

CASE DETAILS

THE STATE OF MADHYA PRADESH AND OTHERS

v.

BHUPENDRA YADAV

(Civil Appeal No. 5984 of 2023)

SEPTEMBER 20, 2023

[HIMA KOHLI AND RAJESH BINDAL, JJ.]

HEADNOTES

Issue for consideration: Whether the appellants have erred in rejecting the candidature of the respondent to the post of Constable, despite the latter having truthfully disclosed in his affidavit the fact that he had faced trial in a criminal case which had resulted in his acquittal.

Service Law – Rejection of candidature by the departmental authorities on basis of moral turpitude – Propriety:

Held: An employer has the discretion to terminate or condone an omission in the disclosure made by a candidate – While doing so, the employer must act with prudence, keep in mind the nature of the post and the duties required to be discharged – Higher the post, more stringent ought to be the standards to be applied – Even if a truthful disclosure has been made, the employer is well within its right to examine the fitness of a candidate and in a concluded criminal case, keep in mind the nature of the offence and verify whether the acquittal is honourable or benefit has been extended on technical reasons – If the employer arrives at a conclusion that the incumbent is of a suspect character or unfit for the post, he may not be appointed or continued in service – In the instant case, even though the respondent had truthfully declared that he was involved in a criminal case which was decided by the trial Court, on perusing the facts of the said case, it is clear that it was not a case of clean acquittal – It is evident from the facts narrated that after the charge-sheet was filed, the respondent had arrived at a compromise with the complainant, based on which the offence u/s. 341 IPC was compounded – As for the remaining offences for which the respondent was charged i.e. s.354(D) of the IPC and s.11 (D)/12 of the

POCSO Act, they were non compoundable and therefore, the matter was taken to trial – The respondent was acquitted by the trial Court primarily on account of the fact that the complainant did not support the case set up by the prosecution and the other prosecution witnesses had turned hostile – In such circumstances, the respondent's plea that he had been given a clean acquittal in the criminal case, is found to be devoid of merits – Mere acquittal of the respondent in the criminal case would not automatically entitle him to being declared fit for appointment to the subject post. [Paras 10, 16, 19]

LIST OF CITATIONS AND OTHER REFERENCES

Avatar Singh v. Union of India and Others (2016) 8 SCC 471 : [2016] 7 SCR 445; *Daya Shankar Yadav. v. Union of India and Others* (2010) 14 SCC 103 : [2010] 13 SCR 1076; *Rajasthan Rajya Vidhut Prasaran Nigam Limited and Another v. Anil Kanwaria* (2021) 10 SCC 136 – relied on.

Commissioner of Police, New Delhi and Another v. Mehar Singh (2013) 7 SCC 685 : [2013] 13 SCR 432; *Union Territory, Chandigarh Administration and Others v. Pradeep Kumar and Others* (2018) 1 SCC 797 : [2018] 1 SCR 112; *Pawan Kumar v. Union of India and Another* 2022 SCC Online SC 532; *Ashutosh Pawar v. High Court of M.P and Another* 2018 SCC Online MP 72; *Jainendra Singh v. State of Uttar Pradesh* (2012) 8 SCC 748 : [2012] 6 SCR 1047; *State of Madhya Pradesh and Others v. Abhijit Singh Pawar* (2018) 18 SCC 733: [2018] 13 SCR 1133; *R.K. Kapur v. Union of Indian and Another* AIR 1964 SC 787 : [1964] SCR 431; *State of Madhya Pradesh and Others v. Parvez Khan* (2015) 2 SCC 591 : [2014] 14 SCR 520 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5984 of 2023.

From the Judgment and Order dated 24.01.2018 of the High Court of Madhya Pradesh at Gwalior in WA No.46 of 2018.

Appearances:

Bharat Singh, AAG, Harmeet Singh Ruprah, DAG, Abhimanyu Singh, Sunny Choudhary, Shashank Shekhar, Sumit Arora, Advs. for the Appellants.

Ms. Savitri Pandey, Bhoopesh Pandey, Dr. Sushil Balwada, Srilok Nath Rath, Ms. Reena Rao, Ms. Akansha Rai, Ms. Apeksha Rai, Pramod Kumar, Vivekanand Rana, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

HIMA KOHLI, J.

