



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

Writ Petition No. 4498 of 2019

- (1) Maharashtra State Electricity
Distribution Company Limited
through its Superintending Engineer,
O & M Division, Chandrapur,
Tahsil and District : Chandrapur.
- (2) Laxman K. Bhartake,
Aged about Major, Occu. Service,
Superintending Engineering,
MSEDCL, O & M Division, Chandrapur,
Tahsil and District : Chandrapur.

... Petitioners

- Versus -

Anup Sahebrao Kumbhalkar,
Aged about : 31 years,
now R/o. Plot No. 38, Deep Nagar,
Near Darda Nagar, Yavatmal,
Tahsil and District : Yavatmal.

... Respondent

Mr. A. D. Mohgaonkar, Advocate for the petitioners
Mr. B. C. Chandrakapure, Advocate for the respondent

CORAM : ANIL L. PANSARE, J.

DATED : 08-01-2025

ORAL JUDGMENT

Heard.

2. Issue Rule, returnable forthwith. Mr. B. C. Chandrakapure,
learned counsel waives service of notice for the respondent. With

consent of learned counsels for the parties, the petition is taken up for final hearing.

3. Having heard both sides, the only question that requires answer is whether the respondent employee has understood the contents of 'Attestation Form' which he was required to fill in while applying for the post of Junior Operator with the petitioner company. The attestation form commenced with the warning that furnishing false information or suppression of any actual information will result in termination of service. The information which the respondent has not furnished or in other words has suppressed is under column no. 11 which reads thus :

"11 a) Have you ever been arrested, prosecuted kept under depentation, 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 resticated by any university or any other education authority/Institution ?

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b) Is any case pending against you in / any Court of Law, University or any other educational authority / Institution at the time of filling up ; this attestation form : (If the answer (a) Or (b) is Yes. full particulars of the case, arrest, detention fined, conviction, sentence etc. and the nature of the case pending in the Court/ University / educational authority etc. at the time of filling this form should be given.

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4. Learned counsel for the petitioners submits that the respondent has suppressed his criminal antecedents. He was, at the relevant time, facing trial for the offence punishable under Sections 325, 341, 386 and 506 of the Indian Penal Code. This fact was unfolded subsequent to respondent's appointment and accordingly, show cause notice dated 29-11-2012 was given to him. In response, the respondent stated that his neighbours lodged false case and he has been acquitted in the said case. The respondent thereafter suffered order of termination which he challenged before the Labour Court. Initially, the Labour Court allowed the complaint. The revision came to be filed and matter was remanded back. The Labour Court in the second round has again allowed the complaint and set aside order of termination. The revisional Court i.e. Industrial Court vide judgment and order dated 19-12-2018 dismissed the revision and upheld the order passed by the Labour Court. Both the Courts were of the view that for want of knowledge of meaning of words "prosecution", "moral turpitude" or "conviction", the respondent failed to fill in the information against the said column.

5. The question, therefore, is whether the plea put forth by the respondent that he had no knowledge of the said words was firstly a genuine defence and secondly has proved the same.

6. Learned counsel for the respondent submits that in the evidence, respondent has deposed that he was unaware of these words and, therefore, could not furnish the information. This, according to him is an inadvertent and *bona fide* mistake. He further submits that even the witness examined by the petitioner, who was of the rank of Manager, admitted in cross-examination that he does not know the meaning of word “prosecution”.

7. May be that the petitioners’ witness or the respondent were not aware of the meaning of the words “prosecution”, “moral turpitude” or “conviction”, the question is whether the information sought under column no. 11 could have been kept blank. The answer in my view will be in the negative.

8. It is not the plea of the respondent that he did not understand the attestation form at all. The attestation form consists of three pages. It commenced with a warning which is noted above. The respondent does not say that he did not understand the wordings given at the commencement of the attestation form. Further the word “moral turpitude” does not find place in column no. 11 of attestation form. Most importantly, in clause (b) of column no. 11, a simple information as to whether any case is pending against the candidate in any Court of law, university or any other educational authority was sought. It is not

the case of the respondent that he did not understand the contents of clause 11, what is said is that he is unaware of couple of words therein. These words are not in clause 11(b) and, therefore, there is no justification for not furnishing information against said clause. Further, if he could not understand a single word in clause 11, he could not have filled in rest of the form which includes similar or more difficult words than which are used in column no. 11. Most importantly, if the plea of respondent that he failed to understand the contents of column no. 11 is/was correct, he could have, rather ought to have, in his reply come up with a case that he committed mistake as he did not understand the contents and, therefore, did not fill in the information. He does not utter a word in this regard in his reply dated 1-12-2012. What is said by him is that he has been falsely implicated in the said case by his neighbour and was acquitted in the case. The order of acquittal is passed subsequent to respondent getting employment. Thus, when the attestation form was filled, the aforesaid case was pending against the respondent. He did not disclose the same nor did he come up with a case in his reply to show cause that he committed *bona fide* mistake. Rather he has, in a way, maintained his implied stand of no case pending against him. Such a conduct can be said to be a willful suppression of a material fact.

9. Both the Courts below have failed to appreciate the aforesaid fact and failed to evaluate and assess the evidence in the aforesaid backdrop. An honest person will, in the first opportunity, admit *bona fide* mistake. Here is the person, who has maintained his stand of not furnishing information by stating in his reply to show cause notice, that he has been falsely implicated and later acquitted of the charges.

