

RAJASTHAN HIGH COURT, JODHPUR

A

v.

AKASHDEEP MORYA & ANR.

(Civil Appeal No. 5733 of 2021)

SEPTEMBER 16, 2021

B

**[K. M. JOSEPH AND
PAMIDIGHANTAM SRI NARASIMHA, JJ.]**

Service Law – Judicial Service – Involvement in criminal case – Appointment to the post of Civil Judge (Junior Division) – Respondent was found not deserving to be appointed for the said post in view of his antecedents – Held: Post of a judicial officer at any level of the hierarchy involves applying the most exacting standards – In the absence of an honourable acquittal, the alleged involvement of an officer in criminal cases may undermine public faith in the system – In the present case, in two cases, the respondent was charge-sheeted for offences u/s.324, IPC also – Cases ended in acquittal based substantially on a compromise, the witnesses had turned hostile – Respondent's acquittal was not honourable – Decision taken by the appellant through its committee should not have been interfered with by the High Court – Impugned judgment set aside – Penal Code – ss.34, 148, 149, 323, 324, 341, 504 – Judicial review.

C

D

E

F

G

Service Law – Involvement in criminal case – Principles enunciated in Avtar Singh v. Union of India and Others reported as [2016] 7 SCR 445 at paragraphs 38.4, 38.4.1, 38.4.2 and 38.4.3 – Held: Aforesaid paragraphs would apply to cases involving suppression/false information of involvement in a criminal case where conviction or acquittal is already recorded before the filing of the application/verification and such fact, later came to the knowledge of the employer – Paragraph 38.5 will be apposite in a case where there is no suppression/false information relating to involvement of a criminal case by a candidate.

Judiciary – Judicial Service – Subordinate Judiciary – Judicial Officers – Nature of post – Suitability of candidates – Discussed – Service Law.

H

A **Allowing the appeal, the Court**

- HELD : 1. This is not a case which involves any suppression of material by the first respondent as a candidate. What is held in paragraph 38.4.3 in *Avtar Singh*, is actually meant to apply to cases which involve suppression or false information of involvement in
- B a criminal case where conviction or acquittal has already been recorded before the filing of the application/verification and such fact, later came to the knowledge of the employer. It is in such a situation that paragraphs 38.4.1, 38.4.2 and 38.4.3 would apply. In fact, paragraph 38.5 is what would be actually be apposite in a
- C case where there is no suppression or false information relating to involvement of a criminal case by a candidate. It would, therefore, be a case which would involve applying paragraph 38.5 read with paragraph 30. [Paras 18-21][736-A, G-H; 737-A-B, E-F]
- D *Avtar Singh v. Union of India and Others (2016) 8 SCC 471* : [2016] 7 SCR 445 – relied on.
2. The post of a judicial officer at any level of the hierarchy involves applying the most exacting standards. The incumbent of a judicial post discharges one of the most important functions of the State, that is, the resolution of disputes involving the people
- E of the country. Even in the advertisement, there is a reference to the requirement of the candidate being possessed of character. Character cannot be understood as being limited to a mere certifying of the character by the competent authority. The High Court is involved with the appointment of judicial officers and
- F rightly so, under the scheme of the Constitution. Though the order of appointment is issued by the State, the involvement of the High Court in the appointment of judicial officers essentially flows from its position in the constitutional scheme. The High Court is duty bound to recommend the most suitable persons to occupy the post. The post of a Civil Judge or a Magistrate is of
- G the highest importance notwithstanding the fact that in the pyramidal structure of the judiciary, the Civil Judge or the Magistrate is at the lowest rung. All the litigation which is instituted in the country, the highest volume of the same takes place at the lowest level. Not many of the cases finally reach the
- H highest Court. It is through the Civil Judge (Junior Division)/

Magistrate that the common man has the greatest interface. Most importantly, the perception of the common man about the credentials and background of the judicial officer is vital. In the absence of a honourable acquittal, the alleged involvement of an officer in criminal cases may undermine public faith in the system. [Para 22][737-F-H; 738-A-D]