1. Leave granted.

2. A challenge has been laid in the present appeal to the judgement dated 24th January, 2018, passed by the Division Bench of the High Court of Madhya Pradesh at Gwalior, dismissing the appeal¹ filed by the appellant – State Government against the order dated 17th November, 2017, passed by the learned Single Judge in a writ petition² and relegating the matter back to the competent authority for passing a fresh order.

3. We may first allude to the relevant facts of the case.

3.1 In May, 2015, a criminal case³ was registered against the respondent who was arrayed as an accused in a Special Sessions Case⁴ in the Court of the First Additional Sessions Judge, Ashok Nagar (MP). Charges were framed against the respondent under Sections 341, 354(D) of the Indian Penal Code⁵ and Section 11 (D)/12 of the POCSO Act. The case set up by the prosecution against the respondent was that on 14th February, 2015, he along with the other co-accused had wrongfully restrained the complainant therein (a minor) and tried to outrage her modesty. Despite the complainant spurring the repeated efforts made by the respondent to befriend her, he had persistently stalked her, threw a letter and flowers at her and insisted that she speaks to him.

1 Writ Appeal No. 46 of 2018

2 Writ Petition No. 19621 of 2017

3 Vide Crime No.64/2015, registered at PS Isagarh, District Ashoknagar, under Sections 341, 354 (D), 323, 34 IPC and under Sections 7, 8 and 11(d)/12 of the Protection of Children from Sexual Offences Act, 2012, for short ‘the POCSO Act’.

4 Special Sessions Case No. 16 of 2015 instituted on 21st May, 2015

5 For short ‘IPC’

3.2 Records reveal that during the course of the trial, the complainant had turned hostile. On a perusal of the judgement⁶ passed by the First Additional Sessions Judge, Ashok Nagar, MP in the Sessions Case⁴, it transpires that the parties arrived at a settlement. As a result, not only the complainant but even her friends who had witnessed the incident, went into a denial mode and refused to support the case set up by the prosecution. The trial Court recorded the fact that a compromise was arrived at between the complainant and the respondent (accused therein) and based on the compromise application preferred by the parties, the charges framed against him under Section 341 of the IPC, were compounded. As the other offences for which the respondent was charged, were non-compoundable, the case continued but because the prosecutrix and the witnesses cited by the prosecution turned hostile, the trial Court passed an order, acquitting the respondent of the charges framed under Section 354(D) of the IPC and Section 11 (D)/12 of the POCSO Act.

3.3 In the very next year, i.e., 2016, the appellant – State Government conducted an entrance examination for filling up vacancies of the post of constables. The respondent participated in the said examination and qualified the same under the OBC category. Thereafter, a physical test was conducted which was also cleared by the respondent. Finally, based on his performance, the respondent was selected and posted at Ujjain. *Vide* letter dated 22nd July, 2017, the appellant No.3 – Superintendent of Police, Ujjain directed the respondent to furnish requisite information in terms of the prescribed form. In the verification form, the respondent disclosed information about his involvement in the aforesaid criminal case and the order of acquittal passed by the trial Court.

3.4 On scrutinizing his verification form, the appellant No. 3 – Superintendent of Police, Ujjain addressed a communication dated 24th August, 2017⁷ to the respondent informing him that he was found to be unfit for being recruited. For ready reference, the contents of the said letter are extracted hereinbelow : –

6 Dated 26th October, 2015

7 No./SP/Ujjain/Est./P3756A/17 dated: 24.08.17

“OFFICE OF THE SUPERINTENDENT OF POLICE,
DISTRICT UIJAIN, MP

No./SP/Ujjain/Est./P3756A/17, Dated: 24.08.17

To,
Bhupendra Yadav
Son of Shri Kalyan Singh Yadav
R/o village Post Parsaul
District Ashok Nagar, MP

Sub: About finding to be unfit in the character verification

Ref.: Letter No. Visha/21/Vaihar/2016-17 (F 515/17) dated 09.08.17

It is to intimate in reference to the subject above that you were selected in the Constable Selection Examination 2016 and the District Ujjain has been allotted to you. You have been found to be acquitted in Crime No. 64/15 Sections 341, 354-D, 323, 34 IPC and 7/8 POCSO Act, Section 354 (D) IPC and Section 11 (D)/12 Protection of Children from Sexual Offences, 2012 registered in the police station Isagarh District Ashok Nagar because the offence was not proved ‘beyond doubt’ In your character verification.

