# Rajasthan Rajya Vidyut Prasaran Nigam ... vs Anil Kanwariya on 17 September, 2021

## Equivalent citations: AIRONLINE 2021 SC 728

## Author: M.R. Shah

## Bench: A.S. Bopanna, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 5743-5744 OF 2021
(Arising out of SLP(Civil) Nos.7386-7387/2020)

Rajasthan Rajya Vidyut Prasaran Nigam
Limited and another … Appellants

Versus

Anil Kanwariya … Respondent

JUDGMENT

M.R. SHAH, J.

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 05.09.2019 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur in D.B. Special Appeal Writ No. 560/2019, as well as the order dated 05.12.2019 passed in D.B. Review Petition (Writ) No. 250/2019, by which the Division Bench of the High Court has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge dated 23.01.2019 by which the learned Single Judge allowed the said writ petition preferred by the respondent herein and quashed and set aside the order of termination terminating the services of the respondent – employee herein – original writ petitioner on the ground of suppression of material facts of conviction and penalty at the time of applying for the post in 2013 and also submitting a false declaration at the time of documents verification on 14.04.2015, the employer – Rajasthan Rajya Vidyut Prasaran Nigam Limited and another have preferred the present appeal.

3. That the appellants herein invited applications for the post of Technical Helper by issuing advertisement in the month of October, 2013. Pursuant to the said advertisement, respondent

herein – employee applied for the said post. The written test was held on 02.02.2014 and result of which was declared on 31.03.2015. The date fixed for the documents' verification was 14.04.2015. The respondent herein having qualified for the said post was appointed as a Technical Helper as probationer trainee for a period of two years on 06.05.2015 and was placed under Superintending Engineer, RVPN, Jodhpur. As per condition No. 16 of the terms and conditions of the appointment order, the appointment of the respondent was subject to production of a character certification/verification report issued by the Superintendent of Police of the concerned District where he belongs. The Superintendent of Police, Sawai Madhopur vide police verification/antecedents report dated 5.6.2015 informed the appellants that a Case bearing No. 13/2011 against the respondent-employee for the offences under Sections 143, 341, 323 IPC in which a chargesheet was filed against the respondent- employee on 17.01.2011 and the learned trial Court convicted the respondent-employee vide judgment and order dated 5.8.2013, convicting him for the offences under Sections 341 and 323 IPC, however, given the benefit under the Probation of Offenders Act, 1958 (hereinafter referred to as "Act 1958"). While giving the benefit of Act 1958, the respondent-employee was ordered to be released on probation for good conduct.

It is to be noted that even subsequently such conviction of the respondent-employee came to be confirmed, however, the learned Sessions Judge vide judgment dated 09.09.2015 granted the benefit of Section 12 of the Act 1958 to the respondent-employee which provides that a person shall not suffer disqualification attaching to the conviction. 3.1 Having found that the respondent-employee deliberately suppressed the fact of conviction and penalty, not only at the time of applying for the post, but also on 14.04.2015 whereby he submitted a declaration during documents verification that neither criminal case is pending against him nor he has suffered any conviction by any court of law in any criminal case and finding concealment of facts of criminal case, the appellants issued a show cause notice dated 31.08.2015 to the respondent-employee and granted him an opportunity of being heard on 15.03.2016 and having found that in view of suppression of material fact of not disclosing his conviction by the competent court, respondent- employee shall not be continued in service and therefore vide order dated 6.5.2016, the appellants terminated the services of the respondent-employee.

3.2 Aggrieved by the order of termination, the respondent-employee preferred Writ Petition No. 6969 of 2016 before the learned Single Judge of the High Court. The learned Single Judge of the High Court solely relying on the judgment of this Court in the case of Avtar Singh v. Union of India, reported in (2016) 8 SCC 471, and also on order dated 9.9.2015 passed by the learned Sessions Judge in appeal granting benefit of Section 12 of the Act 1958, allowed the writ petition and quashed and set aside the order of termination and directed the appellants to reinstate the respondent-employee with all consequential benefits.