A

3.1 In two of the FIRs which were lodged, final reports were filed. The matter progressed further and the investigating authorities filed chargesheets. However, it is true that the first respondent stood acquitted. The acquittal is certainly not on the basis that there was no evidence whatsoever against the first respondent. This Court is unable to describe the acquittal as honourable. The last of the FIRs which was FIR No. 98/2012. The chargesheet apparently sought to make out a case under Sections 323, 341, 324 and Section 34 of the IPC. The allegation against the first respondent was one of the inflicting a gandasa blow on the head of the victim. The first of the case, that is FIR No. 81/99, where also chargesheet was filed against the first respondent related to offences under Sections 341, 323, 148, 149, 504 and 324 IPC. Therein, the allegation was that the first respondent had inflicted a sword blow on the hand of the victim. Section 324 IPC is a non-bailable offence. Thus in two cases, he was chargesheeted for offences under Section 324 IPC also. [Paras 23-25][738-D-H; 739-A]

B

C

D

E

F

G

3.2 The first respondent was apparently nearly 30 years of age when the incident relating to FIR No. 98/12 allegedly took place. It is not inapposite in this context to notice that the advertisement for the post was issued in the very next year viz., in the year 2013. Bearing in mind the age, the nature of the offences in which the first respondent was implicated and the two FIRs, at any rate, in which the matter progressed from the stage of the FIR to the stage of chargesheet and the manner in which the case ended viz., acquittal based substantially on a compromise and also where the witnesses turned hostile and also the nature of the post for which the first respondent was a candidate, the matter should have been approached differently by the High Court. The decision taken by the appellant through its committee after

H

- A bearing in mind the decision in *Avatar Singh* though it has referred only to paragraph 38.1.4, but in the body of which decision, it has borne in mind the principles, which would be apposite, should not have been interfered with by the High Court. In the facts of this case, interference with the decision of the appellant was not warranted. The impugned judgment is set aside. [Paras 27, 30][740-B-C, E-H]

Commissioner of Police v. Raj Kumar (2021) 9 SCALE 713; Commissioner of Police and Others v. Sandeep Kumar (2011) 4 SCC 644 : [2011] 3 SCR 964 – relied on.

- C *Mohammed Imran v. State of Maharashtra and Ors. (2019) 17 696 : 2018 (10) JT 15; State of Madhya Pradesh vs. Abhijit Singh Pawar (2018) 18 SCC 733 : [2018] 13 SCR 1133 – referred to.*

D	<u>Case Law Reference</u>		
[2016] 7 SCR 445	relied on		Para 11
[2011] 3 SCR 964	relied on		Para 14
[2018] 13 SCR 1133	referred to		Para 16

- E CIVIL APPELLATE JURISDICTION: Civil Appeal No.5733 of 2021.

From the Judgment and Order dated 21.03.2018 of the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Writ Petition No.12290 of 2017.

- F Ms. Meenakshi Arora, Sr. Adv., Mukul Kumar, Advs. for the Appellant.

Gp. Capt. Karan Singh Bhati, Dashrath Singh, Rajesh Kumar, Nimesh Suthar, Aditya Chouhan, Ms. Gunjan Negi, Advs. for the Respondents.

- G The Judgment of the Court was delivered by

K. M. JOSEPH, J.

1. Leave granted.

- H 2. By the impugned judgment, the High Court has allowed the writ petition filed by the first respondent against the decision of the

appellant by which it found that the first respondent did not deserve to be appointed to the Civil Judges' cadre. A

3. The appellant issued a notification dated 25.11.2013 inviting applications for filling up the post of Civil Judge (Junior Division). The respondent applied pursuant to the same. It would appear that there was no requirement in the application for indicating about involvement of the candidate in any criminal case. However, when the matter was taken for verification, the respondent volunteered with the information with regard to his being implicated in certain criminal cases. We may notice the details of the cases which are as follows:

FIR No./ Police Station	Under Sections	Police Investigation	Decision of Court
81/25.06.99	341, 323, 147, 148, 149, 504, 324 IPC	Challan dated 26.07.1999	Acquitted on 05.02.2011 on the basis of compromise.
75/03.05.11	420, 406, 120-B IPC	F.R. No. 78/29.05.11	F.R. Accepted on 01.10.2011
106/06.06.11	452, 323, 34 IPC	F.R. No. 120/30.06.11	F.R. Accepted on 18.10.2011
98/30.05.12	341, 323, 324, 34 IPC	Challan dated 27.06.2012	Acquitted on 16.07.2012 on the basis of compromise.

