
(2016) 09 BOM CK 0174
In the Bombay High Court
Case No : Writ Petition No. 1051 of 2015

Pradeep Manikrao Chikte

APPELLANT

Vs

Deputy Director Vocational Education and Training

RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28
Penal Code, 1860 (IPC) — Section 143, Section 427

Citation : (2016) 6 ALLMR 730 : (2017) 2 MhLJ 462

Hon'ble Judges : Prasanna B. Varale, J.

Bench : Single Bench

Advocate : None, for the Respondent No. 2; A.R. Taiwade, Assistant Government Pleader, for the Respondent No. 1; S.S. Ghate, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Prasanna B. Varale, J.(Oral) - Heard Shri S.S. Ghate, learned counsel for the petitioner and Mrs. Taiwade, learned Assistant Government Pleader for the respondent no. 1.

2. Though respondent no. 2 is duly served, none appears for the respondent no. 2.

3. Rule. Rule made returnable forthwith.

4. By the present petition, the petitioner challenges the judgment and order passed by the learned Labour Court, Buldana dated 3-3-2006 in Complaint (ULP) No. 546/2004 and judgment and order dated 2-2-2015 passed by the learned Industrial Court, Akola in Revision ULP No. 39/2006.

5. The facts giving rise to the present petition can be summarized as follows.

The petitioner in response to an advertisement calling applications for the post of

Instructor in the Industrial Training Institute at Mehkar submitted his application as he was duly qualified. The petitioner was selected and appointed temporarily on 4-1-1998. An appointment order was issued on 2-6-2000 whereby the petitioner was appointed on the fixed scale of Rs. 5,000-8,000. Before joining the services, the petitioner was required to fill up an application form giving certain details such as residential address, date of birth, educational qualifications, earlier employment, if any etc. In the said application form, the petitioner was required to submit his reply on a query about his prosecution or disqualification. The same is at clause (11) of the application form and reads thus :

(11) (a) Have you ever been prosecuted, disqualified by any Public Service Commission from appearing in any examination/selections or debarred from taking any examination/rusticated by any University or any other educational Authority/Institution.

(b) In any case pending against you in any court of law, University or any Institution, at the time of filling up this attestation form ?

The petitioner replied to these queries in negative. The petitioner was in service till 7-1-2003 and on 7-1-2003 received a notice terminating his services on the ground that on verification of his application form through the investigating agencies, it was informed by communication forwarded through the office of the Superintendent of Police, Akola that a prosecution was launched against the petitioner for the offences under Section 143, 427 of the Indian Penal Code read with Section 135 of the Mumbai Police Act vide Crime No. 18/1996. It was informed to the petitioner that as the petitioner suppressed the factum of a prosecution pending against him at the time of his appointment and at the time of filling up of the application form, the services of the petitioner are terminated with effect from 9-1-2003. Being aggrieved by the said order, the petitioner approached the learned Labour Court by filing Complaint ULP No. 546/2004. The petitioner was protected by an interim order passed by learned Labour Court and subsequently, the learned Judge, Labour Court, Buldana, holding that the termination order passed against the petitioner does not come within the scope of retrenchment and as the petitioner failed to comply with the condition no. 15, no error was committed by the authorities, dismissed the complaint. Being aggrieved by the judgment and order of learned Judge, Labour Court, the petitioner preferred revision before learned Industrial Court, Akola. At the initial stage of revision, the petitioner was protected by an interim order and by judgment and order dated 2-2-2015, the learned Member, Industrial Court, Akola dismissed the revision. The learned Member, Industrial Court found no fault with the judgment and order of the learned Judge, Labour Court, Buldana, namely, on the ground that the nature of appointment of the petitioner was purely temporary, the petitioner subjected himself to the authorities by filling up the application form requiring the petitioner to provide certain information and the petitioner though was prosecuted, suppressed the material fact of the prosecution and make the false declaration before the authority. The learned

Member, Industrial Court found neither the respondents committed any illegality nor committed any unfair labour practise as complained by the petitioner.