3.3 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, quashing and setting aside the order of termination and directing the appellants to reinstate the respondent-employee, the appellants-employer preferred appeal before the Division Bench being D.B. Special Appeal Writ No. 560 of 2019. The Division Bench also solely relying upon para 38.4.1 of the decision of this Court in the case of Avtar Singh (supra) and observing that the employee was held guilty in a dispute of trivial nature with his father, uncle, brother and cousin and

as it was a trivial nature dispute and such a dispute which even if disclosed could have been ignored by the employer because of the benefit of Section 12 of the Act 1958, the Division Bench by the impugned judgment and order has dismissed the said appeal and has confirmed the judgment and order passed by the learned Single Judge, directing reinstatement of the employee with all consequential benefits. The review petition preferred by the appellants herein has also been dismissed.

4. Dr. Manish Singhvi, learned Senior Advocate has appeared on behalf of the appellants and Mr. Navin Prakash, Advocate has appeared on behalf of the respondent-employee.

4.1 Dr. Manish Singhvi, learned Senior Advocate appearing on behalf of the appellants-employer has vehemently submitted that in the facts and circumstances of the case, both, the learned Single Judge as well as the Division Bench have materially erred in quashing and setting aside the order of termination mainly relying upon the decision of this Court in the case of Avtar Singh (supra) and considering the subsequent order passed by the learned Sessions Court granting the benefit of Section 12 of the Act 1958.

4.2 It is further submitted that, as such, in the facts and circumstances of the case, the decision of this Court in the case of Avtar Singh (supra) shall not be applicable at all. It is submitted that on the contrary it supports the case of the appellants.

4.3 It is further submitted that in the present case at the time when the respondent-employee applied for the advertised post, he was already convicted for the offences under Sections 341 and 323 IPC by the competent criminal court which he did not disclose. It is submitted that even thereafter also when he submitted the declaration at the time of documents verification on 14.04.2015, the respondent-employee though already suffered a conviction for the offences under Sections 341 and 323 IPC and at that time, i.e., on 14.04.2015, only the benefit under Sections 3 & 4 of the Act 1958 was given, he filed a false declaration. It is submitted that the learned trial Court did not grant the benefit of Section 12 of the Act 1958, which benefit of Section 12 of the Act 1958 was given only vide judgment and order dated 9.9.2015 by the learned Sessions Judge. It is submitted that as the respondent-employee suppressed the material fact of criminal case firstly in the year 2013 when he submitted the application and thereafter subsequently on 14.04.2015 when he submitted the declaration at the time of documents verification and thereafter when the services of the respondent were terminated after giving him an opportunity of being heard, the same ought not to have interfered with by the learned Single Judge and thereafter by the Division Bench.

4.4 It is further submitted that the High Court has materially erred in even considering the subsequent decision of the learned Sessions Court in appeal granting the benefit of Section 12 of the Act 1958. It is submitted that the date on which the respondent applied for the said post and even submitted the declaration, there was no order passed by the learned Sessions Court granting the benefit of Section 12 of the Act 1958 and at that time the order passed by the learned trial Court granting the benefit of Sections 3 & 4 of the Act 1958 was subsisting. Therefore, the High Court ought not to have relied upon and/or taken into consideration the subsequent decision of the learned Sessions Judge dated 9.9.2015 granting the benefit of Section 12 of the Act 1958. 4.5 It is

further submitted by the learned senior counsel appearing on behalf of the appellants that the matter may be looked at from another angle. It is submitted that when the employee initially suppressed the material fact and obtained the appointment fraudulently, thereafter it is a case of trustworthiness, reliability and credibility of such an employee. It is submitted that if the employee would have disclosed at the relevant time that he is facing the criminal trial and/or he has been convicted, in that case from the very inception, the employer would not have employed him. It is submitted that therefore the employer is justified in not continuing such an employee who has suppressed the material fact at the relevant time, on the premise that such a person cannot be trusted thereafter and cannot be continued in service.

4.6 It is further submitted that even the observations made by the Division Bench in the impugned judgment that the dispute for which the employee was convicted was a trivial nature dispute and such a dispute which even if disclosed could have been ignored by the employer because of the benefit of Section 12 of the Act 1958 given to him is absolutely irrelevant, it is submitted that such a reasoning is not germane. It is submitted that such an observation is on the basis of surmises and conjectures that what could have been done by the employer.