4. On 06.07.2015, the Committee of the High court tasked by the Chief Justice to consider the case of 12 candidates including the 1st respondent resolved to not recommend the case of the 1st respondent. The Chief Justice referred the matter back to the Committee regarding the 12 candidates. On 29.07.2015, the Committee again did not recommend the case of the 1st respondent. The Full Court on 08.08.2015 resolved to request the Committee to reexamine the matter. Again on 26.08.2015, the Committee took note of the antecedents of the 1st respondent and resolved not to recommend the case of the 1st respondent. This was accepted by the Full Court.

5. Thereafter, a writ petition came to be filed by the 1st respondent as Writ Petition No. 13192/2015 which resulted in the following order:

“It is submitted by learned counsel for the appellant that in view of the judgment of Hon’ble Supreme Court in case of Avtar Singh vs Union of India &Ors. reported in (2016) 8 SCC 471, the petitioner is entitled for the relief claimed in this petition.

- A After perusing the aforesaid judgment, the instant writ petition is hereby disposed of with liberty to the petitioner to file representation alongwith the copy of the judgment passed in Avtar Singh's case (*supra*) before the Registrar, Rajasthan High Court, Jodhpur within two weeks from the date of receiving certified copy of the order. Upon filing such representation, it is expected that the said representation will be decided in the light of the adjudication made by the Hon'ble Supreme Court in the case of Avtar Singh (*supra*) and the facts narrated in the representation, on merits within one month from the date of receiving representation."
- B 6. This resulted in the meeting of the Lower Judiciary Committee of the appellant to consider the matter again and the following is the decision:
- D "In compliance of order dated 08.03.2017 of Hon'ble Rajasthan High Court passed in D.B.C.W.P. No. 13192/2015, Akash Deep Morya Vs. Rajasthan High Court, the representation of Shri Akash Deep Morya was considered in the light of the adjudication made by Hon'ble Supreme Court in Avtar Singh's case.
- C In Avtar Singh's case it has been held by the Hon'ble Supreme Court, inter-alia as under:-
- E "if acquittal had already been recorded in a case involving moral turpitude of 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."
- F The committee noted that four different FIRs were registered against Shri Akash Deep Morya from the year 1999-2012, details of which are as under:-
- G 1. In FIR No. 81/1999, charge sheet was filed against Shri Akash Deep Morya and others for the offences u/s 341, 323, 148, 149, 504 and 324 IPC in which the allegation against Shri Morya is to inflict Sword blow on the hand of victim.
- H On the basis of compromise, Shri Morya was acquitted from the charges for the offence u/s 341, 323, 324 and 504 IPC and for the remaining offences, he was acquitted for want of evidence.

2. In FIR No. 75/2011 u/s 420, 406 and 120B IPC, police submitted FR which was accepted on the ground that the parties have compromised the matter and the complainant does not want to proceed further. A

3. In FIR No. 106/2011 u/s 452, 323, 34 IPC police submitted FR on the basis of compromise with the finding that offence under Section 504 IPC only is made out which is non-cognizable. FR was accepted by the Court on the ground that the parties have compromised the matter and the complainant does not want to proceed further. B

4. In FIR No. 98/2012, charge sheet was filed against Shri Morya and others for the offences u/s 323, 341, 324 and 34 IPC in which allegation against Shri Morya was that he inflicted Gandasi blow on the head of one victim. C

Shri Morya was acquitted for the offence u/s 323, 341 IPC on the basis of compromise and was acquitted for the offence u/s 324 IPC for want of evidence. D

As per the pronouncement of Hon'ble Supreme Court in Avtar Singh's case even if acquittal is recorded in a case involving serious nature, the employer may consider relevant facts as to antecedent. E

In the instant matter, four criminal cases have been registered against Shri Morya one after the other. Offences in all the above cases were serious in nature and acquittals were not clean. In adjudging his candidature, comparison with other candidates is not relevant. Therefore, taking note of all the relevant aspects the committee is of the view that Shri Morya does not deserve appointment on the post of Civil Judge Cadre and his representation is liable to be rejected. F

RESOLVED to reject the representation of Shri Akash Deep Morya. G

7. Following the same, on 05.05.2017, communication was addressed by the Registrar General of the appellant to the respondent indicating that the respondent did not deserve the appointment on the post of Civil Judge cadre and the representation stood rejected. This resulted in the filing of the writ petition. H

A 8. The writ petition filed by the respondent has been allowed by the High Court. The High Court after wading through the cases, took the view that:

- B "Upon appreciation of entire facts and documentary evidence on record, there is no doubt that out of four cases, in two cases compromise was arrived at between the parties because offences were for simple nature, for the dispute of water supply upon agricultural land, in which ultimately compromise arrived between the parties and the petitioner alongwith his brother was acquitted and complainant was also acquitted in one of the case in the cross FIR registered upon complaint of accused party. Admittedly, no criminal case pending against the petitioner when online application form was submitted by him for recruitment upon the post in question. In case of Avtar Singh (*supra*), the Hon'ble Supreme Court held that whole idea of verification of character and antecedents is that the person suitable for the post should be appointed and candidate should not have antecedents of such a serious nature which may adjudge him unsuitable for the post. The verification of antecedents is necessary to find out fitness of the candidates. The case in hand there is no allegation of suppression of information. More so, it is a case in which petitioner has categorically explain that out of four cases, two cases were found to be false after investigation, therefore, FR was submitted and accepted by the court. In two other cases offences were of simple injuries in which compromise arrived between the parties because those offences were compoundable as per Cr.P.C., therefore, petitioner and other persons were acquitted by the Court.

F

- G
- Upon perusal of the aforesaid decision of the committee it emerges from the consideration that all the four criminal cases registered against the petitioner were considered and committee opined that offences in all the cases were serious in nature and acquittals were not clean, therefore, in adjudging the candidature, comparison with the other candidates is not relevant as such taking note of all the relevant aspects, the committee held that Sh. Morya does not deserve appointment on the post of Civil Judge Cadre and his representation is liable to be rejected. In our humble opinion the committee has failed to consider the case of the petitioner in the

H

spirit of verdict given by the Hon'ble Supreme Court in the case of Avtar Singh because as per committee offences in all the cases were serious in nature and acquittals were not clean, but this finding is not perverse because it is obvious from the documentary evidenced that out of four cases in two cases after investigation, FR was submitted by the police, which is accepted by the competent court and further it is not in dispute that in FIR no. 81 at Police Station, Kesharisinghpur charge sheet was filed against the petitioner and other persons for offence under Section 341, 323, 148, 149, 504 and 324 IPC and for the same incident in FIR no. 80 registered against the complainant upon complaint of accused party charge-sheet was filed, but in both the cases, compromise arrived between the parties and the same was accepted by the court because offences were not of serious in nature, which is evident from the sections itself.

In fourth case which is registered upon FIR no. 98, the charge-sheet was filed against the petitioner and his brother for offences under Sections 323, 341, 324 and 34 IPC. In the said case there was allegation for simple injuries for the dispute arising out for water supply turn in the agricultural field. All the offences were compoundable and trible by the magistrate, therefore, compromise was arrived between the neighbours was accepted by the court. In view of the above position of facts, it cannot be said that petitioner was involved in the case of serious nature as observed by the committee.

As per verdict in the case of Avtar Singh (*supra*) though a discretion is given to the employer to assess the suitability of the candidate while considering the antecedents, but at the same time, a duty is cast upon the employer not to crush the future of a candidate who has succeeded in the competitive examination and come in merit upon his performance. Admittedly, the petitioner belongs to SC category which is weaker section of the society, against whom two false cases were registered in which after investigation, police gave opinion that no such incident took place and in other two cases registered against him for the offence of simple injuries, compromise was arrived between the parties and trial court acquitted him on the basis of compromise, therefore, we are of the opinion that decision of the committee is not in consonance with the spirit of the judgment in the case of Avtar Singh (*supra*). H

- A 9. Thereafter, the Court took the view that it is an important aspect that the first respondent belonging to the Scheduled Caste category, which is a weaker section of the society, appeared in the competitive examination and succeeded in it on the basis of performance and was recommended for appointment. But due to the registration of some cases against him prior to the submission of the application, the appointment has been denied. It is further found that in such type of cases, if appointments will be denied casually, then nobody will trust upon the judicial system. Therefore, it is the duty of the employer to apply its mind to assess the suitability of the candidate objectively. It is further found that it is beyond imagination that the employer will treat offences under
- B Section 323 and 324 IPC at par with other heinous offences and denial of appointment was found unsustainable and also unconstitutional. It was, accordingly, that the petition was allowed.

10. Heard Ms. Meenakshi Arora, learned senior counsel appearing for the appellant, and Gp. Capt. Karan Singh Bhati, learned counsel appearing on behalf of the first respondent.