You have been found to be unfit for the Government Service because Sections 7 /8, Section 354 IPC and 11 (D) 12 Protection of Children from Sexual Offences are related to the moral degradation.

Sd/-
Superintendent of Police
District Ujjain

Copy to:

01. Reserved Inspector Police Line Ujjain with two copies that one copy be given to the concerned person and the acknowledgement of the receiving be sent to the office .

Sci/-
Superintendent of Police
District Ujjain”

3.5 Aggrieved by the aforesaid decision taken by the appellant No. 3 – Superintendent of Police, Ujjain, the respondent preferred a writ petition² before the High Court praying *inter alia* that the order dated 24th August, 2017, passed by the appellant No.3 be quashed and directions be issued to reinstate him in service with all consequential benefits. *Vide* judgement dated 17th November, 2017, the learned Single Judge dismissed the writ petition² filed by the respondent with the following observations:

“From perusal of the impugned order dated 24.08.2017 (Annexure P/1) it appears that in the light of the judgment rendered by the Hon’ble Apex Court in the case of Avtar Singh Vs. Union of India and Ors. 2016 (4) MPLJ 332 case of the petitioner has been considered and after considering the same impugned order has been passed treating the case of the petitioner is of moral turpitude. Once the departmental authorities have arrived to a conclusion then no interference can be made by this Court under Article 226 of the Constitution of India because this Court is not sitting as a appellate authority. Even otherwise the matter pertains to Section 354(d) of IPC and Section 7, 8, 11(D) and 12 of the POCSO Act which amounts to moral turpitude, therefore, no case is made out”

3.6. The aforesaid order was challenged by the respondent in an appeal¹ filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 which resulted in passing of the impugned judgment whereby the Division Bench quashed and set aside the order dated 24th August, 2017⁸, passed by the Competent Authority and the order dated 17th November, 2017, passed by the learned Single Judge and remanded the matter back to the Competent Authority to pass a fresh order in the facts of the instant case. The two factors that weighed with the High Court for allowing the appeal¹ were that the respondent had fairly disclosed his involvement in the criminal case wherein he had been acquitted and except for the said case, there was no other criminal case pending against him. Aggrieved by the said decision, the present appeal has been filed.

4. Mr. Bharat Singh, learned counsel for the appellants submitted that the Division Bench of the High Court has erred in interfering with the judgment passed by the learned Single Judge and overlooked the fact that a candidate who seeks recruitment in police service, must be of

impeccable character, integrity and clean antecedents; that mere acquittal in the criminal case did not entitle the respondent for appointment in police service; that it is always open to an employer to consider the antecedents of a candidate and examine as to whether he would be suitable for appointment and such a discretion exercised by the Competent Authority ought not to be interfered with unless the decision is arbitrary or *mala fide*. Lastly, learned counsel submitted that even though a compromise was entered into between the respondent and the complainant in the criminal case³ and he was acquitted on being extended benefit of doubt, it still lies within the domain of the employer to decide as to whether the respondent would be a suitable candidate for appointment to the post, considering the fact that the offence for which he was charged involved moral turpitude. In support of the aforesaid submission, learned counsel has cited Commissioner of Police, New Delhi and Another v. Mehar Singh⁸; Avatar Singh v. Union of India and Others⁹; Union Territory, Chandigarh Administration and Others v. Pradeep Kumar and Others¹⁰ and Pawan Kumar v. Union of India and Another¹¹.

5. *Per contra*, Ms. Savitri Pandey, learned counsel for the respondent, submitted that the learned Single Judge of the High Court has committed an error in dismissing the writ petition² filed by the respondent in view of the fact that while filling up the verification form, he had furnished all the requisite information and duly disclosed the criminal case³ in which he was involved and its final outcome. Although, the respondent was acquitted of all the charges levelled against him, the learned Single Judge had dismissed the writ petition² which order was rightly overturned by the Division Bench of the High Court. Referring to the order dated 26th October, 2015, passed by the learned Sessions Judge, learned counsel for the respondent described it as a case of clean acquittal and argued that the appellant No. 3 ought not to have declared the respondent unfit for being recruited as a Constable.