10. Learned counsel for the respondent has invited my attention to the judgment passed by the Hon'ble Supreme Court in the case of ***Pawan Kumar Vs. Union of India and another [2022 SCC OnLine SC 532]*** wherein the Court observed thus :

“13. What emerges from the exposition as laid down by this Court is that by mere suppression of material/false information regardless of the fact whether there is a conviction or acquittal has been recorded, the employee/recruit is not to be discharged/terminated axiomatically from service just by a stroke of pen. At the same time, the effect of suppression of material/false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service rules into consideration, while taking appropriate decision regarding continuance/suitability of the employee into service. What being noticed by this Court is that mere suppression of material/false information in a given case does not mean that the employer can arbitrarily discharge/terminate the employee from service.”

As could be seen, the Supreme Court has held that in a case where facts are suppressed or false information is given, the employer cannot act arbitrarily in discharging/terminating the employee. The Court further held that due regard should be given to the result of the case as to whether the employee was convicted or acquitted. The Court further held that the effect of suppression of material or false information involving criminal case, if any, should be left for the employer to consider keeping in view the objective criteria and the relevant service rules.

11. In the present case, the petitioner – employer expected the candidates to fill in attestation form which commenced with a warning of consequences of suppression of facts. Despite such status, the respondent has not furnished necessary information as regards his criminal antecedents. On the top of it, when show cause notice was issued, he does not admit the mistake but maintained a stand by saying that he was falsely implicated and, later on, acquitted. If in such case, the employer has taken a decision to discontinue the services, the decision so taken appears to me to be correct.

12. Learned counsel for the petitioners has then placed reliance upon the judgment of Hon'ble Supreme Court in the case of ***Devendra Kumar Vs. State of Uttarakhand and others [(2013) 9 SCC 363]***

wherein the Court held that suppression of material fact itself amount to moral turpitude and is a separate and distinct matter than what is involved in criminal case. In such cases, the service was liable to be terminated, even if, there had been no further trial or person concerned stood acquitted/discharged. The Court upheld that termination of service of appellant on ground of suppression of material information.

13. This case is a perfect answer to the plea taken by the respondent that he was acquitted in the case. Firstly, the case was pending when he submitted attestation form. Secondly, the consequence or result of case is immaterial, disclosing correct facts that defines character of a person is material. Thus, the plea of acquittal is not available to the respondent.

14. Learned counsel for the respondent has relied upon judgment of Hon'ble Supreme Court in the case of ***Avtar Singh Vs. Union of India and ors. [2016(5) ALL MR 916 (S.C.)]*** wherein various decisions were considered and the Supreme Court has summarized the views in following manner.

“30. 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:

(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.

(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.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(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 : -

(a) 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.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) 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.

- (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.*
- (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.*
- (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.*
- (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.*
- (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.*
- (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.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

15. This judgment was considered by the Supreme Court in the case of ***State of Rajasthan and ors. Vs. Chetan Jeff*** in ***Civil Appeal No. 3116 of 2022***. The Court held that ***Avtar Singh*** was considered in the case of ***State of M. P. Vs. Abhijit Singh Pawar [(2018) 18 SCC 733]*** and observed as under :

*“6.10 After reproducing and/or reconsidering para 38.5 of the decision in ***Avtar Singh (supra)***, in ***Abhijit Singh Pawar (supra)***, in para 13, this Court observed and held as under :*

*13. In ***Avtar Singh [Avtar Singh v. Union of India, (2016) 8 SCC 471***, though this Court was principally concerned with the question as to non-disclosure or wrong disclosure of information, it was observed in para 38.5 that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.”*

16. From the various judgments on this issue, what emerges is that it would depend upon facts and circumstances of each case as to what consideration should be given by the employer to facts and information suppressed by the employee while seeking appointment. In my view, the writ Court should be reluctant in imposing its views in

such matters. What should stand scrutiny of law is whether fair opportunity was given to the employer before taking harsh action.

17. In the present case and as has been noted, despite an opportunity given, the respondent has neither admitted nor showed remorse to the act committed by him. In his reply to show cause, respondent does not admit that he committed a mistake or that he misread or failed to read attestation form or that he did not understand the contents thereof but he has in a way justified his stand of not disclosing material information on the ground that he was falsely implicated in the case and was later on acquitted. The employer thought it proper to terminate his services, which is a discretion well exercised by the employer.

18. In the circumstances and considering the law laid down in various judgments, the orders impugned will not stand scrutiny of law. At this stage, I am informed by learned counsel for the respondent that the respondent is now working with the petitioner – company in different capacity on different post, may be helper. If what has been stated is correct, subsequent employment whether as helper or otherwise shall not be affected by this order.

19. With the above observations, writ petition is allowed. Judgment and order dated 19-12-2018 passed by the Industrial Court, Maharashtra, (Chandrapur Bench), Chandrapur in Revision (ULP) No. 33/2017 and Judgment and order dated 18-4-2017 passed by the Labour Court, Chandrapur in Complaint ULP No. 5/2013 are quashed and set aside.

20. Learned counsel for the respondent submits that the respondent intends to make representation. If such representation is made, the petitioner – company, if willing, may consider the same in the light of various judgments rendered on this point.

21. Rule is made absolute in above terms with no order as to costs.

(Anil L. Pansare, J.)

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