6. Shri Ghatе, learned counsel for the petitioner submitted that the petitioner, being aggrieved by the judgment and order passed by the learned Labour Court and Industrial Court, approached this Court by presenting the petition and by interim order dated 27-2-2015, the services of the petitioner were protected. Shri Ghatе, learned counsel further submitted that while filling up the application form, the petitioner was under an impression that clause (11) refers to the factum of punishment and under an erroneous impression, clause (11) of the application form was replied in negative. Shri Ghatе, learned counsel further submitted that there was no intention of the petitioner to suppress the factum of his participation in an agitation led by some of the villagers against one illegal country liquor shop being run at Malegaon Bazar. Shri Ghatе, learned counsel further submitted that the petitioner participated in that agitation as it was impression of the petitioner that the agitation was sort of social movement against the illegality in the village and the petitioner at the relevant time of said agitation was in his prime youth and under bona fide belief that this agitation is not an act of any illegality or a crime, participated in the agitation. Shri Ghatе, learned counsel further submitted that the petitioner at the time of responding to the advertisement was possessing the requisite qualification, such as, diploma course holder in polytechnic college and as he was fulfilling the other criteria, the petitioner was appointed by order dated 2-6-2000. Shri Ghatе, learned counsel then submitted that though at the time of appointment of the petitioner, the prosecution launched against the petitioner was pending, subsequently, the State Government itself in its wisdom submitted a proposal for withdrawal of the prosecution against the petitioner before the learned Judicial Magistrate First Class, Telhara. Shri Ghatе, learned counsel then by inviting my attention to the order passed by the learned Judicial Magistrate First Class, Telhara dated 20-5-2003 placed on record at Annexure-D, submitted that the learned Judicial Magistrate First Class on the application submitted by the State and on perusal of the record found that the offences alleged against the petitioner and other accused persons were of simple and of summary nature, consented to withdraw the prosecution against the petitioner and other accused persons and the proceedings against the petitioner was closed and the petitioner and other accused persons were discharged. Shri Ghatе, learned counsel then submitted that subsequent to the discharge order passed by the learned Judicial Magistrate First Class, Telhara dated 20-5-2003, vide communication dated 25-4-2006, it was informed to the office of the respondent no. 1 that subsequent to 20-5-2003, neither any offence is registered against the petitioner nor any objectionable activity is reported against the petitioner at the relevant Police Station. Shri Ghatе, learned counsel, thus submitted that both the Courts below by adopting hyper-technical approach ousted the petitioner. Shri Ghatе, learned counsel then submitted that the State Government by Government Resolution dated 13-6-1998 issued certain directions in respect of the application form filled

up by the candidates and the verification of the information supplied by such candidates. Shri Ghate, learned counsel submitted that the Government Resolution dated 13-6-1998 dealing with the aspect of suppression of information in respect of the prosecution directed that if the offences registered against such candidates are in the nature of moral turpitude or serious offences like involvement in violence etc., then such candidates must be declared unfit for the Government services, but if the offences are of summary nature, in such cases, there is no reason to terminate the services of such candidates. Shri Ghate, learned counsel in support of his submissions relied on the judgments of the Apex Court in following cases.

(1) Commissioner of Police and ors. v. Sandeep Kumar reported in 2011 AIR SCW 3601 and

(2) Avtar Singh v. Union of India and ors. in Special Leave Petition [C] No. 20525/2011 dated 21-7-2016.

7. Per contra, Mrs. Taiwade, learned Assistant Government Pleader appearing for the respondent no. 1 supported the judgment and order passed by the learned Judge, Labour Court as well as the learned Member, Industrial Court. Learned Assistant Government Pleader fairly submitted that a communication is issued by the office of the Superintendent of Police, Akola dated 25-4-2006 informing that subsequent to the discharge order passed by learned Judicial Magistrate First Class dated 20-5-2003, neither any offence is registered against the petitioner nor any objectionable activity is noted against the petitioner by the relevant Police Station.

8. In view the submissions of learned counsel for the petitioner as well as learned Assistant Government Pleader and the above referred facts, the issue for consideration before this Court would be :

whether the suppression of fact, namely, launching of prosecution against the petitioner for a simple and summary nature offence would entail the petitioner to deprive of the services to which the petitioner was otherwise eligible and qualified ?

9. As stated above, it is not in dispute that the petitioner was holding the academic qualification to hold the post of Instructor in the Industrial Training Institute, Mehkar. The petitioner was working on the said post from 13-12-1999 and continued to work till 7-1-2003. There is nothing adverse against the petitioner about his behaviour or otherwise in his service period. The petitioner admits that he participated in the agitation under an erroneous impression but the act of participation was only with a bona fide intention to oppose the illegal liquor shop at Village, Malegaon Bazar. Perusal of the material placed on record shows that there was a morcha arranged by some leader in the village against the liquor shop and many people participated in the morcha and raised agitation and the petitioner was one of them. As referred to above, the nature of offences against the petitioner is neither a serious offences involving moral turpitude or

any violent act against the person or property. It will be useful to refer to the Government Resolution dated 13-6-1988 relied on by Shri Ghate, learned counsel for the petitioner. The perusal of the Government Resolution shows that the issue was before the State Government for consideration, namely, whether to permit such candidates suppressing the information about the prosecution entitling them to continue in services. The Government Resolution issued directions. Clause (A) of the Government Resolution deals with such cases where the offences are of moral turpitude or violence and if the offender of such nature offences are convicted by the competent Court, then such candidates are declared unfit for the Government Services. The resolution further held that if the candidates are involved in other offences (of simple and summary nature), they may be continued in the services. Then the direction is about the continuity of the candidates who are acquitted by the competent Courts. The clause (C) deals with the situation where the prosecution launched against the candidate is pending before the competent Court, in that case, the candidate be appointed subject to decision of the competent Court and on finding the candidate is convicted by the competent Court, the action be initiated in view of the service conditions/rules.