11. Ms. Meenakshi Arora, learned senior counsel appearing for the appellant, has pointed out that the order of the High Court is erroneous. This is for the reason that what is involved is the power of the employer to take a decision bearing in mind the relevant inputs in this case. She drew our attention to the cases in question. She reminded us that the Court is dealing with the case of appointment to a Judicial post. The offences cannot be trivialized. There were four FIRs which were lodged involving the first respondent. It is not as if the first respondent stood acquitted honourably. The acquittal cannot be described as acquittal for total want of evidence. On the other hand, in the first FIR the matter came to be settled and witnesses turned hostile. The last of the FIRs also is a case where a chargesheet was filed. The cases did involve offences under Sections 323 and 324 IPC as charged by the investigating agency and again acquittal flowed from a compromise and it was not as a result of the Court appreciating the evidence and holding that there is no evidence at all against the first respondent. She drew our attention, in fact, to the decision of *Avtar Singh v. Union of India and Others*¹:

“30. The employer is given ‘discretion’ to terminate or otherwise to condone the omission. Even otherwise, once employer has the

H ¹(2016) 8 SCC 471

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.

(emphasis supplied)

12. She further pointed out that that this was not certainly a decision of the appellant which should have been interfered with by the High Court.

13. *Per contra*, Gp. Capt. Karan Singh Bhati, learned counsel for the first respondent, pointed out that the first respondent belongs to the Scheduled Caste community. He was falsely implicated in all these cases. He also highlighted the fact that at a young age, persons may be more prone to commit mistakes. The approach of the Court in such matters

A should be a more liberal one. As long as the offences are not serious, which is the case in the present case, in the facts of the case, the impugned judgment is only to be supported. In this regard, he drew our attention to a few decisions.

B 14. He drew our attention to the judgment in *Mohammed Imran v. State of Maharashtra and Ors.*² He pointed out that the said decision also involved appointment to a judicial post and yet, he contended, that this Court after noticing the facts, directed reconsideration of the decision taken in the said case not to appoint the petitioner in the said case. He would contend that principle of the said case would apply on all fours in the facts of this case as well.

C He further drew our attention to the judgment in *Commissioner of Police and Others v. Sandeep Kumar*³. Therein, the Court held:

D “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.

E F 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.”

G 15. He contended that the dispute as far as the first FIR lodged against the first respondent is concerned, was essentially a property dispute. Regarding the second FIR which related to the offences under Sections 420, 406 IPC, he would point out that it was essentially a civil matter and it is just given a criminal colour. He reminds us that the said case did not even go to trial. On the other hand, the investigating authority

H ²(2019) 17 696
³(2011) 4 SCC 644

did not find merit in the contents of the FIR which culminated in lodging of the final report. The same is the fate of the third FIR which did not culminate in the lodging of the chargesheet and on the contrary, the case did not see the light of the day and a final report was filed. The final report was accepted and there was no protest and the matter ended. Even in the last case, it is his contention that the case involved offence under Section 323 IPC which can by no means, be described as a serious offence justifying eliminating an eligible candidate belonging to a weaker section of the society. In these matters, he would submit, the liberal spirit which animated this Court which decided the case in *Sandeep Kumar* (*supra*), should continue to guide this Court as well.

16. Ms. Meenakshi Arora, learned senior counsel, brought to our notice that the decision of this Court reported in *Mohammed Imran* (*supra*) has come to be noted and appreciated by a later judgment which is reported in *Abhijit Singh Pawar*⁴. Ms. Meenakshi Arora, drew our attention to paragraph 15:

“15. The reliance placed by Mr. Dave, learned Amicus Curiae on the decision of this Court in Mohd. Imran v. State of Maharashtra (Civil Appeal No.10571 of 2018) is not quite correct and said decision cannot be of any assistance to the respondent. In para 5 of said decision, this Court had found that the only allegation against the appellant therein was that he was travelling in an auto-rickshaw which was following the auto-rickshaw in which the prime accused, who was charged under Section 376 IPC, was travelling with the prosecutrix in question and that all the accused were acquitted as the prosecutrix did not support the allegation. The decision in Mohd. Imran v. State of Maharashtra (Civil Appeal No.10571 of 2018) thus turned on individual facts and cannot in any way be said to have departed from the line of decisions rendered by this Court in Commr. of Police v. Mehar Singh (2013) 7 SCC 685, State of M.P. v. Parvez Khan (2015) 2 SCC 591 and UT, Chandigarh Admn. v. Pradeep Kumar (2018) 1 SCC 797.

