

(2022) 09 BOM CK 0075
In the Bombay High Court
Case No : Writ Petition (L) No. 16826 Of 2021

Swapnil Prakash Parab

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 16-09-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 323, 324, 504
Code Of Criminal Procedure, 1973 — Section 350(8)

Citation : (2022) 09 BOM CK 0075

Hon'ble Judges : S.V. Gangapurwala, J; R.N. Laddha, J

Bench : Division Bench

Advocate : Amit Dubey, Ashok M. Saraogi, M. A. Sayed, Neel G. Helekar, P. J. Khosla

Final Decision : Dismissed

Judgement

R. N. Laddha, J

1. Heard learned Counsel for the parties.
2. Rule. The rule is made returnable forthwith with the consent of and at the request of the learned Counsel for the parties.
3. This Petition is directed against the order dated 20th March 2020 passed by the Chief Administrative Officer (P) of the Respondent organisation- Bhabha Atomic Research Centre, Mumbai, rejecting the representation dated 23rd December 2019 made by the Petitioner, alongwith the termination letter dated 27th February 2018.
4. The brief facts of the case that come out of the record are that in 2016, the Respondent organization – Bhabha Atomic Research Centre invited applications from the eligible candidates for filling up the post of Hospital Work Assistant. The Petitioner had applied and was selected by the Respondents for the post. Before appointing the Petitioner, he was required to declare whether he had ever been arrested, prosecuted or detained. He was also asked to state whether he had

been charged with an offence before a Court for which he was convicted, conditionally discharged, placed on probation or acquitted. He answered all of them in the negative. The disclosure of these facts in the attestation form is an essential requirement. The attestation form itself contends a clause that any false declaration may lead to cancellation of candidature.

5. The accepted position, though, is that Crime No.189/2012 was registered against the Petitioner before the concerned police station alleging offences punishable under Sections 323, 324, 504 read with Section 34 of the IPC and that at the time of attestation form was filled, he was facing a criminal case that he did not disclose. The Respondents, having come to know about the same, issued a show- cause notice dated 25th October 2016 as to why his candidature should not be cancelled for suppression of such material information. According to the Petitioner, he did not disclose that there was a criminal matter pending because he had not committed any offence and that he was acquitted, too. The Respondents did not accept the explanation but instead cancelled his candidature by communication February 2018, based on suppression of material Petitioner thereupon filed Original Application No.382/2018 and challenged the said action of the Respondents before the Central Administrative Tribunal. The Tribunal, by impugned judgment, dismissed the said application. The Petitioner, aggrieved, filed Writ Petition No.2923/2018 before the High Court. The High Court, however, dismissed the Writ Petition by its order dated 24th July 2019. The Petitioner challenged the decision of the High Court by filing Special Leave Petition No.24504/2019 before the Hon'ble Supreme Court. The Hon'ble Supreme Court, by its order dated 21st October 2019, disposed of the SLP, however, it granted liberty to the Petitioner to make representation based on the decision in Avtar Singh v/s. Union of India & Ors. 2016 8 SCC 471, to the concerned authority. Under the liberty granted by the Hon'ble Supreme Court, the Petitioner had made representation to the second Respondent. The said representation, however, came to be rejected. That became the subject matter of challenge of this writ petition.

6. The Petitioner thereupon filed Original Application No.382/2018 and challenged the said action of the Respondents before the Central Administrative Tribunal. The Tribunal, by impugned judgment, dismissed the said application. The Petitioner, aggrieved, filed Writ Petition No.2923/2018 before the High Court. The High Court, however, dismissed the Writ Petition by its order dated 24th July 2019. The Petitioner challenged the decision of the High Court by filing Special Leave Petition No.24504/2019 before the Hon'ble Supreme Court. The Hon'ble Supreme Court, by its order dated 21st October 2019, disposed of the SLP, however, it granted liberty to the Petitioner to make representation based on the decision in Avtar Singh v/s. Union of India & Ors. 1 , to the concerned authority. Under the liberty granted by the Hon'ble Supreme Court, the Petitioner had made representation to the second Respondent. The said representation, however, came to be rejected. That became the subject matter of challenge of this writ petition.

7. Learned Counsel for the Petitioner submitted that the Petitioner had no intention to suppress any information from the Respondent authority and non-disclosure of pendency of criminal case was the bonafide mistake of the Petitioner. Mere involvement in some petty cases would not render a person unsuitable for the job. The learned Counsel further submitted that in any case, the Petitioner was acquitted by Judgment dated 8th June 2016. In his view, the representations made by the Petitioner have not been considered in light of the judgment of the Apex Court in the case of Avtar Singh (supra). The learned Counsel relied on the decision of the Hon'ble Supreme Court in Pawan Kumar v/s. Union of India & Anr. 2022 SCC OnLine SC 532 .

8. On the other hand, the learned Additional Government Pleader submitted that it was not in dispute that on the date when the Petitioner filled the application form, a criminal case was pending against him. His later acquittal on its own would not be sufficient to wash away the suppression of material facts. Verifying character and antecedents is also part of the recruitment process as mentioned in OM No.18011/9 (s)/78- Estt(13) dated 27/10/82 issued by Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms.

9. We have considered the rival contentions and examined the record with reference to the applicable law.

10. In Avtar Singh (supra), the Hon'ble Supreme Court has held that the Authorities who were called upon to consider the issue where there was suppression of material information or disclosure of false information by the candidate must consider, amongst others, following factors:

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."

