

# Shimbhu Singh vs State Of U.. And Others on 1 November, 2012

**Author: Devendra Pratap Singh**

**Bench: Devendra Pratap Singh**

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Court No. - 1

Case :- WRIT - A No. - 20356 of 2008

Petitioner :- Shimbhu Singh

Respondent :- State Of U.. And Others

Petitioner Counsel :- P.K. Lal, Sanjay Kumar

Respondent Counsel :- C.S.C.

Hon'ble Devendra Pratap Singh, J.

1. Learned counsel for the petitioner has made a statement that he does not wish to file any rejoinder affidavit.
2. Heard learned counsel for the parties at length and perused the record.
3. This petition is directed against an order dated 2nd of September 2007 by which the selection of the petitioner has been cancelled.
4. It is pleaded that in pursuance of an advertisement dated 6.1.2005 and 21.1.2005, the petitioner had applied for recruitment to the post of Constable. After being selected, he was appointed on 15.5.2005. While he was posted in Bareilly, he was served with the impugned order cancelling his selection without giving any notice or opportunity. It is further pleaded that he had given an affidavit dated 16.4.2005 at the time of his selection that no criminal case was ever lodged or was

pending against him and he was never arrested in any criminal case. It is further pleaded that from the impugned order he came to know that a Criminal Case No.121 of 2000 had been lodged against him at Police Station G.R.P., Shahjahanpur under Section 3/25 of the Arms Act. It is also pleaded that he neither knew about the said case nor was ever arrested or interrogated in it. It is then pleaded that after receiving the impugned order, he found out that a false case was registered whereafter he was acquitted vide order dated 1.2.2008. It is explained that some body had got lodged a false case against him in collusion with G.R.P. and made complaint to the D.I.G. who got it enquired, whereafter the impugned order was passed.

5. Before the Court deals with the arguments of the petitioner, it would be appropriate to note the facts which stand proved from the record.

6. The petitioner was an accused in case Crime No.121 of 2000 lodged at Police Station G..R.P., Shahjahanpur. He was arrested in the night intervening 7th and 8th May, 2000 and sent to jail. He was released on bail. Charge-sheet was submitted against him and after taking cognizance, it was converted into a criminal trial no.7619 of 2005 and charges were framed against him, which was denied by him and he claimed to be tried.

7. The petitioner applied for recruitment to the post of Constable and submitted a declaration in the nature of an affidavit dated 16.4.2005. He swore and declared that to the best of his knowledge, no criminal case, either cognizable or non-cognizable was ever registered against him, no police report for any criminal case was ever filed against him; he was never arrested in any criminal case. He further gave an undertaking that if any information given in the declaratory affidavit is found to be false at any point of time, he may be removed from service and he would have no objection.

8. On these proven facts, let us consider the first argument of the petitioner about the truthfulness of the affidavit.

9. It is urged that the affidavit dated 16.4.2005 filed by the petitioner was correct and he did not know about the lodging of the criminal case before he was confronted by the impugned order and in fact he was never arrested in the said case. It is further urged that some imposter has created the entire story only to cause harm to the petitioner.

10. A perusal of the Judgment dated 1.2.2008, which has been filed by the petitioner himself, shows that he was arrested by Constables Bindeshwari Dubey and Ram Bax Maurya of G.R.P. Police Station Shahjahanpur in the night intervening 7/8th May, 2000. It also shows that he was released on bail. It also shows that after framing of charges in 2005, he gave his statement to the Magistrate under Section 313 Cr.P.C. claiming to be tried for the offence under Section 3/25 of Arms Act. The factum of his arrest and bail is also mentioned in paragraph 10 of the uncontroverted counter affidavit filed by the State. However, there is neither any explanation nor denial of these proven facts. Thus, it is established that the petitioner had knowingly and deliberately filed a false affidavit to seek appointment to the post of Constable. Therefore, the first argument of the petitioner, apart from being untenable, lacks any factual foundation. It is preposterous even to suggest, let alone to seriously argue that an impostor in 2000 would get himself arrested and obtain bail, so that he may

use it to discredit the petitioner in 2005 when he is appointed as a Constable !

11. It is then urged, in fact great emphasis has been laid by the petitioner that Superintendent of Police did not record his satisfaction about the suitability of the petitioner for the post in accordance to Government Order dated 28.4.1958, and therefore, the order cannot be sustained. He has relied upon the Apex Court decision in the case of Ram Kumar vs. State of U.P. [2011 (4) ESC 634 (SC)], decision of this Court in the case of Rashid Khan vs. State of U.P. [2012 (4) ADJ 583]; Dinesh Chandra vs. State of U.P. & others (Special Appeal No.52 of 2012) decided on 14.9.2012 and Dhananjay Singh vs. State of U.P. & others (Special Appeal No.1946 of 2011) decided on 14.9.2012.

