Avtar Singh vs Union Of India & Ors on 21 July, 2016

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Bench: Prafulla C. Pant, Arun Mishra, Ranjan Gogoi

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITIOIN [C] NO.20525/2011

Avtar Singh … Petitioner

Vs.

Union of India & Ors. … Respondents

[With SLP [C] Nos.4757/2014 and 24320/2014]

J U D G M E N T

ARUN MISHRA, J.

1. The cases have been referred to for resolving the conflict of opinion in the various decisions of Division Benches of this Court as noticed by this Court in Jainendra Singh v. State of U.P. through Principal Secretary, Home & Ors. (2012) 8 SCC 748. The Court has considered the cleavage of opinion in various decisions on the question of suppression of information or submitting false information in the verification form as to the question of having been criminally prosecuted, arrested or as to pendency of a criminal case. A Division Bench of this Court has expressed the opinion on merits while referring the matter as to the various principles to be borne in mind before

granting relief to an aggrieved party. Following is the relevant observation made by a Division Bench of this Court :

> "29. As noted by us, all the above decisions were rendered by a Division Bench of this Court consisting of two Judges and having bestowed our serious consideration to the issue, we consider that while dealing with such an issue, the Court will have to bear in mind the various cardinal principles before granting any relief to the aggrieved party, namely:
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> 29.1. Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.
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> 29.2. Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if finds it not desirable to appoint a person to a disciplined force can it be said to be unwarranted.
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> 29.3. When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.
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> 29.4. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services. 29.5. The purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have a clear bearing on the character and antecedents of the candidate in relation to his continuity in service. 29.6. The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.
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> 29.7. The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.
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> 29.8. An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention,

even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

29.9. An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated. 29.10. The authorities entrusted with the responsibility of appointing constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of constable.

30. When we consider the above principles laid down in the majority of the decisions, the question that looms large before us is when considering such claim by the candidates who deliberately suppressed information at the time of recruitment, can there be different yardsticks applied in the matter of grant of relief.

31. Though there are very many decisions in support of the various points culled out in the above paragraphs, inasmuch as we have noted certain other decisions taking different view of coordinate Benches, we feel it appropriate to refer the abovementioned issues to a larger Bench of this Court for an authoritative pronouncement so that there will be no conflict of views and which will enable the courts to apply the law uniformly while dealing with such issues."

2. This Court while referring the matter had expressed the opinion that in case an appointment order has been secured fraudulently, the appointment is voidable at the option of the employer and the employee cannot get any equity in his favour and no estoppel is created against the employer only by the fact that the employee has continued in service for a number of years. It has been further observed that if appointment is secured on forged documents, it would amount to misrepresentation and fraud. The employer has a right to terminate the services on suppression of important information or giving false information, having regard to nature of employment. Verification of character and antecedents is important if the employer has found an incumbent to be undesirable for appointment to a disciplined force. It cannot be said to be unwarranted. The Court thus further opined that suppression of material information necessary for verification of character/antecedents will have a clear bearing on character and antecedents of a candidate in relation to his continuity in service and such a person cannot claim a right for appointment or continuity in service. The Bench was of the view that in uniformed service, suppression or false information can be viewed seriously as it requires higher level of integrity and the employer is supposed to find out before an appointment is made that criminal case has come to an end and pendency of a case would serve as a bar for appointment and in such cases of suppression whether different yardsticks can be applied as noted in the various decisions of this Court. The question which has been referred to arises frequently and there are catena of decisions taking one view or the other on the facts of the case. It would be appropriate to refer to the various decisions rendered by this Court; some of them have been referred to in the impugned order.

3. It cannot be disputed that the whole idea of verification of character and antecedents is that the person suitable for the post in question is appointed. It is one of the important criteria which is necessary to be fulfilled before appointment is made. An incumbent should not have antecedents of such a nature which may adjudge him unsuitable for the post. Mere involvement in some petty kind of case would not render a person unsuitable for the job. Way back in the year 1983, in State of Madhya Pradesh v. Ramashanker Raghuvanshi & Anr. (1983) 2 SCC 145, where a teacher was employed in a municipal school which was taken over by the Government and who was absorbed in Government service in 1972 subject to verification of antecedents and medical fitness. The termination order was passed on the basis of a report made by the Superintendent of Police to the effect that the respondent was not a fit person to be entertained in Government service, as he had taken part in 'RSS and Jan Sangh activities'. There was no allegation of involvement in subversive activities. It was held that such activities were not likely to affect the integrity of individual's service. To hold otherwise would be to introduce 'McCarthyism' into India which is not healthy to the philosophy of our Constitution. It was observed by this Court that most students and most youngmen who take part in political activities and if they do get involved in some form of agitation or the other, is it to be to their ever lasting discredit ? Sometimes they feel strongly on injustice and resist. They are sometimes pushed into the forefront by elderly persons who lead and mislead them. Should all these young men be debarred from public employment ? Is Government service such a heaven that only angels should seek entry into it ? This Court has laid down that the whole business of seeking Police report about the political belief and association of the past political activities of a candidate for public employment is repugnant to the basic rights guaranteed by the Constitution. This Court has considered in Ramashanker Raghuvanshi's case (supra) the decision in Garner v. Board of Public Works 341 US 716 thus :

> "5. In another loyalty oath case, Garner v. Board of Public Works 341 US 716, Douglas, J. had this to say :
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> Here the past conduct for which punishment is exacted is single – advocacy within the past five years of the overthrow of the Government by force and violence. In the other cases the acts for which Cummings and Garland stood condemned covered a wider range and involved some conduct which might be vague and uncertain. But those differences, seized on here in hostility to the constitutional provisions, are wholly irrelevant. Deprivation of a man's means of livelihood by reason of past conduct, not subject to this penalty when committed, is punishment whether he is a professional man, a day laborer who works for private industry, or a Government employee. The deprivation is nonetheless unconstitutional whether it be for one single past act or a series of past acts ... Petitioners were disqualified from office not for what they are today, not because of any program they currently espouse (cf. Gerende v. Board of Supervisors 341 US 56), not because of standards related to fitness for the office, cf Dent v. West Virginia 129 US 114; Hawker v. New York 170 US 189, but for what they once advocated ...
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> 6. In the same case, Frankfurter, J. observed :

> The needs of security do not require such curbs on what may well be innocuous feelings and associations. Such curbs are indeed self-defeating. They are not merely unjustifiable restraints on individuals. They are not merely productive of an atmosphere or repression uncongenial to the spiritual vitality of a democratic society. The inhibitions which they engender are hostile to the best conditions for securing a high-minded and high-spirited public service.
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> 10. We are not for a moment suggesting that even after entry into government service, a person may engage himself in political activities.

All that we say is that he cannot be turned back at the very threshold on the ground of his past political activities. Once he becomes a government servant, he becomes subject to the various rules regulating his conduct and his activities must naturally be subject to all rules made in conformity with the Constitution." At the same time, this Court has also observed that after entry into Government service, a person has to abide by the service rules in conformity with the Constitution.

