

(2017) 01 BOM CK 0092
In the Bombay High Court
Case No : Writ Petition No. 3563 of 2015

Ravindra

APPELLANT

Vs

Executive Engineer, Maharashtra State Electricity Distribution
Company Limited

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28

Citation : (2017) 2 AIRBomR 30 : (2017) 1 CLR 1010 : (2017) LIC 1123 :
(2017) 3 MhLJ 902

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Shri Tawshikar Swapnil D., Advocate, for the Petitioner; Shri Shelke
Avishkar S., Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.(Oral)—Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner is aggrieved by the judgment of the Labour Court dated 05.12.2013 by which Complaint (ULP) No.39/2008 filed by him seeking preventive orders against the Respondent from proceeding with the notice dated 19.09.2008, has been dismissed. The Petitioner is also aggrieved by the judgment of the Industrial Court dated 24.11.2014 by which Revision (ULP) No.81/2013 has been dismissed.

3. The case of the Petitioner is with regard to the suppression of tainted antecedents while tendering the application for appointment as a Junior Technician with the Respondent. "Suppressio veri or suggestio falsi" is the issue.

4. The Petitioner has tendered an application for seeking appointment to the post of Junior Technician. The attestation form dated 17.07.2007 has been filled in by

him in his own handwriting. The attestation form begins with three conditions which read as under:

"1. Warning the furnishing of false information or suppression of any factual information in the Attestation form would be a disqualification and is likely to render the candidate unfit for employment under the Government.

2. 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. Failure to do so will be deemed to be suppression of factual information.

3. 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 pension, his service would be liable to be terminated."

5. Based on the above, the material information that was required was under clauses 11(a) and 11(b) which read as under:

"11 (a) Have you ever been arrested/prosecuted/kept under detention/or bond down/fined/convicted by a court of law for any offence or debarred/disqualified by any public service commission/selection or debarred from taking any examination/rusticated by any University or any other educational authority/Institution ? NO"

"11(b) 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 to (a) or (b) is "yes" full particulars of the case, arrest detention, fine, conviction, sentence, etc. and the nature of the case pending in the court/university educational authority, etc. at the time of filling up this form should be given).

Note :Please also see the "warning" at the top of this Attestation form.

....CASE REGISTERED AT POLICE STATION YERMALA VIDE CR.NO.30/07."

6. The answer given to clause 11(a) is "NO". The answer given to clause 11(b) is "Case registered at Police Station Yermala vide Cr.No.30/07".

7. There is no dispute that the Petitioner has been appointed by the letter dated 11.07.2007 as a Junior Technician in the special drive to wipe out the backlog of Physically Handicapped Persons (PHP). The note below clause 11(b) reads as "Please also see the "warning" at the top of this attestation form". This indicates those three conditions on the attestation form which have been reproduced herein above, were once again specifically pointed out.

8. On 21.05.2008, the Respondent, upon conducting a scrutiny through the Superintendent of Police, Osmanabad, noticed that the Petitioner was in one day

Police custody remand and was 14 days in magisterial custody remand. This aspect was not mentioned while answering clause 11(a) which specifically posed a question as "Have you ever been arrested.....".

9. Shri Tawashikar, learned Advocate for the Petitioner, has strenuously canvassed that the Petitioner may have got confused in the wordings of clause 11(a) which includes several contingencies. Being not highly educated (I.T.I. Electrician), he may not have understood the import of clause 11(a) and probably got carried away by the words prosecuted or detained or convicted or debarred or disqualified, etc.. Considering the total effect of clause 11(a), he probably may have been under an impression that he is expected to declare whether, he has been convicted or debarred or disqualified. The words "Have you ever been arrested" may have been missed by him.

10. Shri Tawashikar further submits that if the Petitioner had any intention of suppressing any information, he would not have answered clause 11(b) by disclosing that the criminal case has been registered against him at Yermala Police Station. He submits that vide the said criminal case registered against him, he was charged with having committed offences under Sections 147, 148, 325, 436, 435, 323 r/w 149 of the Indian Penal Code and Section 135 of the Bombay Police Act. He was one of the eleven accused. The explanation is that prior to taking up the present employment, he was a Journalist. He had reached the particular spot where the offence is alleged to have occurred on 05.04.2007. The law enforcing agency mistakenly presumed him to be a part of the crowd which is said to have caused the riot and had assaulted some persons. He further submits that by judgment dated 08.03.2011, he has been acquitted in Sessions Case No.15/2010.

11. He has placed reliance upon the judgment of the Honourable Supreme Court in the matter of Avtar Singh v. Union of India, 2016 (8) SCC 471 and especially the conclusions drawn by the Honourable Apex Court in paragraphs 38.1 till 38.11 which read as under:

"38. 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:

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 recourse 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."

12. It is strenuously submitted by Shri Tawashikar that even if the Petitioner is, prima facie, held to be guilty of suppression of material information, a departmental enquiry will have to be conducted against him under clause 38.9 of Avtar Singh judgment (supra). He further adds that after receiving the notice dated 19.09.2008, though he had sought time to submit his reply within three days, he had rushed to the Labour Court by filing Complaint (ULP) No.39/2008. Though his complaint and his revision petition have been dismissed by the impugned judgments, he is still in service owing to the continuation of the interim relief by both the lower Courts and by this Court by order dated 06.04.2015. Consequentially, the Petitioner has put in about eight years in service.

13. Shri Shelke, learned Advocate for the Respondent, has strenuously opposed this petition. The contention is that continuance in service under interim orders of the Court cannot create equities in favour of the Petitioner. His case has to be tested in the light of the notice dated 19.09.2008 served upon him by the Management. The Management has called upon the Petitioner to reply to the notice dated 19.09.2008 which is in fact a charge sheet-cum-show cause notice. When both the complaint and the revision petition have been dismissed, merely because the Petitioner continued in service, would not create any right in him. He submits that the Petitioner had initially filed an affidavit in lieu of evidence and thereafter, did not press the affidavit and did not lead any evidence.