11. The above case of Avtar Singh has also been followed in the subsequent decision of the Hon'ble Supreme Court in Pawan Kumar (supra). The decision relied upon by the learned Counsel for the Petitioner refers to various factors, including the above - listed factors that the authorities are duty bound to

consider before deciding on the suppression of material information or disclosure of false information. In paragraph 11 of the judgment in Pawan Kumar (supra) it was held that :

"11. This cannot be disputed that the candidate who intends to participate in the selection process is always required to furnish correct information relating to his character and antecedents in the verification/attestation form before and after inducting into service. It is also equally true that the person who has suppressed the material information or has made false declaration indeed has no unfettered right of seeking appointment or continuity in service, but at least has a right not to be dealt with arbitrarily and power has to be judiciously exercised by the competent authority in a reasonable manner with objectivity having due regard to the facts of the case on hand. It goes without saying that the yardstick/standard which has to be applied with regard to adjudging suitability of the incumbent always depends upon the nature of post, nature of duties, effect of suppression over suitability to be considered by the authority on due diligence of various aspects but no hard and fast rule of thumb can be laid down in this regard."

12. In Rajasthan Rajya Vidyut Prasaran Nigam Limited and Anr. v/s. Anil Kanwariya(2021) 10 SCC 136, made the following relevant observations in paragraph 14 -

"14. The issue / question may be considered from another angle, from the employer's point of view. The question is not about whether an employee was involved in a dispute of trivial nature and whether he has been subsequently acquitted or not. The question is about the credibility and / or trustworthiness of such an employee who at the initial stage of the employment i.e. while submitting the declaration / verification and /or applying for a post made false declaration and / or not disclosing and / or suppressing material fact of having involved in a criminal case. If the correct facts would have been disclosed, the employer might not have appointed him. Then the question is of TRUST. Therefore, in such a situation, where the employer feels that an employee who at the initial stage itself had made a false statement and / or not disclosed the material facts and / or suppressed the material facts and therefore he cannot be continued in service because such an employee cannot be relied upon even in future, the employer cannot be forced to continue such an employee. The choice / option whether to continue or not to continue such an employee always must be given to the employer. At the cost of repetition, it is observed and as observed hereinabove in catena of decision such an employee cannot claim the appointment and / or continue to be in service as a matter of right."

13. In the present case, it is not in dispute that in the attestation form, the Petitioner had not mentioned his arrest and pendency of a criminal case against him though he was well aware of the same. The attestation form clearly warns the Petitioner/declarant that any false statement may lead to the cancellation of his appointment. Admittedly, the information given by the Petitioner was not

true. There was suppression of required information. It is not the case of the Petitioner that he was not aware of the pendency of the criminal case. It is also not the contention of the Petitioner that acquittal had already been recorded before filing of attestation form, nor it is the case of the Petitioner that the criminal case was pending, but he was not aware of it. Further, it is not the claim of the Petitioner that the Respondents did not seek this information. There is nothing on record even to suggest that the decision taken by the concerned Authority in rejecting the candidature of the Respondent was in any way actuated by malafides or suffered on any other count.

14. In the State of Madhya Pradesh and Others v/s. Abhijeet Singh Pawar (2018) Vol 18 SCC 733, it has been held as under:

"16. We must observe at this stage that there is nothing on record to suggest that the decision taken by the authorities concerned in rejecting the candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability of the respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge as well as by the Division Bench and dismiss Writ Petition No. 9412 of 2013 preferred by the respondent. No costs."

15. We have also perused the order in Writ Petition No.29293/2018. The order records that there was a counter criminal case, and the parties had settled the disputes and requested for compounding the offences. Both cases involve offences which were not compoundable. Therefore, the parties were asked to lead the evidence. The witness had turned hostile. The Petitioner was thereupon acquitted.

16. Paragraph 14 of State of Madhya Pradesh (supra) reads as follows:

"14. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) CrPC, the law declared by this Court in Mehar Singh [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] , specially in paras 34 and 35 completely concludes the issue. Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition."

17. The Petitioner was to serve as Hospital Work Assistant in Bhabha Atomic Research Centre. This institution is the nation's premier research centre and is engaged in advanced research and development activities in nuclear science. A

candidate interested in joining such a sensitive institution is expected to have a flawless character and integrity without blemishes. An individual with criminal antecedents will not fit in this category. He should be reliable and trustworthy. He was expected to state all the required information honestly. Honesty and integrity are the inherent requirements in public employment.

18. The Petitioner never informed the concerned authorities that there was a bona fide mistake by him in filling up the attestation form. It was only when the concerned authorities discovered that there was suppression of material facts by the Petitioner. The Petitioner's only defence was that he had not committed any offence and had subsequently been acquitted of all charges. His perception of not having committed an offence could not be enough. He had to make a declaration and leave it to the employer to determine the effect of the pendency of a criminal case on his upcoming job. His subsequent acquittal on its own would not be enough to erase the suppression of essential facts. Besides, looking at the sensitive nature of activities undertaken at Bhabha Atomic Research Centre, we cannot say that the employer's decision to reject the Petitioner's representation was unreasonable or arbitrary. The decision on the suitability of the Petitioner, in our view, was entirely correct and did not call for any interference.

19. For all the above reasons, we dismiss the petition. The rule is accordingly discharged. There shall be no orders for costs.