4. A 3-Judge Bench of this Court in T. S. Vasudavan Nair v. Director of Vikram Sarabhai Space Centre & Ors. (1988) Supp SCC 795 had considered a case where the employee had suppressed the fact that during emergency he had been convicted in a case registered under the Defence of India Rules for having shouted slogans on one occasion. This Court has laid down that cancelling the offer of appointment due to such non-disclosure was illegal and the employer was directed to appoint him as a Lower Division Clerk. Thus this Court has taken the view that non-disclosure of aforesaid case was not a material suppression on the basis of which employment could have been denied and the person adjudged unsuitable for being appointed as an LDC. This Court has laid down thus :

> "2. We have heard learned counsel for the parties. In the special facts and circumstances of this case we feel that the appellant should not have been denied the employment on the sole ground that he had not disclosed that during emergency he had been convicted under the Defence of India Rules for having shouted slogans on one occasion. We, therefore, set aside the judgment of the High Court and also the order dated August 1, 1983 cancelling the offer of appointment. The respondents shall issue the order of appointment to the appellant within three months appointing him as a Lower Division Clerk, if he is not otherwise disqualified, with effect from the date on which he assumes duty. It is open to the respondents to employ the appellant at any place of their choice. The appeal is disposed of accordingly."

5. In Union of India & Ors. v. M. Bhaskaran (1995) Supp 4 SCC 100, it was held that if some persons have procured employment in Railway on the basis of bogus and forged casual labourer service cards, they were rightly held guilty of misrepresentation and fraud. Mere long continuance of such employment could not create any equity in their favour or estoppel against the employer. The question was left open whether after obtaining employment on the basis of bogus and forged casual labourer service cards was covered under Rule 31(1)(i) and (iii) of the Railway Services (Conduct)

Rules, 1966. It was held that the employment procured by fraud is voidable at the option of the employer and employee cannot plead estoppel. This Court has laid down thus :

> "6. It is not necessary for us to express any opinion on the applicability of Rule 3(1)(i) and (iii) on the facts of the present cases for the simple reason that in our view the railway employees concerned, respondents herein, have admittedly snatched employment in railway service, maybe of a casual nature, by relying upon forged or bogus casual labourer service cards. The unauthenticity of the service cards on the basis of which they got employment is clearly established on record of the departmental enquiry held against the employees concerned. Consequently, it has to be held that the respondents were guilty of misrepresentation and fraud perpetrated on the appellant-employer while getting employed in railway service and had snatched such employment which would not have been made available to them if they were not armed with such bogus and forged labourer service cards. Learned counsel for the respondents submitted that for getting service in railway as casual labourers, it was strictly not necessary for the respondents to rely upon such casual service cards. If that was so there was no occasion for them to produce such bogus certificates/service cards for getting employed in railway service. Therefore, it is too late in the day for the respondents to submit that production of such bogus or forged service cards had not played its role in getting employed in railway service. It was clearly a case of fraud on the appellant-employer. If once such fraud is detected, the appointment orders themselves which were found to be tainted and vitiated by fraud and acts of cheating on the part of employees, were liable to be recalled and were at least voidable at the option of the employer concerned. This is precisely what has happened in the present case. Once the fraud of the respondents in getting such employment was detected, the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer-appellant after following the due procedure of law and complying with the principles of natural justice. Therefore, even independently of Rule 3(1)(i) and (iii) of the Rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent-employees have continued in service for a number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppel against the employer. In this connection we may usefully refer to a decision of this Court in Distt. Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi (1990) 3 SCC 655.. In that case Sawant, J. speaking for this Court held that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the concerned appointee. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications

mentioned in the advertisement. It amounts to a fraud on public to appoint persons with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. It is of course true as noted by the Tribunal that the facts of the case in the aforesaid decision were different from the facts of the present case. And it is also true that in that case pending the service which was continued pursuant to the order of the Tribunal the candidate concerned acquired the requisite qualification and hence his appointment was not disturbed by this Court. But that is neither here nor there. As laid down in the aforesaid decision, if by committing fraud any employment is obtained, such a fraudulent practice cannot be permitted to be countenanced by a court of law. Consequently, it must be held that the Tribunal had committed a patent error of law in directing reinstatement of the respondent-workmen with all consequential benefits. The removal orders could not have been faulted by the Tribunal as they were the result of a sharp and fraudulent practice on the part of the respondents. Learned counsel for the respondents, however, submitted that these illiterate respondents were employed as casual labourers years back in 1983 and subsequently they have been given temporary status and, therefore, after passage of such a long time they should not be thrown out of employment. It is difficult to agree with this contention. By mere passage of time a fraudulent practice would not get any sanctity. The appellant authorities having come to know about the fraud of the respondents in obtaining employment as casual labourers, started departmental proceedings years back in 1987 and these proceedings have dragged on for a number of years. Earlier, removal orders of the respondents were set aside by the Central Administrative Tribunal, Madras Bench and proceedings were remanded and after remand, fresh removal orders were passed by the appellant which have been set aside by the Central Administrative Tribunal, Ernakulam Bench and which are the subject-matter of the present proceedings. Therefore, it cannot be said that the appellants are estopped from recalling such fraudulently obtained employment orders of the respondents subject of course to following due procedure of law and in due compliance with the principles of natural justice, on which aspect there is no dispute between the parties. If any lenient view is taken on the facts of the present case in favour of the respondents, then it would amount to putting premium on dishonesty and sharp practice which on the facts of the present cases cannot be permitted." It is apparent from the aforesaid discussion that the case of M. Bhaskaran (supra) did not relate at all to the suppression of material facts or submitting false information but pertained to obtaining employment on the basis of forged or bogus casual labourer service cards. The decision in M. Bhaskaran (supra) is quite distinguishable. It has a different field to operate. Though the principles laid down therein may be attracted to some extent in a given case in a particular factual scenario but are not of general application in the cases in which the question involved is with which we are presently dealing with.