10. In the judgment of the Apex Court in the case of Commissioner of Police and ors. v. Sandeep Kumar (cited supra) while upholding the judgment of the Delhi High Court in an identical case, the Apex Court observed that when the incident took place, the respondent was about 20 years of age. The Apex Court further observed that "at that age, young people often commit indiscretions, and such indiscretions can often been condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives." (emphasis supplied). The Apex Court then referred to the character of "Jean Valjean" in classic novel of Victor Hugo "Les Miserables", in which for committing a minor offence of stealing a loaf of bread for his hungry family, Jean Valjean was branded as a thief for his whole life. The Apex Court further observed that :

16. We may also here refer to the case of Welsh students mentioned by Lord Denning in his book "Due Process of Law". It appears that some students of Wales were very enthusiastic about the Welsh language and they were upset because the radio programmes were being broadcast in the English language and not in Welsh. They came up to London and invaded the High Court. They were found guilty of contempt of court and sentenced to prison for three months by the High Court Judge. They filed an appeal before the Court of Appeals. Allowing the appeal, Lord Denning observed :-

"I come now to Mr. Watkin Powell's third point. He says that the sentences were excessive. I do not think they were excessive, at the time they were given and in the circumstances then existing. Here was a deliberate interference with the course of justice in a case which was of no concern of theirs. It was necessary for

the judge to show - and to show to all students everywhere - that this kind of thing cannot be tolerated. Let students demonstrate, if they please, for the causes in which they believe. Let them make their protests as they will. But they must do it by lawful means and not by unlawful. If they strike at the course of justice in this land - and I speak both for England and Wales - they strike at the roots of society itself, and they bring down that which protects them. It is only by the maintenance of law and order that they are privileged to be students and to study and live in peace. So let them support the law and not strike it down.

But now what is to be done ? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the law. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence, dishonesty or vice in them. (emphasis supplied) On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers - more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong - very wrong - in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed."

It would be useful for our purposes to refer to the latest judgment of the Apex Court referred by learned counsel for the petitioner in the case of *Avtar Singh v. Union of India* and ors. (cited supra). The Apex Court by taking stock of the situation and considering the issue involved and various decisions of either the High Court or of the Apex Court observed thus :

26. 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.

27. 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.

28. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed

service. For lower posts which are not sensitive, nature of duties, impact of suppression on suitability has to be considered by concerned authorities considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

29. The "McCarthyism" is antithesis to constitutional goal, chance of reformation has to be afforded to young offenders in suitable cases, interplay of reformatory theory cannot be ruled out in to nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.

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.

We answer the reference accordingly. Let the matters be placed before an appropriate Bench for consideration on merits.

11. On the backdrop of the judgment of the Apex Court in the case of Avtar Singh v. Union of India and ors. (cited supra), if the facts of present petition are assessed, it reveals that the prosecution launched against the petitioner was for a simple and summary nature offences. The nature of the post occupied by the petitioner was "Instructor" in Industrial Training Institute. The impact of suppression, considering the nature, duties and services of the petitioner, it is not necessary to apply the rigorous criteria. As stated above, even the State in its wisdom prayed for withdrawal of the prosecution launched against the petitioner and the learned Judicial Magistrate First Class permitted the State Government to withdraw the prosecution. Subsequent to withdrawal of the prosecution, till year 2006 i.e. till the petitioner was protected by the interim order passed by learned Labour Court, neither offence was registered against the petitioner nor any objectionable activity was noted. Considering all these aspects, in my opinion, the action of the respondent no. 1 issuing notice of termination dated 7-1-2003 is unsustainable. On the backdrop of the above

referred facts, the issue framed for consideration by this Court will have to reply in following words that the suppression of fact, namely, launching of prosecution against the petitioner for a simple and summary nature offence i.e. participation in agitation of the petitioner against an illegal liquor shop would not entail the petitioner to deprive of the services to which the petitioner was otherwise eligible and qualified. Resultantly, the judgments and orders passed by learned Labour Court as well as the Industrial Court impugned in the petitioner are also not sustainable. In the result, the petition is allowed. The judgments and orders passed by Labour Court and Industrial Court are quashed and set aside. Needless to state that the order dated 7-1-2003 passed by the respondent no. 1 is quashed and set aside.

Rule is made absolute in aforesaid terms.