17. No doubt, learned counsel for the first respondent did point out that in the said case, the criminal case was pending against the respondent therein when he applied. Compromise was entered into after an affidavit disclosing such pendency was filed.

⁴(2018) 18 SCC 733

- A 18. As we have noticed from our narrative, this is not a case where the first respondent as a candidate suppressed facts about the criminal cases against him as there was no requirement in the application to disclose such details. On the other hand, it is on the showing of the appellant itself a case where the material was unravelled at the time of verification. Therefore, we may start by holding that this is not a case which involves any suppression of material by the first respondent as a candidate. We notice this aspect to put in perspective the principles which have been enunciated by this Court in the decision in *Avtar Singh* (supra) at paragraphs 38.4, 38.4.1, 38.4.2 and 38.4.3:
- C “38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:
- D 38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.
- E 38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.
- F 38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.”
- G 19. Therefore, we may proceed on the basis that what is held in paragraph 38.4.3, is actually meant to apply to cases which involve suppression or false information of involvement in a criminal case where conviction or acquittal has already been recorded before the filing of the application/verification and such fact, later came to the knowledge of the employer. It is in such a situation that paragraphs 38.4.1, 38.4.2 and 38.4.3 would apply.

20. We notice that in the decision which has been taken by the Committee of the appellant after the direction of the High Court in Writ Petition No. 13192/2015, there is a reference to paragraph 38.4.3. In fact, paragraph 38.5 is what would be actually be apposite in a case where there is no suppression or false information relating to involvement of a criminal case by a candidate.

A

“38.5 In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.”

B

No doubt, in this case there was no occasion to disclose but it is a case where the 1st respondent disclosed the information during verification. We may also notice paragraph 38.10:

C

“38.10 For determining suppression or false information attestation/ verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.”

D

E

21. We have already set out what has been laid down at paragraph 30. It would, therefore, be, in our view, a case which would involve applying paragraph 38.5 read with paragraph 30.

22. We cannot be oblivious, in a case of this nature, about the nature of the post which is at stake. The post of a judicial officer at any level of the hierarchy involves applying the most exacting standards. This is for reasons which are obvious. The incumbent of a judicial post discharges one of the most important functions of the State, that is, the resolution of disputes involving the people of the country. Judges occupying the highest moral ground go a long way in building public confidence in the justice delivery system. In fact, even in the advertisement, there is a reference to the requirement of the candidate being possessed of character. Character cannot be understood as being limited to a mere certifying of the character by the competent authority. The High Court is involved with the appointment of judicial officers and

F

G

H

- A rightly so, under the scheme of the Constitution. Though the order of appointment is issued by the State, the involvement of the High Court in the appointment of judicial officers essentially flows from its position in the constitutional scheme. The High Court is duty bound to recommend the most suitable persons to occupy the post. The post of a Civil Judge or a Magistrate is of the highest importance notwithstanding the fact
- B that in the pyramidal structure of the judiciary, the Civil Judge or the Magistrate is at the lowest rung. We say this for the reason that of all the litigation which is instituted in the country, the highest volume of the same takes place at the lowest level. Not many of the cases finally reach the highest Court. It is through the Civil Judge (Junior Division)/
- C Magistrate that the common man has the greatest interface. Most importantly, the perception of the common man about the credentials and background of the judicial officer is vital. We have only highlighted these aspects as a prelude to consider the facts of the case further. In other words, in the absence of a honourable acquittal, the alleged involvement of an officer in criminal cases may undermine public faith
- D in the system.

23. In two of the FIRs which were lodged, final reports were filed. In two FIRs, we notice that the matter progressed further and the investigating authorities filed chargesheets. However, it is true that the first respondent stood acquitted. The acquittal is certainly not on the basis that there was no evidence whatsoever against the first respondent. We are unable to describe the acquittals as honourable or acquittals based on there being a complete absence of evidence.

24. We may notice, the last of the FIRs which is FIR No. 98/2012. In the earlier decision of the High Court, we notice the error which it apparently committed where it included Section 324 IPC as being mentioned in the FIR, which is not so. When it came to the decision which was finally taken pursuant to the direction of the High Court, it is noted that the chargesheet was filed against the respondent under Section 324. This appears to be correct. The chargesheet apparently sought to make out a case under Sections 323, 341, 324 and Section 34 of the IPC. We further notice the allegation against the first respondent was one of the inflicting a *gandasa* blow on the head of the victim. The first of the case, that is FIR No. 81/99, where also chargesheet was filed against the first respondent related to offences under Sections 341, 323, 148, 149, 504 and 324 IPC. Therein, the allegation which is noted by the High Court, was that the first respondent had inflicted a sword blow on

- H the hand of the victim.