6. The next decision mentioned by the Division Bench in the order of reference is in Delhi Administration through its Chief Secretary & Ors. v. Sushil Kumar (1996) 11 SCC 605 in which

appointment was denied to an incumbent who was duly selected for the post of Constable in Police service subject to verification of character and antecedents. On verification of his antecedents it was found that he was involved in a criminal case under sections 304, 324/34 and 324 IPC. The incumbent was appointed in Delhi Police service in the year 1990. On character verification, his name was rejected. The tribunal allowed the application and directed the appointment since employee had been acquitted in the said criminal case. It was held by this Court that mere acquittal in the criminal case was not enough once it was found that it was not desirable to appoint such a person as a Constable in the disciplined force. This Court opined that the view taken by the employer in the background of the case cannot be said to be unwarranted, though he was discharged or acquitted. Antecedents of the incumbents could not be said to be proper. The Court has held thus :

> "3. This appeal by special leave arises from the order of the Central Administrative Tribunal, New Delhi made on 6-9-1995 in OA No. 1756 of 1991. The admitted position is that the respondent appeared for recruitment as a Constable in Delhi Police Services in the year 1989-90 with Roll No. 65790. Though he was found physically fit through endurance test, written test and interview and was selected provisionally, his selection was subject to verification of character and antecedents by the local police. On verification, it was found that his antecedents were such that his appointment to the post of Constable was not found desirable. Accordingly, his name was rejected. Aggrieved by proceedings dated 18-12-1990 culminating in cancellation of his provisional selection, he filed OA in the Central Administrative Tribunal. The Tribunal in the impugned order allowed the application on the ground that since the respondent had been discharged and/or acquitted of the offence punishable under Section 304 IPC, under Section 324 read with Section 34 IPC and under Section 324 IPC, he cannot be denied the right of appointment to the post under the State. The question is whether the view taken by the Tribunal is correct in law? It is seen that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Though he was found physically fit, passed the written test and interview and was provisionally selected, on account of his antecedent record, the appointing authority found it not desirable to appoint a person of such record as a Constable to the disciplined force. The view taken by the appointing authority in the background of the case cannot be said to be unwarranted. The Tribunal, therefore, was wholly unjustified in giving the direction for reconsideration of his case. Though he was discharged or acquitted of the criminal offences, the same has nothing to do with the question. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate. Appointing authority, therefore, has rightly focussed this aspect and found it not desirable to appoint him to the service." It is apparent that the background of the case was considered by the employer in the case of Sushil Kumar (supra) and this Court has emphasized in the aforesaid background that the decision of the employer was not unwarranted as the incumbent was rightly

> not found desirable for appointment to the service. It was not a case of suppression in the verification form. The decision does not deal with the effect of suppression but the case has turned on the background of the facts of the case in which the incumbent was involved as is apparent from the discussion made by this Court in para 3 quoted above. Thus, it is apparent that the background facts of the case have to be taken into consideration by the employer or court while dealing with such matters.

7. Another decision of this Court which has been noted in the order is Commissioner of Police, Delhi & Anr. v. Dhaval Singh (1999) 1 SCC 246. It was a case pertaining to the verification or antecedents form in August, 1995 in which pendency of criminal case was not mentioned but it was disclosed on 15.11.1995. An application was submitted mentioning that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case and the latter may be treated as an information despite such disclosure before passing an order of cancellation of candidature, was not taken into consideration by the concerned employer. This Court has held that cancellation of the candidature of Dhaval Singh was not appropriate. It was without proper application of mind and without taking into consideration all relevant material. The tribunal has therefore rightly set it aside. This Court has laid down thus :

> "5. That there was an omission on the part of the respondent to give information against the relevant column in the Application Form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it on 15-11-1995 to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the respondent was cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20-11-1995 shows that the information conveyed by the respondent on 15-11-1995 was not taken note of. It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial court — it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15-11-1995 and whether that application could not be treated as curing the defect which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above."

8. In Regional Manager, Bank of Baroda v. Presiding Officer, Central Govt. Industrial Tribunal & Anr. (1999) 2 SCC 247, the respondent employee secured the appointment on a clerical post concealing information of criminal prosecution under section 307 IPC. Subsequent to his appointment, he was convicted by the criminal court. After one year of the conviction, Bank issued a show cause notice against the proposed termination of his service and for pendency of criminal prosecution. After about one and a half years, second show-cause notice was issued and after 1 year 8 months, the order of termination of services was passed. In the appeal the employee was acquitted. This Court did not interfere under Article 136 of the Constitution in the decision of the tribunal. In the facts of the case, directing reinstatement as punishment was found by the Labour Court to be an extreme punishment and not warranted due to acquittal in the criminal case. At the same time, it was made clear that the decision was rendered on the peculiar facts of the case and will not be treated as a precedent in future. This Court has discussed the matter thus :

> "8. The facts which are well established on record and which have weighed with us for coming to the aforesaid conclusion may now be noted. It is true that the respondent made a wrong statement while replying to Query 27 of the application form that he had not been prosecuted at any time. It is equally true that the Labour Court itself found that giving a false statement should not be deemed to be such a grave misconduct which may be visited with extreme punishment of termination from service. However, it has also to be noted that the appellant-Management while issuing show-cause notice for the first time on 26-2-1980 has in terms noted in the said notice that not only the criminal proceedings were pending but had ultimately ended in conviction of the respondent. The appellant itself thought it fit to await the decision of the criminal case before taking any precipitate action against the respondent for his misconduct. Thus, according to the respondent, this suppression was not so grave as to immediately require the appellant to remove the respondent from service. On the contrary, in its wisdom, the appellant thought it fit to await the decision of the criminal proceedings. This may be presumably so because the charge against the respondent was that he was alleged to have involved himself in an offence under Section 307 of the Indian Penal Code. It was not an offence involving cheating or misappropriation which would have a direct impact on the decision of the appointing Bank whether to employ such a person at all. We may not delve further into the liberal approach of the appellant itself when it did not think it fit to immediately take action against the respondent but wait till the decision of the criminal case. Be that as it may, once the Sessions Court convicted the respondent, the appellant issued the impugned notice dated 26-2-1980. It can therefore be safely presumed that if the Sessions Court itself had acquitted the respondent, the appellant would not have decided to terminate his services on this ground. So far as the notice dated 26-2-1980 is concerned, in the reply to the said show-cause notice filed by the respondent, he had mentioned that an appeal was pending in the High Court against the said conviction. In that view of the matter, once the High Court ultimately acquitted the respondent for any reason, with which strictly we are not concerned, the net result that follows is that by the time the Labour Court decided the matter, the respondent was already acquitted and hence there remained no real occasion for the