4.7 Making the above submissions and relying upon the decisions of this Court in the cases of Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav, (2003) 3 SCC 437; Secretary, Department of Home Secretary, A.P. v. B. Chinnam Naidu, (2005) 2 SCC 746; Daya Shankar Yadav v. Union of India, (2010) 14 SCC 103; Jainendra Singh v. State of U.P., (2012) 8 SCC 748; Devendra Kumar v. State of Uttaranchal, (2013) 9 SCC 363; and State of M.P. v. Abhijit Singh Pawar, (2018) 18 SCC 733, it is prayed to allow the present appeals and quash and set aside the impugned judgment and order passed by the Division Bench and consequently quash and set aside the judgment and order passed by the learned Single Judge and consequently dismiss the writ petition filed by the respondent-employee before the High Court.

5. The present appeals are vehemently opposed by Shri Navin Prakash, learned Advocate appearing for the respondent-employee. It is submitted that in the facts and circumstances of the case and more particularly the order passed by the learned Sessions Court granting the benefit under Section 12 of the Act 1958 and considering the fact that the dispute was of a trivial nature with the family members, the learned Single Judge rightly set aside the order of termination which has been rightly confirmed by the Division Bench.

5.1 It is further submitted that the order passed by the learned Single Judge, confirmed by the Division Bench, is absolutely in consonance with the decision of this Court in the case of Avtar Singh (supra), more particularly para 38.4.1 of the said decision.

5.2 It is further submitted by the learned counsel that even otherwise the omission or the lapse committed on the part of the respondent was neither intentional nor deliberate, rather it was under bonafide belief that in view of the benefit granted to the respondent under the provisions of section 3 of the Act 1958 by the learned trial Court, the respondent has not incurred disqualification. It is submitted therefore the said omission or the lapse deserves to be condoned by taking a lenient view. Heavy reliance is placed on the decisions of this Court in the cases of T.S. Vasudavan Nair v.

Director of Vikram Sarabhai Space Centre, 1988 Supp. SCC 795; Commissioner of Police v. Sandeep Kumar, (2011) 4 SCC 644; and Avtar Singh (supra).

5.3 It is further submitted that in the instant case, as has been held by the learned Single Judge in judgment and order dated 23.01.2019, the employer – appellants herein did not at all consider the case of the respondent as regard to the extenuating circumstances and the benefit granted to him under sections 3 & 12 of the Act 1958 by the learned trial Court and the learned sessions Court.

5.4 Making the above submissions and relying upon the aforesaid decisions, it is prayed to dismiss the present appeals.

6. We have heard the learned counsel for the respective parties at length.

At the outset, it is required to be noted that the appellants herein – employer terminated the services of the respondent on non-disclosure of the pending criminal case against him at the time when he submitted the application for appointment, submitted in the month of October/November, 2013 and thereafter in the declaration dated 14.04.2015. As observed hereinabove, the respondent was chargesheeted for the offences under Sections 143, 341 and 323 IPC vide chargesheet dated 17.01.2011. The learned trial Court convicted the respondent for the offences under Sections 341 & 323 IPC, vide judgment and order dated 5.8.2013. However, granted the benefit under Section 3 of the Act 1958 only. In the month of October, 2013, the appellants issued an advertisement for the post of Technical Helper and the last date for submission of the application was 14.11.2013. Pursuant to the said advertisement, the respondent applied for the said post and the written test was held on 02.02.2014 and the result of which was declared on 31.03.2015. The respondent submitted declaration on 14.04.2015 declaring that neither any criminal case is pending against him nor he has been convicted by any court of law. The date fixed for documents verification was 14.04.2015 and along with the documents verification he was required to file a declaration which he submitted stating that neither any criminal case is pending against him nor he has been convicted by any court of law. Therefore, on the date of submitting an application and even at the time when declaration was filed on 14.04.2015, there was already an order of conviction against him. Even at the relevant time, the benefit of Section 12 of the Act 1958 was not granted to the respondent, which was given subsequently vide judgment of the learned Sessions Court dated 09.09.2015.