12. Before the Court deals with this argument, it would be relevant to take note of the ratio laid down by the Apex Court in its earlier decision in Kendriya Vidyalaya Sangathan and others vs. Ram Ratan [2003 (3) SCC 437], which though was distinguished on facts in Ram Kumar's case (supra), but not overruled. In Kendriya Vidyalaya (supra), the facts were that the incumbent while seeking appointment in an institution, had given a false declaration in the attestation form that no criminal case was pending against him and he had never been prosecuted. However, on verification, it was found that a criminal case under Sections 323, 341, 294, 506B read with Section 34 IPC was pending and on this false declaration, his services were dispensed. On challenge before the High Court, the writ petition was allowed observing that the criminal case was withdrawn by the State Government meaning thereby that the case was not serious and it did not involve moral turpitude. On appeal, the Supreme Court set aside the High Court judgment and held to the following effect in para 12 of the report :

"The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedent of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal

of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of columns 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted."

13. The facts in Ram Kumar's case (supra) were that Ram Kumar applied for and was selected and appointed as Police Constable in 2006 upon a declaration that no criminal case was registered against him, though on verification it was found that a case under Sections 324, 323, 504 IPC had been lodged in 2001, but he was acquitted in July 2002. But his services were dispensed on the ground of filing false affidavit to secure employment. On challenge before the High Court, it dismissed the writ petition relying upon the decision of Kendriya Vidyalaya (supra). He appealed to the Apex Court where it was argued that since he had been acquitted more than four years ago, he did not mention it in the affidavit. It was on these facts and arguments that the Court held that the authority had to adjudge the suitability of the incumbent in view of Government Order dated 28.4.1958. And on these facts, the Apex Court, distinguished the decision in Kendriya Vidyalaya Sangathan in the following words in para 10 of the report :-

"In Kendriya Vidyalaya Sangathan and others vs. Ram Ratan Yadav (supra) relied on by the respondents a criminal case had been registered under Sections 323, 341, 294, 506-B read with Section 34 IPC and was pending against the respondent in that case and the respondent had suppressed this material in the attestation form. The respondent, however, contended that the criminal case was subsequently withdrawn and the offences in which the respondent was alleged to have been involved were also not of serious nature. On these facts, this Court held that the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya and he could not be suitable for appointment as the character, conduct and antecedents of a teacher will have some impact on the minds of the students of impressionable age and if the authorities had dismissed him from service for suppressing material information in the attestation form, the decision of the authorities could not be interfered with by the High Court. The facts of the case in Kendriya Vidyalaya Sangathan and others vs. Ram Ratan Yadav (supra) are therefore materially different from the facts of the present case and the decision does not squarely cover the case of the appellant as has been held by the High Court."

14. In the case of Rashid Khan (supra) also the facts were identical to that of Ram Kumar, and totally relying upon the decision of the Apex Court, the order of cancellation was set aside by the Division. In the cases of Dinesh Chandra (supra) and Dhananjay Singh (supra), the Division Bench of this Court recorded a specific finding to the effect in paragraph 9 : ".....There is nothing on record to say that at the time of filing of the affidavit, the appellant had knowledge of the pendency of the case. ...." and in paragraph 10 of both the reports, it held : "in such circumstances, finding that the appellant had filed false affidavit without there being any material that the appellant had knowledge of the case on the date of filing of the affidavit does not appear to be correct. ...." Both these cases are distinguishable. As already found, herein above, that from the judgment itself, it is apparent that the petitioner was arrested in the night intervening 7/8th of May 2000 and thereafter he was released on bail, thus, on the date of filing the affidavit, the petitioner had full knowledge. Accordingly, the ratio of both these cases would not apply to the present case.

15. It is apparent that the foundational facts in all the five cases is entirely different. In all the five cases the question was the examination of the previous antecedents and character of the incumbent. The Apex Court in the case of Daya Shanker Yadav vs Union of India & others [2011 (2) SCC 439] has drawn a distinction between previous antecedents and character with current dubious conduct and character in the following words :

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

(a) If the declarant has answered the questions in the affirmative and furnished the details of any criminal case (wherein he was convicted or acquitted by giving benefit of doubt for want of evidence), the employer may refuse to offer him employment (or if already employed on probation, discharge him from service), if he is found to be unfit having regard to the nature and gravity of the offence/crime in which he was involved.