appellant to pursue the termination order. Consequently, that was a sufficient ground for not visiting the respondent with the extreme punishment of termination of service. But even that apart, though the conviction was rendered by the Sessions Court on 20- 2-1979, the show-cause notice for the first time was issued by the appellant after one year, i.e., on 26-2-1980 and thereafter, the termination order was passed on 18-4-1983. That itself by the passage of time, created a situation wherein the original suppression of involvement of the respondent in the prosecution for an offence under Section 307 of the Indian Penal Code did not remain so pernicious a misconduct on his part as to visit him with the grave punishment of termination from service on these peculiar facts of the case and especially when the Labour Court also did not award any back wages to the respondent from 1983 till the respondent's reinstatement by its order dated 29-9-1995 and one month thereafter and when the High Court also did not think it fit to interfere under Article 226 of the Constitution of India on the peculiar facts of this case. In our opinion, the interest of justice will be served by maintaining the order passed by the Labour Court and as confirmed by the High Court subject to a slight modification that the respondent may be treated to be a fresh recruit from the date when he was exonerated by the High Court, i.e., from 13-1-1988 which can be treated as 1-1-1988 for the sake of convenience. It is ordered accordingly. From 1-1-1988, the respondent will be treated to have been reinstated into the services of the Bank on the basis that he will be treated as a fresh recruit from that date and will be entitled to be placed at the bottom of the revised scale of pay for Clerks and will also be entitled to other allowances which were available in the cadre of Clerks in the Bank's service. The respondent will be entitled to back wages with effect from 1-11-1995, i.e., from the date when the Labour Court awarded the reinstatement of the respondent. It also directed that the appellant-Bank will work out appropriate back wages payable to the respondent from 1-11-1995 in the time-scale of Clerks as available from 1-1-1988, treating his services to be continuous from that date and accordingly, working out of his salary and emoluments on a notional basis with the usual increments from 1-1-1988 and the actual arrears of pay and other permissible emoluments from 1-11-1995 till reinstatement of the respondent by the appellant. All such arrears will be paid to the respondent within a period of four weeks from 1-3-1999. The respondent who is present before us takes notice of this order and his counsel on his instructions states that the respondent will report for duty pursuant to the present order before the Regional Manager, Bank of Baroda, Northern Zone, Meerut on 1-3-1999. Learned counsel for the appellant agrees to the said course being adopted. The appeal will stand dismissed subject to the aforesaid modifications. IA No. 2 for passing order under Section 17- B of the Industrial Disputes Act, 1947 will not survive in view of the present order. We make it clear that this order of ours is rendered on the peculiar facts and circumstances of the case as mentioned earlier and will not be treated as a precedent in future. There would be no order as to costs." The Court has taken note of the fact that it was not an offence involving cheating or misappropriation which would have direct impact on the decision of the appointing Bank. By the time the Labour Court decided the matter the employee was acquitted by the High Court. The passage of time created a

> situation wherein the original suppression or involvement of the respondent in the prosecution for an offence under section 307 IPC did not remain so pernicious or misconduct to visit him punishment of termination. In the peculiar facts this Court has not interfered but at the same time laid down that the decision would not be treated as a precedent in future.

9. In Kendriya Vidyalaya Sangathan & Ors. v. Ram Ratan Yadav (2003) 3 SCC 437, a question arose as to suppression of material information relating to character and antecedents. In clause 4 of the offer of appointment offered to Physical Education Teacher, it was mentioned that suppression of any information will be considered a major offence for which the punishment may extend to dismissal from service. Suppression of information was held to be material as a criminal case under sections 323, 341, 294, 506-B read with section 34 IPC was pending on the date when the respondent filled the attestation form. This Court has observed that suppression of material information or making a false statement has a clear bearing on the character and antecedents in relation to his continuance in service. It was also held that mere fact that the case was withdrawn by the State Government was not much material. This Court has discussed the matter thus :

> "10. The memorandum dated 7-4-1999/8-4-1999 terminating the services of the respondent refers to columns 12 and 13 of the attestation form, the criminal case registered against the respondent on the basis of the report given to the appellants by IG, Police, suppression of material information by the respondent while submitting attestation form and violating the clause stipulated under para 9 of the offer of appointment issued to him, OM dated 1-7-1971 of the Cabinet Secretary, Department of Personnel, New Delhi, in which it is clearly mentioned that furnishing of false information or suppression of factual information in the attestation form would be disqualification and is likely to render the candidate unfit for employment under the Government and that as per clause 4 of the offer of appointment, the respondent was on probation for a period of two years and that his services were liable to be terminated by one month's notice.
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> 11. It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506-B read with Section 34 IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against columns 12 and 13 as "No" is plainly suppression of material information and it is also a false statement. Admittedly, the respondent is holder of BA, BEd and MEd degrees. Assuming even his medium of instruction was Hindi throughout, no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of the respondent that he did not study English at all. If he could understand columns 1-11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of columns 12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken the help of somebody. This being the position, the Tribunal was right in rejecting the contention of the respondent and the High Court committed a manifest error in accepting the

> contention that because the medium of instruction of the respondent was Hindi, he could not understand the contents of columns 12 and 13. It is not the case that columns 12 and 13 are left blank. The respondent could not have said "No" as against columns 12 and 13 without understanding the contents. Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling columns 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.
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> 12. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service.

The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedents of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of columns 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted." It is clear from the decision in Ram Ratan Yadav (supra) that besides considering the effect of suppression, this Court has observed that having regard to the nature of

employment and various aspects, the employer has the discretion to terminate his services as provided in the order of appointment. It was also held that the involvement in the criminal case would have some impact on the minds of students of impressionable age. This Court has further observed that the order of termination of service shows that there had been due consideration of various aspects by the concerned authority while passing the order of termination. It is clear from the decision in Ram Ratan (supra) also that there is a discretion with the employer to terminate the services. Character, conduct and antecedents do have some impact on the nature of employment and there has to be due consideration of various aspects. Thus, it follows that merely because there is a power to terminate services or cancellation of offer of appointment, it does not follow that the person should be removed outrightly. Various aspects have to be considered and the discretion so used should not be arbitrary or fanciful. It has to be guided on certain principles for which purpose verification is sought.

10. In Secretary, Department of Home Secy., A.P. & Ors. v. B. Chinnam Naidu (2005) 2 SCC 746, the case pertained to suppression of material information and/or giving false information in the attestation form. In the attestation form the respondent had not mentioned about his arrest and pendency of a case against him. The tribunal held that the employee had suppressed material information while filling up the attestation form and upheld the order of termination. The High Court set aside the order of the tribunal holding that the employer was not justified in denying appointment to the respondent. This Court has noted that as per the relevant column of the attestation form the candidate was required to indicate whether he had ever been convicted by a court of law or detained under any State/Central preventive detention laws. He was not required to indicate whether he had been arrested in any case or any case was pending against him. In view of the relevant column in the form it could not be said that the respondent had made false declaration or had suppressed material information. As such this Court held that the action of the employer in not permitting the respondent to join the training due to suppression of truth in the attestation form, was not sustainable. This Court observed that the requirement in the present case was “conviction” and not “prosecution”. This Court has held thus :

> “8. In order to appreciate the rival submissions it is necessary to take note of column 12 of the attestation form and column 3 of the declaration. The relevant portions are quoted below:
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> “Column 12.—Have you ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offence whether such conviction sustained in court of appeal or set aside by the appellate court if appealed against.” “Column 3.—I am fully aware that furnishing of false information or suppression of any actual information in the attestation form would be a disqualification and is likely to render me unfit for employment under the Government.
>
> 9. A bare perusal of the extracted portions shows that the candidate is required to indicate as to whether he has ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offences whether such conviction is sustained or set aside by the appellate court, if appealed against. The candidate is

not required to indicate as to whether he had been arrested in any case or as to whether any case was pending. Conviction by a court or detention under any State/Central preventive detention laws is different from arrest in any case or pendency of a case. By answering that the respondent had not been convicted or detained under preventive detention laws it cannot be said that he had suppressed any material fact or had furnished any false information or suppressed any information in the attestation form to incur disqualification. The State Government and the Tribunal appeared to have proceeded on the basis that the respondent ought to have indicated the fact of arrest or pendency of the case, though column 12 of the attestation form did not require such information being furnished. The learned counsel for the appellants submitted that such a requirement has to be read into an attestation form. We find no reason to accept such contention. There was no specific requirement to mention as to whether any case is pending or whether the applicant had been arrested. In view of the specific language so far as column 12 is concerned the respondent cannot be found guilty of any suppression."