6.1 At this stage, it is required to be noted that the show cause notice dated 31.08.2015 was followed after the employer received the police verification/antecedents report dated 5.6.2015 of the Superintendent of Police, Sawai Madhopur disclosing that the respondent was already convicted by the learned trial Court vide judgment and order dated 5.8.2013 and was granted the benefit of Section 3 of the Act 1958 only. That thereafter it appears that having realised that in view of the conviction imposed by the learned trial Court and granted the benefit of Section 3 of the Act 1958 only, the same shall come in his way, belatedly the respondent preferred an appeal before the learned Sessions Court on 11.08.2015, challenging the judgment and order of conviction passed by the learned trial Court dated 5.8.2013, i.e., after a period of two years. That by judgment and order dated 9.9.2015, the learned Sessions Court allowed the said appeal partly, however granted the benefit of Section 12 of the Act 1958, as prayed.

6.2 From the judgment and order passed by the learned Sessions Court, it appears that only submission on behalf of the respondent was with respect to granting the benefit of Section 12 of the Act 1958 and the appeal came to be disposed of by the learned Sessions Court within a period of one month from the date of filing of the appeal, though the judgment and order of conviction by the learned trial Court was passed in the year 2013. Therefore, it appears that only with a view to get out of the disqualification of conviction, belatedly he preferred an appeal and obtained the order of granting the benefit of Section 12 of the Act 1958. Even otherwise, it is required to be noted that on getting the benefit of Section 12 of the Act 1958 subsequently by that itself the respondent cannot get away of the allegations of suppression of material fact and filing a false declaration that neither any criminal case is pending against him nor he has been convicted by any court of law, which was filed on 14.04.2015.

6.3 Thus, at the time when he submitted the application for appointment in the month of October/November 2013, the respondent already suffered a conviction by the competent court which not only he did not disclose, but in fact, a false declaration was filed that neither any criminal case is pending against him nor he has been convicted by any court of law. That thereafter after receipt of the police verification/antecedents report dated 5.6.2015 from the Superintendent of Police, Sawai Madhopur and after giving a show cause notice and an opportunity of being heard to the respondent, the employer terminated the services of the respondent on the ground of non-disclosure /suppression of material fact and filing a false declaration.

7. In light of the aforesaid facts, the orders passed by the learned Division Bench as well as the learned Single Judge of the High Court and the reliance placed upon the decision of this Court in the case of Avtar Singh (supra), relied upon on behalf of the respondent-employee, are required to be considered.

8. While considering the aforesaid issues, few decisions of this Court on appointment obtained by fraud/misrepresentation and/or appointment obtained by suppression of material facts are required to be referred to and considered.

8.1 In the case of B. Chinnam Naidu (supra), this Court has observed that the object of requiring information in the attestation form and the declaration thereafter by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service. It is further observed that when a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service. 8.2 In the case of Devendra Kumar (supra), while joining the training, the employee was asked to submit an affidavit giving certain information, particularly, whether he had ever been involved in any criminal case. The employee submitted an affidavit stating that he had never been involved in any criminal case. The employee completed his training satisfactorily and it was at this time that the employer in pursuance of the process of character verification came to know that the employee was in fact involved in a criminal case. It was found that the final report in that case had been submitted by the prosecution and accepted by the Judicial Magistrate concerned. On the basis of the same, the employee was discharged abruptly on the ground that since he was a temporary government servant, he could be removed from service without holding an enquiry. The said order was challenged by the employee

by filing a writ petition before a Single Judge of the High Court which was dismissed. The Division Bench upheld that order, which was the subject matter of appeal before this Court. Dismissing the appeal, this Court observed and held that the question is not whether the employee is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. It is further observed that the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information and in that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged. It is further observed by this Court in the said decision that where an applicant/employee gets an order by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. "Fraud avoids all judicial acts, ecclesiastical or temporal". It is further observed and held that dishonesty should not be permitted to bear the fruit and benefit those persons who have defrauded or misrepresented themselves and in such circumstances the court should not perpetuate the fraud by entertaining petitions on their behalf. The relevant observations in the said decision are in paras 12, 13, 18 & 25, which are as under:

> 12. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more res integra. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/discharged.
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> 13. It is a settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. "Fraud avoids all judicial acts, ecclesiastical or temporal." [Vide S.P. Chengalvaraya Naidu v. Jagannath (1994) 1 SCC 1: AIR 1994 SC 853.] In Lazarus Estates Ltd. V. Beasley [(1956) 1 QB 702: (1956) 2 WLR 502:
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> (1956) 1 ALL ER 341 (CA)] the Court observed without equivocation that:
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> (QB p. 712) "... No judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."
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> 18. The ratio laid down by this Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the court should not perpetuate the fraud by entertaining petitions on their behalf. In Union of India v. M. Bhaskaran

> (1995) Supp (4) SCC 100 this court, after placing reliance upon and approving its earlier judgment in Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi (1990) 3 SCC 655, observed as under: (M. Bhaskaran case, SCC p. 104, para 6) If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a court of law as the employment secured by fraud renders it voidable at the option of the employer.
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> 25. More so, if the initial action is not in consonance with law, the subsequent conduct of party cannot sanctify the same. Sublato fundamento cadit opus – a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim nullus commodum caprere potest de injuria sua propria applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. [Vide Union of India v. Major General Madan Lal Yadav (1996) 4 SCC 127:1996 SCC (Cri) 592: AIR 1996 SC 1340 and Lily Thomas v. Union of India (2000) 6 SCC 224: 2000 SCC (Cri) 1056.] Nor can a person claim any right arising out of his own wrongdoing (jus ex injuria non oritur).

8.3 In the case of Jainendra Singh (supra), this Court summarised the principles to be considered in a case where the appointment is obtained by misrepresentation and/or suppression of facts by candidates/appointees as under:

> "(i) 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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> (ii) 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 find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.
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> (iii) 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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> (iv) 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.

(v) 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 clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

(vi) The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

(vii) 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.

(viii) 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.

(ix) An employee in the uniformed service 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.

(x) 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." 8.4 In the case of Daya Shankar Yadav (supra), this Court had an occasion to consider the purpose of seeking the information with respect to antecedents. It is observed and held that the purpose of seeking the information with respect to antecedents is to ascertain the character and antecedents of the candidate so as to assess his suitability for the post.

It is further observed that 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 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." Thereafter, it is observed and held that an employee can be discharged from service or a prospective employee may be refused employment 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).

8.5 In the case of Abhijit Singh Pawar (supra), when the employee participated in the selection process, he tendered an affidavit disclosing the pending criminal case against him. The affidavit was filed on 22.12.2012. According to the disclosure, a case registered in the year 2006 was pending on the date when the affidavit was tendered. However, within four days of filing such an affidavit, a compromise was entered into between the original complainant and the employee and an application for compounding the offence was filed under Section 320 Cr.P.C. The employee came to be discharged in view of the deed of compromise. That thereafter the employee was selected in the examination and was called for medical examination. However, around the same time, his character verification was also undertaken and after due consideration of the character verification report, his candidature was rejected. The employee filed a writ petition before the High Court challenging rejection of his candidature. The learned single Judge of the High Court of Madhya Pradesh allowed the said writ petition. The judgment and order passed by the learned single Judge directing the State to appoint the employee came to be confirmed by the Division Bench which led to appeal before this Court. After considering catena of decisions on the point including the decision of this Court in the case of Avtar Singh (supra), this Court upheld the order of the State rejecting the candidature of the employee by observing that as held in Avtar Singh (supra), 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. After reproducing and/or re-considering para 38.5 of the decision in the case of Avtar Singh (supra), in paragraph 13, this Court observed and held as under:

> 13. In Avtar Singh (supra), 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.

In the said decision, this Court also considered the conduct on the part of the employee in getting discharge on the basis of the compromise which was obtained within a period of four days of filing the affidavit/disclosure. In paragraph 14, it is observed and held as under:

> 14. In the present case, as on the date when the respondent had applied, a criminal case was pending against him. Compromise was entered into only after an affidavit disclosing such pendency was filed. On the issue of compounding of offences and the effect of acquittal under Section 320(8) of CrPC, the law declared by this Court in Mehar Singh (2013) 7 SCC 685, specially in paras 34 and 35 completely concludes the issue.