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

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

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

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

16. Examining the crucial difference of facts in Ram Kumar's case, where the incumbent was acquitted four years before filing the attestation form, and the present case, where the criminal case was pending and he was on bail, on the ambit of the above ratio, it would show "a current dubious conduct and absence of character at the time of making the declaration, thereby making him unsuitable for the post". It is also well settled that a case can be relied upon for the proposition it decides and not what logically follows from it because one difference on facts, here or there, may make a world of difference. The facts in all the five cases were materially different, therefore, the decisions would not help the petitioner. But the decision in Kendriya Vidyalaya (supra) still holds water and applies with full force.

17. It is then urged on behalf of the petitioner that neither he was afforded any opportunity nor he was put to notice before the impugned order was passed terminating his services and therefore it is vitiated. As already found herein above, that the petitioner did file a false declaration and obtained employment. There is no pleading or proof as to how depriving him of an opportunity of being heard has prejudiced him. Even during arguments, the counsel for the petitioner failed to demonstrate what prejudice has been caused to him. The Apex Court in the case of Om Prakash Mann vs. Director of Education (Basic) & others [2006 (7) SCC 558] was examining the contention that non furnishing of the enquiry report before passing the order of termination, was sufficient to set aside the order. The Court found that the incumbent had failed to demonstrate what prejudice has been caused to him. It has gone on to hold to the following effect in paragraph 9 :

"By now it is well-settled principle of law that the doctrines of principle of natural justice are not embodied rules. They cannot be applied in a straitjacket formula. To sustain the complaint of violation of the principle of natural justice one must

establish that he has been prejudiced by non-observance of the principle of natural justice. As held by the High Court the appellant has not been able to show as to how he has been prejudiced by non-furnishing of the copy of the enquiry report."

18. Again in *Secretary, Andhra Pradesh Social Welfare Educational Institutions vs. Pindiga Sridhar & others* [2007 (13) SCC 352], the Court was confronted with a situation where compassionate appointment was obtained by suppressing material fact and the services were terminated without notice. It held that the principles of natural justice cannot be applied in a straitjacket formula. Their application depends upon the facts and circumstances of each case. To sustain a complaint of violation of principles of natural justice one must establish that he was prejudiced for non-observance. It has gone on to hold in paragraph 7 that "these facts clearly disclose that the appointment on compassionate ground was secured by playing fraud. Fraud cloaks everything. In such admitted facts, there was no necessity of issuing show-cause notice to him."

19. Therefore, this argument also fails.

20. It is lastly urged that the petitioner has already been acquitted and is a young man and in his quest for employment, he committed a mistake and this Court should take a sympathetic view.

21. As observed herein above, that it is not a case of bonafide mistake, but the petitioner is audacious enough even to have filed a false affidavit before this Court denying the fact of the lodging of the criminal case, his arrest etc. On these facts, sympathy would be misplaced. The Apex Court in case after case has frowned upon the practise of showing sympathy in deciding cases and that too in totally undeserving cases in casual manner beyond precincts of law. In *Jagdish Singh vs. Punjab Engineering College* (JT. 2009 (8) SC 501), the Apex Court referred with approval its earlier decision in the following words:

"The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

22. Therefore, the Court is not inclined to accept the plea, or rather declines to fall in the trap. It is by now well settled principle of law that sentiment or sympathy alone would not be a guiding factor in determining the rights of the parties and it cannot issue a direction only on sentiment or sympathy because mistaken and misplaced compassion at the instance of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability.'

23. There is also another overbearing aspect to the case.

24. In the writ petition, the petitioner in paragraph after paragraph has repeated that he did know about the case, he was never arrested and the affidavit filed by him was true, but in the end he has stated in paragraph 13 that ".....by the grace of God he has been saved and the entire case was found to be false, fake, untrue and imaginary....." He seems to have learnt no lessons from the age old adage that "once bitten twice shy". Despite the termination for filing false affidavit, he did not "burn his fingers" and is repeating it before this Court in filing false affidavit. Such litigants do not deserve "kid glove" handling but stern action lest it sends out a wrong message that even in such cases only "rap on the knuckles" is what one gets. The Supreme Court in the case of Dhananjay Sharma vs. State of Haryana & others [1995 (3) SCC 757] gave a clarion call to keep the stream of Justice clear and pure, in the following words in in paragraph 38 of the report :

"The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in courts aims at striking a blow at the rule of law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice."

25. Accordingly, considering all the aforesaid facts and the reasons given herein above, the writ petition does not deserve a simple rejection, but something more, so that it acts as a deterrent to others that filing of false affidavit would prove costly. Thus, the writ petition is dismissed with costs and the Registrar General of this Court is directed to lodge a first information report against the petitioner for having filed a false affidavit and committing fraud in trying to mislead the Court under the relevant Sections of the Indian Penal Code within four weeks from today.

Order Date :- 01.11.2012 PKG