11. This Court in R. Radhakrishnan v. Director General of Police & Ors. (2008) 1 SCC 660 considered a case where the appellant intended to obtain appointment in police force. Application for appointment and the verification roll were both in Hindi and also in English. The application was filed for appointment to the post of a Fireman on 5.1.2000. He was involved in the criminal case which occurred on 15.4.2000 under section 294(b) IPC. He was released on bail and was acquitted of the said charge on 25.9.2000. However his services were dispensed with on the ground of suppression of pendency of the criminal case. This Court upheld the order and had held thus :

"10. Indisputably, the appellant intended to obtain appointment in a uniformed service. The standard expected of a person intended to serve in such a service is different from the one of a person who intended to serve in other services. Application for appointment and the verification roll were both in Hindi as also in English. He, therefore, knew and understood the implication of his statement or omission to disclose a vital information. The fact that in the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment is not in dispute. It is also not in dispute that the persons who had not made such disclosures and were, thus, similarly situated had not been appointed." In R. Radhakrishnan (supra) this Court had taken note of the decision in Sushil Kumar (supra) in which the background facts of the case in which the employee was involved were considered, and the antecedents were not found good.

12. In Union of India & Ors. v. Bipad Bhanjan Gayen (2008) 11 SCC 314, the facts indicate that the respondent was selected for training as a Constable in Railway Protection Force, and pending verification of Form 12, he was sent for training. It was found on verification that he had been involved in FIR 20/1993 for an offence punishable under section 376 IPC and another case under section 417 was pending in the court. On 10.7.1995 his services were terminated with immediate effect because of his involvement in the police case and suppression of factual information in the

attestation form by the candidate. It was an admitted fact that two prosecutions were pending on the date when he filled in the form. The employee was under probation at the time of termination of his service.

This Court has held thus :

"8. We have heard the learned counsel for the parties and gone through the record. Rule 57 of the Rules provides for a probation period of 2 years from the date of appointment subject to extension. Rule 67 provides that a direct recruit selected for appointment as an enrolled member of the Force is liable to be discharged at any stage if the Chief Security Officer, for reasons to be recorded in writing, deems it fit to do so in the interest of the Force till such time as the recruit is not formally appointed to the Force. A reading of these two rules would reveal that till a recruit is formally enrolled to the Force his appointment is extremely tenuous.

9. It is the admitted case that the respondent was still under probation at the time his services had been terminated. It is also apparent from the record that the respondent had been given appointment on probation subject to verification of the facts given in the attestation form. To our mind, therefore, if an enquiry revealed that the facts given were wrong, the appellant was at liberty to dispense with the services of the respondent as the question of any stigma and penal consequences at this stage would not arise.

10. It bears repetition that what has led to the termination of service of the respondent is not his involvement in the two cases which were then pending, and in which he had been discharged subsequently, but the fact that he had withheld relevant information while filling in the attestation form. We are further of the opinion that an employment as a police officer pre-supposes a higher level of integrity as such a person is expected to uphold the law, and on the contrary, such a service born in deceit and subterfuge cannot be tolerated." The fact remains that this Court in Bipad Bhanjan Gayen (supra), the case in which the offence involved was with respect to commission of rape under section 376 and cheating under section 417. The case involved moral turpitude, as such suppression was material as that would have clear impact on the antecedents and suitability of an incumbent for being appointed in the service. Thus the suppression was material and was such that the employer could have safely taken the view to terminate the services. Such an incumbent cannot be said to have any equity to seek employment till he is given a clean chit by the courts of law and his antecedents are otherwise found to be good besides the acquittal.

13. In A.P. Public Service Commission v. Koneti Venkateswarulu & Ors.

(2005) 7 SCC 177 there was suppression of the information regarding the employment and the explanation offered that he inadvertently filled the form was not accepted.

14. In Kamal Nayan Mishra v. State of Madhya Pradesh & Ors. (2010) 2 SCC 169, this Court has considered the question of dismissal of a confirmed employee without any inquiry or opportunity to show cause on the basis that he had furnished incorrect/false information in his personal attestation form. This Court held that such misdemeanor would be treated as a misconduct and punishment can be imposed only after subjecting the employee to appropriate disciplinary proceedings as per the relevant service rules. Besides, the attestation was required to be furnished after 14 years of the service, and even after detection of the suppression, the authorities waited for 7 long years which indicated that the Department assumed that such misconduct did not call for any disciplinary or punitive action. Thus the belated decision which was taken to terminate his service sans enquiry was adjudged to be illegal and violative of protection conferred under Article 311(2) of the Constitution. This Court in Kamal Nayan Mishra (supra) has held that the decision in Ram Ratan (supra) was with respect to a probationer. It was not laid down in the said decision that services of a confirmed employee holding a civil post under the State, could be terminated for furnishing false information in the attestation form, without giving him an opportunity to meet the charges against him, as such the termination was void. This Court held thus :

> "9. On the contentions urged, two questions arise for consideration:
>
> (i) Whether the ratio decidendi of the decision in Ram Ratan Yadav (2003) 3 SCC 437 apply to this case? Does it hold that the State Government could dismiss or remove the holder of a civil post, without any enquiry or opportunity to show cause, once it is found that he has given incorrect/false information in the personal attestation form?

(ii) Whether the termination of the appellant is valid?" x x x x x "18. There are also several other features in this case which distinguish it from Ram Ratan Yadav (2003) 3 SCC 437. First is that Ram Ratan Yadav (supra) related to an employee of Kendriya Vidyalaya Sangathan, who did not have the protection of Article 311 of the Constitution of India, whereas in this case we are concerned with a government servant protected by Article

311. Second is that the attestation form in this case, was required to be furnished by the employee, not when he was appointed, but after fourteen years of service. The third is that while action was promptly taken against the probationer in Ram Ratan Yadav, within the period of probation, in this case even after knowing that the appellant had furnished wrong information, the respondents did not take any action for seven long years, which indicated that the Department proceeded for a long time on the assumption that the wrong information did not call for any disciplinary or punitive action. The belated decision to terminate him, seven years later was unjustified and violative of Article 311.

19. If the appellant had been issued a charge-sheet or a show-cause notice he would have had an opportunity to explain the reason for answering the queries in Column 12 in the manner he did. He could have explained that he did not understand the queries properly and that he was instructed to furnish the information as on the date of appointment. In fact his contention that he was required to answer the queries in Column 12 with reference to the date of his appointment, finds support from the termination order, which says that the appellant was terminated for giving wrong information

and concealment of facts in the attestation from at the time of initial recruitment. This clearly implies that he was expected to reply the queries in Column 12 with reference to his initial appointment, even though Clauses 12(b) and (c) of the form stated that the information should be as on the date of signing of the attestation form. The explanations given by the appellant, would have certainly made a difference to the finding on guilt and the punishment to be imposed. But he could not give the said explanations as there was no show-cause notice or enquiry. The termination order is also unsustainable, as the statement therein that the appellant had given wrong information and concealed the facts at the time of initial recruitment, is erroneous.