Even after the disclosure is made by a candidate, the employer would be well within his rights to consider the antecedents and the suitability of the candidate. While so considering, the employer can certainly take into account the job profile for which the selection is undertaken, the severity of the charges levelled against the candidate and whether the acquittal in question was an honourable acquittal or was merely on the ground of benefit of doubt or as a result of composition.

9. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, the impugned order passed by the Division Bench dismissing the appeal and confirming the order passed by the learned single Judge quashing and setting aside the order of termination terminating the services of the employee on the ground of non-disclosure/suppression of material fact and filing a false declaration and directing the appellants to reinstate the respondent-employee is unsustainable.

10. Apart from the fact that at the time when the respondent applied in the month of October/November, 2013 though he was already convicted by the competent court and was given the benefit under Section 3 of the Act 1958 only, he did not disclose his conviction, but even at the time when he filed a declaration on 14.04.2015 he filed a false declaration that neither any criminal case is pending against him nor he has been convicted by any court of law and relying upon such a declaration the appellants gave him appointment. Only on police verification/receipt of the antecedent's report from the Superintendent of Police, Sawai Madhopur, the appellants came to know about the conviction of the respondent. Therefore, the appellants were absolutely justified in terminating the services of the respondent.

11. Even the conduct on the part of the respondent to obtain the order subsequently from the learned Sessions Court in an appeal and getting the benefit of Section 12 of the Act 1958 deserves consideration. As observed hereinabove, the judgment and order of conviction by the learned trial Court was passed as far back as on 5.8.2013. For two years, the respondent did not file any appeal before the learned Sessions Court. After a period of approximately two years and after he obtained the appointment on the basis of the false declaration that neither any criminal case is pending against him nor he has been convicted by any court of law and having realised that his conviction and the benefit granted under Section 3 of the Act 1958 by the learned trial Court only will come in his way, subsequently after a period of two years he filed an appeal before the learned Sessions Court on 11.08.29015 and the appeal came to be disposed of within a period of one month, i.e., on 9.9.2015 and the learned Sessions Court granted the benefit of Section 12 of the Act 1958. From the judgment and order passed by the learned Sessions Court, it appears that the respondent only prayed for giving the benefit of Section 12 of the Act 1958 and nothing was contended by him with regard to conviction and order of sentence. Therefore, with a view to get out of the conviction and the benefit of Section 3 of the Act 1958 only and having realised that his conviction may come in his way, he preferred an appeal after a period of two years and obtained the benefit of Section 12 of the Act 1958 which provides that a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law.

Even otherwise, subsequently getting the benefit of Section 12 of the Act 1958 shall not be helpful to the respondent inasmuch as the question is about filing a false declaration on 14.04.2015 that neither any criminal case is pending against him nor he has been convicted by any court of law, which was much prior to the order passed by the learned Sessions Court granting the benefit of Section 12 of the Act 1958. As observed hereinabove, even in case of subsequent acquittal, the employee once made a false declaration and/or suppressed the material fact of pending criminal case shall not be entitled to an appointment as a matter of right.

12. 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.

13. In view of the afore-stated facts and circumstances of the case, both, the learned Division Bench as well as the learned Single Judge have clearly erred in quashing and setting aside the order of termination terminating the services of the respondent on the ground of having obtained an appointment by suppressing material fact and filing a false declaration. The order of reinstatement is wholly untenable and unjustified.

14. In view of the above and for the reasons stated above, the present appeals succeed. The impugned judgment and order passed by the Division Bench, as well as, the order passed by the learned Single Judge quashing and setting aside the order of termination are hereby quashed and set aside. Consequently, the writ petition filed by the respondent-employee stands dismissed and the order of termination stands restored. However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J.
[M.R. SHAH]

NEW DELHI; .....J.
SEPTEMBER 17, 2021. [A.S. BOPANNA]