14. He further submits that the three conditions set out in the Attestation Form are self explanatory. The Petitioner was expected to fill in the form carefully and cautiously. The note below clause 11(b) indicates that the attention of the Petitioner was drawn to the warnings mentioned at the top of the attestation form not once, but on two occasions. Despite the same, the Petitioner has suppressed the fact that he was behind the bars for 15 days. Had that aspect been mentioned, the Respondent would not have selected the Petitioner. Even while answering clause 11(b), the details of the offence have not been mentioned.

15. He then submits that the judgment of the Court of Sessions dated 08.03.2011 does not amount to a clean acquittal. He draws my attention to the conclusion of the learned Sessions Judge in paragraph 10 onwards which would indicate that all the witnesses turned hostile, so also, the Complainant, who did not support the prosecution, was declared hostile.

16. He further submits that this is an open and shut case considering the fact that the Petitioner has answered as "NO" to clause 11(a) and has merely mentioned the case number at clause 11(b). Whether, he suppressed the fact of

arrest and of being behind bars for 15 days, is evident and admitted. No explanation is required since this aspect cannot be washed away and cannot be denied. It is only a matter of interpretation as regards clause 11(a) and clause 11(b) and the information supplied by the Petitioner and for that purpose the summary enquiry was being conducted. He, however, submits that the said summary enquiry could not be concluded because of the intervention of the Labour Court.

17. I find from the record that there is no dispute that the Petitioner was arrested and was in Police Custody Remand for one day and in Magisterial Custody Remand for 14 days. In all for 15 days he was behind the bars upon being arrested. There is also no dispute that he has not disclosed this aspect in clause 11(a).

18. The Honourable Supreme Court in Bhaskar Laxman Jadhav and others v. Karamveer Kakasaheb Wagh Education Society, AIR 2013 SC 523 has observed in paragraphs 46 and 49 as under:

"46. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the Court. True, there is a mention of the order dated 2nd May 2003 in the order dated 24th July 2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2nd May 2003 was passed or that it has attained finality."

"49. A mere reference to the order dated 2nd May 2003, en passant, in the order dated 24th July 2006 does not serve the requirement of disclosure. It is not for the Court to look into every word of the pleadings, documents and annexures to fish out a fact. It is for the litigant to come upfront and clean with all material facts and then, on the basis of the submissions made by learned counsel, leave it to the Court to determine whether or not a particular fact is relevant for arriving at a decision. Unfortunately, the petitioners have not done this and must suffer the consequence thereof."

19. In the light of the law as is laid down in the above referred judgment, it is expected of every Applicant to make a complete disclosure of the facts in relation to his antecedents. The Petitioner cannot decide which fact was material to be disclosed to the prospective employer. Not only has he suppressed the fact of he being behind the Bars for 15 days, a mere reference to the pending complaint would not serve the requirement of disclosure. The Respondent was not expected to collect information from the Police Station on a mere mentioning of the criminal case number. The Petitioner was obliged to disclose the crime registered against him and the sections invoked under which the said offence was punishable.

20. The acquittal of the Petitioner from the Sessions Case is on account of the victim himself turning hostile and not supporting his own case and the case of

the prosecution. The other witnesses also turned hostile. It is in this backdrop, the learned Sessions Judge has acquitted the Petitioner along with other 10 accused as per Section 232 of the Code of Criminal Procedure.

21. It is equally undisputed that the Petitioner was in service for about a year when his conduct was exposed by the report of the Superintendent of Police. It is trite law that his continuance in service, in this backdrop, on account of the interim orders of the Labour Court and the Industrial Court, would not create any equities in his favour. The said period, therefore, cannot be reckoned with to conclude that he has settled in employment and that the Respondent/Management has belatedly discovered his misdemeanor.

22. It is also settled law that where a position is admitted, a formal enquiry is not required to be conducted since an admitted fact is not required to be proved and the enquiry, in such circumstances, is not to be conducted only to complete a formality. However, it also cannot be ignored that the Respondent is yet to take any decision pursuant to the charge sheet cum show cause notice dated 19.09.2008.

23. The Labour Court, in opposition to the note of caution struck by the Honourable Supreme Court in paragraphs 53 and 54 of its judgment in the matter of *Hindustan Lever v. Ashok Vishnu Kate*, 1995(6) SCC 326, has interjected in the matter at the initial stage and prevented the Respondent from taking the matter to its logical end. Subsequently, the complaint was dismissed.

24. It is apparent from the record that all the submissions put forth by the learned Advocate for the Petitioner before this Court are in oral form. No evidence was led by the Petitioner before the Labour Court to prove the contentions and averments and establish unfair labour practices. The Labour Court, naturally and legally, could not have declared any ULP against the Respondent.

25. In the absence of any evidence to support the contentions in the complaint, the complaint has been dismissed by the impugned judgment dated 05.12.2013. For the same reasons, the Industrial Court has dismissed the Revision Petition by the impugned judgment dated 24.11.2014.

26. In the light of the above, I do not find that the judgment of the Labour Court could be termed as being perverse or erroneous. In fact, paragraphs 53 and 54 of the *Hindustan Lever* judgment (supra) mandates that the Labour Court could stay the proposed punishment even at the penultimate stage in the rarest of rare case. An order staying the progress of the disciplinary proceedings is not to be passed at the mere askance. Despite this fact, the Petitioner has not stepped into the witness box before the Labour Court and has not led any evidence.

27. Considering the above, I do not find any merit in this Writ Petition. The same is devoid of merit and is, therefore, dismissed. Rule is discharged.