25. Section 324 IPC is a non-bailable offence. Thus in two cases, he was chargesheeted for offences under Section 324 IPC also by the investigating authority. In a recent judgment, this Court had occasion to deal with the power of the employer to deny appointment. The case, no doubt, related to the police service. There were certain guidelines which were issued and the matter had to be considered by a committee. In *Commissioner of Police v. Raj Kumar*⁵, we may notice, in particular, paragraph 29 and 30:

“29. Public service - like any other, pre-supposes that the state employer has an element of latitude or choice on who should enter its service. Norms, based on principles, govern essential aspects such as qualification, experience, age, number of attempts permitted to a candidate, etc. These, broadly constitute eligibility conditions required of each candidate or applicant aspiring to enter public service. Judicial review, under the Constitution, is permissible to ensure that those norms are fair and reasonable, and applied fairly, in a non-discriminatory manner. However, suitability is entirely different; the autonomy or choice of the public employer, is greatest, as long as the process of decision making is neither illegal, unfair, or lacking in bona fides.

30. The High Court’s approach, evident from its observations about the youth and age of the candidates, appears to hint at the general acceptability of behaviour which involves petty crime or misdemeanour. The impugned order indicates a broad view, that such misdemeanour should not be taken seriously, given the age of the youth and the rural setting. This court is of opinion that such generalizations, leading to condonation of the offender’s conduct, should not enter the judicial verdict and should be avoided. Certain types of offences, like molestation of women, or trespass and beating up, assault, causing hurt or grievous hurt, (with or without use of weapons), of victims, in rural settings, can also be indicative of caste or hierarchy-based behaviour. Each case is to be scrutinized by the concerned public employer, through its designated officials- more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society’s security.

⁵(2021) 9 SCALE 713

A

B

C

D

E

F

G

H

- A 26. As far as the judgment which is referred to by the learned counsel for the first respondent in *Sandeep Kumar* (*supra*) is concerned, we notice that it was a case under Section 325 read with Section 34 IPC. It was a case involving appointment to the post of Head Constable (Ministerial). The incident, it was noted by this Court, in the said case, took place at the time when the candidate was 20 years of age.
- B 27. As we have already noticed, the first respondent was apparently nearly 30 years of age when the incident relating to FIR No. 98/12 allegedly took place. It is not inapposite in this context to notice that the advertisement for the post was issued in the very next year viz., in the year 2013.
- C 28. We notice the nexus between the date of the last incident, his age and the time of the issuance of the advertisement and the application made by the first respondent based on the same.
- D 29. We have also noticed that as far as the decision in *Mohammed Imran* (*supra*) is concerned, how the said decision has been appreciated by a later judgment of this Court reported in *Abhijit Singh Pawar* (*supra*). We have already noted nature of the case in the first and last FIRs.
- E 30. We would, therefore, think that bearing in mind the age, the nature of the offences in which the first respondent was implicated and the two FIRs, at any rate, in which the matter progressed from the stage of the FIR to the stage of chargesheet and the manner in which the case ended viz., acquittal based substantially on a compromise and also where the witnesses turned hostile and also the nature of the post for which the first respondent was a candidate, the matter should have been approached differently by the High Court. Here again, we must notice one aspect. The Court in judicial review is not concerned with the decision *per se*. It is more anxious that the decision-making process is not flawed. Circumstances, where the Court would interfere with the merits of the decision, are far too well settled to require any reiteration. We cannot
- F G possibly hold that the decision taken by the appellant through its committee after bearing in mind the decision in *Avatar Singh* though it has referred only to paragraph 38.1.4, but in the body of which decision, it has borne in mind the principles, which we think would be apposite, should have been interfered with by the High Court. In other words, we would think that in the facts of this case, interference with the decision of the appellant
- H was not warranted.

31. The upshot of the above discussion is that the appeal is to be A
allowed.

32. We allow the appeal. The impugned judgment will stand set
aside.

33. No orders as to costs.

B

Divya Pandey

Appeal allowed.