6. We have heard the arguments advanced by learned counsel for the parties, perused the records and the relevant judgements cited before us.

8 (2013) 7 SCC 685

9 (2016) 8 SCC 471

10 (2018) 1 SCC 797

11 2022 SCC Online SC 532

The question that is required to be answered is whether the appellants have erred in rejecting the candidature of the respondent to the post of Constable, despite the latter having truthfully disclosed in his affidavit the fact that he had faced trial in a criminal case³ which had resulted in his acquittal.

7. It is not in dispute that in the verification form required to be filled up by the respondent, he had made a disclosure of the case registered against him in the year 2015 and the fact that he had faced a trial in the said case that ended in his acquittal *vide* judgement dated 26th October, 2015. In the above circumstances, it cannot be said that the respondent had withheld material information from the appellants while participating in the selection process for the subject post or at the time of filling up the affidavit/verification form. The point on which there is a diversion of opinion between the Division Bench and the learned Single Judge is that while the latter had relied on a decision of this Court in *Avatar Singh*¹⁰ (*supra*) and observed that the Department could not be faulted for issuing the letter dated 24th August, 2017⁸ declaring the respondent as unfit for appointment in government service on the ground that it was a case of moral turpitude, the Division Bench held to the contrary and relying on the very same decision along with one rendered by this Court in *Pradeep Kumar*¹¹ (*supra*) and a Full Bench decision of the High Court of Madhya Pradesh in *Ashutosh Pawar v. High Court of M.P and Another*¹² observed that in a case like the present one where there was no other criminal case pending against the respondent, except for the one in which he had been acquitted and the Department had not undertaken a deeper look at the respondent's past, it was a fit case for relegating the matter to the appellants for fresh consideration.

8. The standard for assessing the suitability of a candidate is measured by the employer based on various factors including the nature of the post, nature of duties, effect of suppression over suitability, etc. However, no hard and fast rule can be laid down in this regard [Refer, *Pawan Kumar*¹² (*supra*)]. It must be emphasised that a candidate who proposes to participate in a selection process, must furnish true and correct information in respect of his character and antecedents in the affidavit/verification form required

to be filled up during the selection process or after induction in the service, as the case may be. A candidate who makes a false declaration or suppresses material information or furnishes half-baked information which may not be the whole truth, can be visited with adverse consequences to the point of his exclusion even though he may have qualified in the entire selection process, based on the said falsity/suppression.

9. In view of the cleavage of opinion expressed in several decisions of this Court, a Division Bench in *Jainendra Singh v. State of Uttar Pradesh*¹³, decided to refer the issue to a larger Bench for an authoritative pronouncement on the question of suppression of information/submitting of false information in the verification form by an aspirant of a job when the incumbent has faced criminal prosecution, been arrested or on account of pendency of a criminal case. The aforesaid conflicting opinions were finally settled by a three-Judges Bench of this Court in *Avatar Singh*¹⁰ (*supra*) where after examining different views expressed by Benches of this Court from time to time, broad guidelines were laid down as to the yardstick to be applied for verification of disclosures made by a candidate to the employer for deciding as to whether the incumbent would be fit for appointment or not. In this context, we may usefully extract the following observations made in *Avatar Singh*¹⁰ (*supra*) : –

“29. 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 kinds of cases?

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36. 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 authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

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38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

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

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

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

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance

and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/ removal or dismissal on the ground of suppression or submitting false information in verification form.

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

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him.”

(emphasis added)

10. As can be discerned from the above decision, an employer has the discretion to terminate or condone an omission in the disclosure made by a candidate. While doing so, the employer must act with prudence, keep in mind the nature of the post and the duties required to be discharged. Higher the post, more stringent ought to be the standards to be applied. Even if a truthful disclosure has been made, the employer is well within its right to examine the fitness of a candidate and in a concluded criminal case, keep in mind the nature of the offence and verify whether the acquittal is honourable or benefit has been extended on technical reasons. If the employer arrives at a conclusion that the incumbent is of a suspect character or unfit for the post, he may not be appointed or continued in service.