20. The learned counsel for the respondents drew our attention to the instructions to the employees in the preamble to the attestation form and the undertaking contained in the verification certificate by the employee at the end of the attestation form, which puts him on notice that any false information could result in termination of his service without enquiry. It is contended that as the attestation form stated that an employee could be terminated without notice, if he furnishes false information, the employee is estopped from objecting to termination without notice. The said contention may merit acceptance in the case of a probationer, but not in the case of a confirmed government servant.

21. No term in the attestation form, nor any consent given by a government servant, can take away the constitutional safeguard provided to a government servant under Article 311 of the Constitution.

x x x x x

23. We also find from an examination of the terms of the attestation form that termination without notice or inquiry was contemplated only in the context of furnishing false information in and around the time of the appointment. Note (1) of the preamble warns that:

> "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".
>
> Similarly, the certificate at the end of the attestation form states that:
>
> "I am not aware of any circumstances which might impair my fitness for employment under the Government. I agree that if the above information is found false or incomplete in any material respect, the appointing authority will have a right to terminate my services without giving notice or showing cause." Be that as it may.
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> x x x x x
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> 25. We have already pointed out that there are clear indications that the appellant was bona fide under the impression that he was required to give the particulars sought in Column 12 of the form with reference to the date of his appointment. Further, the entire matter relates to an attestation form given in 1994 and the

appellant has already been out of service for more than seven years on account of the illegal termination from service without an inquiry on 7-3-2002. We are therefore of the view that the interests of justice would be served if the appellant is reinstated with continuity of service and other consequential benefits, dispensing with any further disciplinary action. The appellant will not be entitled to any salary for the period 7-3-2002 till today." In Kamal Nayan Mishra (supra), this Court has considered various aspects while holding termination order for Kamal Nayan Mishra on the ground of suppression of information was bad in law. The employer has to take into consideration various aspects and a blanket order of termination of services cannot be passed on the basis of mere enabling clause in the verification form to do so.

15. In Daya Shankar Yadav v. Union of India & Ors. (2010) 14 SCC 103 on consideration of various aspects as to ambiguities in the verification form, this Court observed that the purpose of seeking the information is to ascertain the character and antecedents of the candidate so as to assess the suitability for the post. Therefore the candidate will have to answer the questions truthfully and fully and any misrepresentation or suppression or false statement therein, by itself would demonstrate a conduct or character unbefitting for a uniformed police force. This Court has observed various consequences which may arise due to character and antecedents verification thus :

"14. Rule 14 of the Central Reserve Police Force Rules, 1955 relevant in this case relates to verification. Clauses (a) and (b) of the said Rule are extracted below :

"14. Verification.—(a) As soon as a man is enrolled, his character, antecedents, connections and age shall be verified in accordance with the procedure prescribed by the Central Government from time to time. The verification roll shall be sent to the District Magistrate or Deputy Commissioner of the District of which the recruit is a resident.

(b) The verification roll shall be in CRP Form 25 and after verification shall be attached to the character and service roll of the member of the force concerned." The purpose of seeking the said information is to ascertain the character and antecedents of the candidate so as to assess his suitability for the post. Therefore, the candidate will have to answer the questions in these columns truthfully and fully and any misrepresentation or suppression or false statement therein, by itself would demonstrate a conduct or character unbefitting for a uniformed security service.

15. When an employee or a prospective employee declares in a verification form, answers to the queries relating to character and antecedents, the verification thereof can therefore lead to any of the following consequences:

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit

of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

(b) On the other hand, if the employer finds that the criminal case disclosed by the declarant related to offences which were technical, or of a nature that would not affect the declarant's fitness for employment, or where the declarant had been honourably acquitted and exonerated, the employer may ignore the fact that the declarant had been prosecuted in a criminal case and proceed to appoint him or continue him in employment.

(c) Where the declarant has answered the questions in the negative and on verification it is found that the answers were false, the employer may refuse to employ the declarant (or discharge him, if already employed), even if the declarant had been cleared of the charges or is acquitted. This is because when there is suppression or non-disclosure of material information bearing on his character, that itself becomes a reason for not employing the declarant.

(d) Where the attestation form or verification form does not contain proper or adequate queries requiring the declarant to disclose his involvement in any criminal proceedings, or where the candidate was unaware of initiation of criminal proceedings when he gave the declarations in the verification roll/attestation form, then the candidate cannot be found fault with, for not furnishing the relevant information. But if the employer by other means (say police verification or complaints, etc.) learns about the involvement of the declarant, the employer can have recourse to courses (a) or (b) above.

16. Thus an employee on probation can be discharged from service or a prospective employee may be refused employment: (i) on the ground of unsatisfactory antecedents and character, disclosed from his conviction in a criminal case, or his involvement in a criminal offence (even if he was acquitted on technical grounds or by giving benefit of doubt) or other conduct (like copying in examination) or rustication or suspension or debarment from college, etc.; and (ii) on the ground of suppression of material information or making false statement in reply to queries relating to prosecution or conviction for a criminal offence (even if he was ultimately acquitted in the criminal case). This ground is distinct from the ground of previous antecedents and character, as it shows a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post."

16. This Court has also held that query in verification form has to be very clear, specific and unambiguous. This Court has observed thus :

"21. If the object of the query is to ascertain the antecedents and character of the candidate to consider his fitness and suitability for employment, and if the

> consequence of a wrong answer can be rejection of his application for appointment, or termination from service if already appointed, the least that is expected of the employer is to ensure that the query was clear, specific and unambiguous. Obviously, the employer cannot dismiss/discharge/terminate an employee, for misunderstanding a vague and complex question, and giving a wrong answer. We do hope that CRPF and other uniformed services will use clear and simple questions and avoid any variations between the English and Hindi versions. They may also take note of the fact that the ambiguity and vague questions will lead to hardship and mistakes and make the questions simple, clear and straightforward. Be that as it may." However, on facts this Court held that the employee was not misled and made a false statement. As such CRPF was justified in dispensing with his services for not being truthful in giving material information.

17. In State of West Bengal & Ors. v. SK. Nazrul Islam (2011) 10 SCC 184, there was concealment of fact regarding antecedents in the verification form. Though Nazrul Islam was selected and found medically fit, he concealed the fact that he was involved in a criminal case. A chargesheet was filed and he had been granted bail. The employer did not appoint him as a Constable. The High Court directed that the employer could not withhold the offer of appointment and they were directed to issue appointment letter to the employee, subject to final decision in the pending criminal case. This Court held that due to pendency of the criminal case under sections 148/323/380/427/506 IPC, the High Court had committed an illegality in issuing a direction to appoint. The employee could not have been held suitable for appointment to the post. This Court has laid down thus :

> "5. We have heard the learned counsel for the parties and we fail to appreciate how when a criminal case under Sections 148/323/380/448/427/506 IPC, against the respondent was pending in the Court of the Additional Chief Judicial Magistrate, Uluberia, Howrah, any mandamus could have been issued by the High Court to the authorities to appoint the respondent as a constable. Surely, the authorities entrusted with the responsibility of appointing constables were under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of constable and so long as the candidate has not been acquitted in the criminal case of the charges under Sections 148/323/380/448/427/506 IPC, he cannot possibly be held to be suitable for appointment to the post of constable."

