LIMJE, am in possession of all the certificate/documents in support of my claim made above in the application form. Information regarding examination Hall ticket/Timetable/Exam Center/result/waiting list/document verification / appointment order will be communicated through SMS/Email only. No letter transaction shall be done through post / address. This matter is mentioned in the advertisement and I accept it.”

9. By the impugned communication dated 9th June 2025, the petitioner was clearly informed that his candidature for the post of Clerk-Typist has been canceled because he concealed material information in the online application form. The relevant portions of the impugned communication dated 9th June 2025 read as under:

“Apropos the subject noted above and in pursuance of order of Hon'ble Principal Judge Shri Anil Subramaniam, it is hereby informed that your candidature for the post of Clerk-Typist (Select list no. 141) has been cancelled on account of concealing the material information in the online application form, which amounts to breach of the declaration/undertaking made by you therein. It is also informed that your name has been struck off from the above select list for the post of Clerk-Typist.”

10. Whether a candidate was involved in a dispute of trivial nature or he has been acquitted in the criminal case is one thing but the making of a false declaration and/or not disclosing and/or suppressing material fact of having been involved in a criminal case is definitely a different matter. When a

candidate initially suppresses the material facts and obtains the appointment fraudulently then it is a case of trustworthiness, reliability and credibility of such a candidate. The employer would have taken a decision at the very inception not to employ him, had the candidate disclosed the relevant and material information at the relevant time that he was facing the criminal trial or he had been convicted in a criminal case. The employer might not have appointed him if the correct facts would have been disclosed. In such a situation, the employer cannot be forced to appoint a person or continue such an employee if the employer feels that the candidate or the employee, who at the initial stage itself made a false statement and/or not disclosed the material facts and/or suppressed the material facts, cannot be appointed or continued in service because such a person cannot be relied upon in future. The choice must be given to the employer whether to continue or not to continue such an employee. Such an employee cannot claim the appointment and/or continue to be in service as a matter of right. Even the pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of a material information itself amounts to moral turpitude. It would definitely amount to suppression of material fact if the information sought by the employer is not disclosed, as required, and in that eventuality the service becomes liable to be terminated even if the person concerned stood acquitted/discharged in the criminal case. The compounding of an offence is no different from conviction on trial and the only difference is that the accused is given the benefit of compounding on admission of guilt.

11. At the time when he made online application, the petitioner was aged about 31 years as his date of birth is 3rd June 1993 and he was not so young as indicated in the decision in "*Sandeep Kumar*". He was quite mature and it must be inferred that he understood the consequences of not filling up correct information in the online application form. Secondly, the involvement of the petitioner in a crime under the Bombay Prevention of Gambling Act,

1887 cannot be ignored because merely a fine of Rs.300/- was imposed on him. The provisions under section 12A authorizes the police officer to apprehend without warrant any person who prints, publishes, sells, distributes or in any manner circulates any newspaper, news-sheet or other document or any news or information with the intention of aiding or facilitating gaming. Section 12A further provides that such person on conviction shall be punished in the manner and to the extent referred to in section 4. The punishment provided under section 4 is to the extent of imprisonment for two years and may be with fine and there is no provision for compounding of offence under the Bombay Prevention of Gambling Act, 1887. Moreover, the severity of punishment is not the sole criteria to determine the effect of a crime on the society. The involvement of the petitioner in the activity associated with gambling certainly pertains to moral turpitude and the writ Court shall have no jurisdiction to direct the employer to take the person like the petitioner in employment who was involved in such an activity. The Court has to keep in mind that in cases where the candidate's/employee's conduct touches upon moral turpitude or he was involved in a serious offence then the employer may decide not to engage him in employment or terminate him from service even though he was acquitted in the criminal case. The general impact of a person who was involved in the gambling activity or propagating or publishing invitation to gambling cannot be overlooked. This is also a relevant consideration for taking a decision whether or not to appoint a person or to terminate his services that the presence of a person like the petitioner in the civil Court as an employee would seriously challenge the confidence of the litigants and the members of the Bar. He would always be looked upon as suspect and even his bonafide actions may come under the scrutiny. The standard expected of a person intended to serve in the establishment of judiciary is quite different and distinct from other services and any deliberate statement or omission regarding a vital information must be seriously viewed and the ultimate decision of the appointing authority cannot be faulted on the ground that no opportunity of hearing was given by the respondent -Authority. The

petitioner bound himself under the undertaking given by him and the declaration made by him. After having understood the stipulations thereunder, the petitioner submitted online application and now he cannot turn around and complain of violation of natural justice.

12. Indeed, the Courts do not act in vain [*refer, “Malloch v. Aberdeen Corporation” (1971) 2 ALL ER 1278 (HL)*].

13. Writ Petition No.10460 of 2025 is dismissed.

[MANJUSHA DESHPANDE, J.]

[SHREE CHANDRASHEKHAR, J.]