11. In *Daya Shankar Yadav. v. Union of India and Others*¹⁴, where this Court was called upon to examine the purpose of seeking information with respect to the antecedents of a candidate, it was observed that the same were essential so as to ascertain the suitability for the post and the disclosures made in the verification form relating to the character and antecedents of the candidate can result in the following consequences:

“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.”

(emphasis added)

12. In State of Madhya Pradesh and Others v. Abhijit Singh Pawar¹⁵ where the State Government had invited applications for filling up the post of Subedars, Platoon Commanders and Inspectors of Police, the respondent candidate who participated in the selection process, filed an affidavit disclosing pendency of a criminal case against him which was subsequently compounded on a compromise arrived at between him and the complainant under Section 320 of the Code of Criminal Procedure¹⁶. Though the respondent was selected on clearing the written examination his candidature was rejected. The reasons offered for declining him an appointment were that the candidate selected is required to maintain law and order of the State and it was considered improper to appoint a person having a criminal record. The said decision was overturned by the learned Single Judge of the High Court and the view taken was affirmed by the Division Bench. When the State Government approached this Court in appeal, citing the decisions in Mehar Singh⁹(supra); R.K. Kapur v. Union of India and Another¹⁷; State of Madhya Pradesh and Others v. Parvez Khan¹⁸; Pradeep Kumar¹¹(supra); and Avatar Singh¹⁰(supra), the following observations were made :—

15 (2018) 18 SCC 733

16 For short ‘the Cr.P.C’

17 AIR 1964 SC 787

18 (2015) 2 SCC 591

13. In Avtar Singh [Avtar Singh v. Union of India, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425], though this Court was principally concerned with the question as to non-disclosure or wrong disclosure of information, it was observed in para 38.5 that even in cases where a truthful disclosure about a concluded case was made, the employer would still have a right to consider antecedents of the candidate and could not be compelled to appoint such candidate.

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16. We must observe at this stage that there is nothing on record to suggest that the decision taken by the authorities concerned in rejecting the candidature of the respondent was in any way actuated by mala fides or suffered on any other count. The decision on the question of suitability of the respondent, in our considered view, was absolutely correct and did not call for any interference. We, therefore, allow this appeal, set aside the decisions rendered by the Single Judge [Abhijit Singh Pawar v. State of M.P., WP No. 9412 of 2013, order dated 31-7-2014 (MP)] as well as by the Division Bench [State of M.P. v. Abhijit Singh Pawar, 2015 SCC OnLine MP 7517] and dismiss Writ Petition No. 9412 of 2013 preferred by the respondent. No costs.

13. In *Rajasthan Rajya Vidhut Prasaran Nigam Limited and Another v. Anil Kanwaria*¹⁹, where the employer had invited applications for the post of a Technical Helper and on qualifying for the said post, the respondent therein was appointed as a probationer trainee, in the course of his police verification which was a pre-condition for confirming him to the post, it had transpired that he had been convicted by the trial Court for offences under Sections 323 and 341 of the IPC but was extended benefit under the Probation of Offenders Act, 1958 and released on good conduct. This Court observed that at the time of submitting an application for appointment, the respondent had already suffered a conviction by the competent Court which fact was withheld by him and he had filed a false declaration. These facts emerged only after receiving the police verification report. After distilling the law on appointments obtained by fraud or misrepresentation/by suppression of material facts, this Court proceeded to quash and set aside

the order passed by the learned Single Judge and upheld the order passed by the Division Bench of the High Court, directing reinstatement of the respondent – employee and held that said decision was unsustainable in view of the fact that the employee had not disclosed/suppressed material facts and had filed a false declaration.

14. In the captioned case, this Court expressed a view that even where there was a subsequent acquittal, the employee having furnished false information/indulged in suppression of material fact of a pending criminal case, cannot claim appointment as a matter of right. Following are the observations made regarding the credibility of such an employee from the perspective of the employer:

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

15. On applying the law expounded by this Court in a series of decisions to the facts of the instant case, we find that the Division Bench of the High Court has dismissed the appeal¹ preferred by the appellant – State

Government and set aside the order passed by the learned Single Judge who had upheld the order passed by the Competent Authority⁸, terminating the services of the respondent on the ground that he was candid enough to make a disclosure in his verification form stating that he had been chargesheeted in a criminal case³ wherein he was later on acquitted and there was no other criminal case pending against him at the relevant time.