18. In Commissioner of Police & Ors. v. Sandeep Kumar (2011) 4 SCC 644, this Court considered a case where Sandeep Kumar's candidature for the post of Constable was cancelled on the ground that he had concealed his involvement in the criminal case under section 325/34 IPC when he was about 20 years. In para 9, this Court took note of the character "Jean Valjean" in Victor Hugo's novel '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 whole life. This Court also referred to the decision in Morris v. Crown Office (1970) 2 QB 114. Relevant portion is extracted hereunder :

> "8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the

incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be 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.

9. In this connection, we may refer to the character "Jean Valjean" in Victor Hugo's novel 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 modern approach should be to reform a person instead of branding him as a criminal all his life.

10. 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 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. 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." (Vide Morris v. Crown Office (1970) 2 QB 114 at p. 125C-H. In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commits indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter." This Court has observed that suppression related to a case when the age of Sandeep Kumar was about 20 years. He was young and at such age people often commit indiscretions and such indiscretions may often be condoned. The modern approach should be to reform a person instead of branding him a criminal all his life. In Morris v. Crown Office (supra), the observations made were that young people are no ordinary criminals. There is no violence, dishonesty or vice in them. They were trying to preserve the Welsh language. Though they have done wrong but must we show mercy on them and they were permitted to go back to their studies, to their parents and continue the good course.

19. In Ram Kumar v. State of Utttar Pradesh & Ors. (2011) 14 SCC 709, appointment was denied to Ram Kumar due to failure to disclose in the verification form about a criminal case under sections 324/323/504 IPC in which he was subsequently acquitted. This Court examined the sustainability of the order and laid down that in terms of the instructions in Government Order dated 28.4.1958 it was the duty of the appointing authority to satisfy himself whether the appellant was suitable for appointment to the post of a Constable, with reference to nature of suppression and nature of the criminal case. Instead thereof, the appointing authority mechanically held that his selection was irregular and illegal because the appellant had furnished an affidavit stating the facts incorrectly at the time of recruitment. This Court also took note of the facts of the case that he was acquitted subsequently and since the sole witness had deposed that victim was injured when he fell and hit a brick platform and that he was not beaten by the accused by any sharp weapon. In view of the aforesaid it was held by this Court that the appointing authority could not have found appellant unsuitable to the post of Constable. Hence, the appeal was allowed and appointment of employee was directed. However, backwages were denied for the period he remained out of service. Relevant portion of the decision is extracted below :

> "9. We have carefully read the Government Order dated 28-4-1958 on the subject "Verification of the character and antecedents of government servants before their first appointment" and it is stated in the government order that the Governor has been pleased to lay down the following instructions in supersession of all the previous orders:

> "The rule regarding character of candidate for appointment under the State Government shall continue to be as follows:
>
> The character of a candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It would be the duty of the appointing authority to satisfy itself on this point."
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> 10. It will be clear from the aforesaid instructions issued by the Governor that the object of the verification of the character and antecedents of government servants before their first appointment is to ensure that the character of a government servant for a direct recruitment is such as to render him suitable in all respects for employment in the service or post to which he is to be appointed and it would be a duty of the appointing authority to satisfy itself on this point.
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> 11. In the facts of the present case, we find that though Criminal Case No. 275 of 2001 under Sections 324/323/504 IPC had been registered against the appellant at Jaswant Nagar Police Station, District Etawah, admittedly the appellant had been acquitted by order dated 18-7-2002 by the Additional Chief Judicial Magistrate, Etawah.
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> 12. On a reading of the order dated 18-7-2002 of the Additional Chief Judicial Magistrate it would show that the sole witness examined before the court, PW 1, Mr Akhilesh Kumar, had deposed before the court that on 2-12-

2000 at 4.00 p.m. children were quarrelling and at that time the appellant, Shailendra and Ajay Kumar amongst other neighbours had reached there and someone from the crowd hurled abuses and in the scuffle Akhilesh Kumar got injured when he fell and his head hit a brick platform and that he was not beaten by the accused persons by any sharp weapon. In the absence of any other witness against the appellant, the Additional Chief Judicial Magistrate acquitted the appellant of the charges under Sections 323/34/504 IPC. On these facts, it was not at all possible for the appointing authority to take a view that the appellant was not suitable for appointment to the post of a police constable.

13. The order dated 18-7-2002 of the Additional Chief Judicial Magistrate had been sent along with the report dated 15-1-2007 of Jaswant Nagar Police Station to the Senior Superintendent of Police, Ghaziabad, but it appears from the order dated 8-8-2007 of the Senior Superintendent of Police, Ghaziabad, that he has not gone into the question as to whether the appellant was suitable for appointment to service or to the post of constable in which he was appointed and he has only held that the selection of the appellant was illegal and irregular because he did not furnish in his affidavit in the pro forma of verification roll that a criminal case has been registered against him.

14. As has been stated in the instructions in the Government Order dated 28- 4-1958, it was the duty of the Senior Superintendent of Police, Ghaziabad, as the appointing authority, to satisfy himself on

the point as to whether the appellant was suitable for appointment to the post of a constable, with reference to the nature of suppression and nature of the criminal case. Instead of considering whether the appellant was suitable for appointment to the post of male constable, the appointing authority has mechanically held that his selection was irregular and illegal because the appellant had furnished an affidavit stating the facts incorrectly at the time of recruitment."

20. When we take stock of aforesaid decisions of this Court in nutshell it emerges that in Ramashanker Raghuvanshi (supra), this Court has opined that activities in Jan Sangh and RSS could not be made a ground to deprive employment. In democratic set up 'McCarthyism' is not healthy. Some leniency to young people cannot be ruled out. In T. S. Vasudavan Nair (supra), a three Judges' Co-ordinate Bench of this Court held that due to non-disclosure of conviction in a case of violation of Defence of India Rules by shouting slogans, the cancellation of appointment was illegal. In Dhaval Singh (supra), though pendency of case was suppressed when verification form was filed, however, the information about it was furnished before cancellation of appointment order on the ground of suppression was passed. This Court set aside the order on the ground of non-consideration of effect of disclosure made before order of cancellation of appointment was passed. In Sandeep Kumar (supra), this Court in the backdrop fact of the case that offence suppressed was committed under section 325/34 IPC at the time when incumbent was 20 years of age. This Court held that young people to be dealt with leniency. They should not be deprived of appointment as suppression did not relate to involvement in a serious case. In Ram Kumar (supra), this Court considered a case when pending criminal case under sections 324, 323, 504 IPC in which subsequently acquittal had been recorded, no overt act was attributed by sole witness to incumbent and moreover Government instructions dated 28.4.1958 requiring authority to consider suitability as such was not complied with, denying back wages to incumbent, his appointment was ordered. In Regional Manager, Bank of Baroda (supra), this Court declined to interfere under Art.136 in view of subsequent acquittal in a case under section 307 IPC. The decision of Labour Court was not interfered with. Passage of time was taken into consideration. However, this Court clarified that decision will not be treated as precedent. In Kamal Nayan Mishra (supra), action was taken when employee was not on probation. He had been confirmed in service and was holding civil post, attestation was filled after 14 years of service and then after 7 years of that, action was taken. It was held that confirmed employee could not have been removed in view of protection under Art.311(2) without enquiry. Removal was held to be void. In M. Bhaskaran (supra), it was held that when the employment was taken on bogus and forged casual labourer service card no estoppel was created against employer by appointment and such appointment was voidable. In Sushil Kumar (supra), on consideration of background facts of the pending case which was suppressed under sections 304, 324/34 and 324 IPC, it was held not desirable to appoint incumbent notwithstanding his subsequent acquittal. In Ram Ratan Yadav (supra), this Court held that suppression of pending criminal case under sections 323, 341, 294, 506B/34 IPC on the date of filing attestation form coupled with impact of it on students, nature of employment, the discretion exercised to terminate the services was upheld. In R. Radhakrishnan (supra) in which pendency of criminal case under section 294(b) IPC was suppressed relying on Sushil Kumar (supra), it was held that removal was legal. In Bipad Bhanjan Gayen (supra), there was suppression of two pending cases on the date of filing verification form under sections 376 IPC and 417 IPC relating to rape and cheating. It was observed that since antecedents were not good incumbent could not claim equity for appointment.

In Daya Shankar Yadav (supra), this Court has laid down course of action to be taken in such cases, and that suppression by itself can be a ground to remove person from service or cancel an appointment, notwithstanding acquittal in the criminal case. In SK Nazrul Islam (supra), due to suppression of pending case on the date of filing of form under sections 148, 323, 380, 427, 596 IPC incumbent was adjudged to be unsuitable for appointment.

This Court has also opined that before a person is held guilty of suppression of a fact it has to be considered whether verification form is precise and is not vague, and what it required to disclose. In Daya Shankar (supra) it was held that in case verification form is vague no fault can be found on the ground of suppression. However, facts which have come to knowledge it has to be determined by employer whether antecedents of incumbent are good for service, to hold someone guilty of suppression, query in the form has to be specific. Similarly, in B. Chinnam Naidu (supra) when column in verification form required to disclose detention or conviction, it did not require to disclose a pending criminal case or fact of arrest, removal on the ground of material suppression of pending case and arrest was set aside as that was not required to be disclosed.

21. The verification of antecedents is necessary to find out fitness of incumbent, in the process if a declarant is found to be of good moral character on due verification of antecedents, merely by suppression of involvement in trivial offence which was not pending on date of filling attestation form, whether he may be deprived of employment? There may be case of involving moral turpitude/serious offence in which employee has been acquitted but due to technical reasons or giving benefit of doubt. There may be situation when person has been convicted of an offence before filling verification form or case is pending and information regarding it has been suppressed, whether employer should wait till outcome of pending criminal case to take a decision or in case when action has been initiated there is already conclusion of criminal case resulting in conviction/acquittal as the case may be. The situation may arise for consideration of various aspects in a case where disclosure has been made truthfully of required information, then also authority is required to consider and verify fitness for appointment. Similarly in case of suppression also, if in the process of verification of information, certain information comes to notice then also employer is required to take a decision considering various aspects before holding incumbent as unfit. If on verification of antecedents a person is found fit at the same time authority has to consider effect of suppression of a fact that he was tried for trivial offence which does not render him unfit, what importance to be attached to such non-disclosure. Can there be single yardstick to deal with all kind of cases?

22. The employer is given ‘discretion’ to terminate or otherwise to condone the omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question. In case the employer come to the conclusion that suppression is immaterial and even if facts would have been disclosed would not have affected adversely fitness of an incumbent, for reasons to be recorded, it has power to condone the lapse. However, while doing so employer has to act prudently on due consideration of nature of post and duties to be rendered. For higher officials/higher posts, standard

has to be very high and even slightest false information or suppression may by itself render a person unsuitable for the post. However same standard cannot be applied to each and every post. In concluded criminal cases, it has to be seen what has been suppressed is material fact and would have rendered an incumbent unfit for appointment. An employer would be justified in not appointing or if appointed to terminate services of such incumbent on due consideration of various aspects. Even if disclosure has been made truthfully the employer has the right to consider fitness and while doing so effect of conviction and background facts of case, nature of offence etc. have to be considered. Even if acquittal has been made, employer may consider nature of offence, whether acquittal is honourable or giving benefit of doubt on technical reasons and decline to appoint a person who is unfit or dubious character. In case employer comes to conclusion that conviction or ground of acquittal in criminal case would not affect the fitness for employment incumbent may be appointed or continued in service.

23. Coming to the question whether an employee on probation can be discharged/refused appointment though he has been acquitted of the charge/s, if his case was not pending when form was filled, in such matters, employer is bound to consider grounds of acquittal and various other aspects, overall conduct of employee including the accusations which have been levelled. If on verification, the antecedents are otherwise also not found good, and in number of cases incumbent is involved then notwithstanding acquittals in a case/cases, it would be open to the employer to form opinion as to fitness on the basis of material on record. In case offence is petty in nature committed at young age, such as stealing a bread, shouting of slogans or is such which does not involve moral turpitude, cheating, misappropriation etc. or otherwise not a serious or heinous offence and accused has been acquitted in such a case when verification form is filled, employer may ignore lapse of suppression or submitting false information in appropriate cases on due consideration of various aspects.

24. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

25. The fraud and misrepresentation vitiates a transaction and in case employment has been obtained on the basis of forged documents, as observed in M. Bhaskaran's case (supra), it has also been observed in the reference order that if an appointment was procured fraudulently, the incumbent may be terminated without holding any inquiry, however we add a rider that in case employee is confirmed, holding a civil post and has protection of Article 311(2), due inquiry has to be held before terminating the services. The case of obtaining appointment on the basis of forged documents has the effect on very eligibility of incumbent for the job in question, however, verification of antecedents is different aspect as to his fitness otherwise for the post in question. The

fraudulently obtained appointment orders are voidable at the option of employer, however, question has to be determined in the light of the discussion made in this order on impact of suppression or submission of false information.

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 reformative theory cannot be ruled out in toto 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:

> 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.
>
> 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. The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.
>
> 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 : -

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.

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

……..J.
(Ranjan Gogoi)

……J.
(Arun Mishra)

New Delhi;
July 21, 2016.

……J.
(Prafulla C. Pant)