16. We are, however, unable to concur with the aforesaid view. Even though the respondent had truthfully declared that he was involved in a criminal case which was decided by the trial Court *vide* judgement 26th October, 2015, on perusing the facts of the said case as noted hereinabove and the observations made in the judgement, quite clearly, this was not a case of clean acquittal. It is evident from the facts narrated that after the chargesheet was filed, the respondent had arrived at a compromise with the complainant and filed an application under Section 320 of the CrPC, based on which the offence under Section 341 IPC was compounded. As for the remaining offences for which the respondent was charged i.e. Section 354(D) of the IPC and Section 11 (D)/12 of the POCSO Act, they were non compoundable and therefore, the matter was taken to trial. The respondent was acquitted by the trial Court primarily on account of the fact that the complainant did not support the case set up by the prosecution and the other prosecution witnesses had turned hostile. In such circumstances, the respondent's plea that he had been given a clean acquittal in the criminal case, is found to be devoid of merits.

17. This is a classic example of the situation contemplated in para 38.4.3 of *Avatar Singh*¹⁰ (*supra*) where the charges framed against the respondent herein involved moral turpitude and though he was acquitted on the prosecution witnesses having turned hostile, but given the facts and circumstances of the case which led to his acquittal, we are of the view that the appellant – State Government was well within its right to exercise its discretion against the respondent and terminate his services on the ground that he was unfit for appointment in the police department. Here was a case where the complainant had reneged from the statement made to the police in view of a settlement arrived at with the respondent. It is noteworthy that the incident, subject matter of the criminal case³ had occurred on 14th February, 2015, and judgement was pronounced by the

trial Court on 26th October, 2015. In the very next year, when the appellant – State Government invited applications for appointment to the post of Constable, the respondent had submitted his application. Even though this is a case of candid disclosure of the criminal case³ on the part of the respondent, which had culminated in an acquittal, but having regard to the fact that the prosecution could not succeed in proving the case against the respondent for the reasons noted hereinabove and further, being mindful of the fact that the case involved moral turpitude and the respondent was charged with non-compoundable offences of a serious nature, we are of the firm view that the judgment of the trial Court cannot be treated as a clean acquittal.

18. The aforesaid aspects were rightly factored in by the appellant – State Government while issuing the communication dated 24th August, 2017⁸ and declaring that the respondent was unfit for appointment to the said post. The yardstick to be applied in cases where the appointment sought relates to a Law Enforcement Agency, ought to be much more stringent than those applied to a routine vacancy. One must be mindful of the fact that once appointed to such a post, a responsibility would be cast on the respondent of maintaining law and order in the society, enforcing the law, dealing with arms and ammunitions, apprehending suspected criminals and protecting the life and property of the public at large. Therefore, the standard of rectitude to be applied to any person seeking appointment in a Law Enforcement Agency must always be higher and more rigorous for the simple reason that possession of a higher moral conduct is one of the basic requirements for appointment to a post as sensitive as that in the police service.

19. We are, therefore, of the opinion that mere acquittal of the respondent in the criminal case³ would not automatically entitle him to being declared fit for appointment to the subject post. The appellant–State Government has judiciously exercised its discretion after taking note of all the relevant factors relating to the antecedents of the respondent. In such a case, even one criminal case faced by the respondent in which he was ultimately acquitted, apparently on the basis of being extended benefit of doubt, can make him unsuitable for appointment to the post of a Constable. The said decision taken by the appellant–State Government

is not tainted by any *malafides* or arbitrariness for the High Court to have interfered therewith. As a result, the judgement dated 17th November, 2017, passed by the learned Single Judge is upheld while quashing and setting aside the impugned judgment dated 24th January, 2018, passed by the Division Bench of the High Court. The appeal is allowed. Parties are left to bear their own costs.

Headnotes prepared by:
Ankit Gyan

Appeal allowed.