

# **Anil Kumar Yadav Son Of Sri Rama Yadav vs State Of U.P. Through Secretary, ... on 27 August, 2007**

**Author: Rakesh Tiwari**

**Bench: Rakesh Tiwari**

## **JUDGMENT**

Rakesh Tiwari, J.

1. Heard counsel for the petitioner, the Standing counsel for the respondents and perused the record.
2. This writ petition has been preferred for issuance of a suitable writ, order or direction in the nature of certiorari for quashing the impugned order dated 12.8.2007 passed by the Superintendent of Police, Pratapgarh whereby the services of the petitioner were terminated on the ground that the petitioner has concealed the factum of pendency of a criminal case against him.
3. It has further been prayed that the respondents may be directed not to give effect the operation of the impugned order dated 12.8.2007 aforesaid and also for issuance of a writ commanding the respondents to permit the petitioner to complete his training as constable in Training School at Pratapgarh and pay the stipend/allowance/salary payable and admissible to him.
4. Brief facts of the case are that in response to the advertisement No. 10-51-2006 (1) dated 1.9.2006 the petitioner applied for recruitment as Police Constable from Jhansi. After facing written, physical and medical tests he was selected as Police Constable. After his selection his antecedents were required to be verified.
5. The petitioner submitted an affidavit stating that no criminal case was ever instituted against him and he was not facing any criminal trial.
6. From the record it appears that after verifying the antecedents of the petitioner it was found that the petitioner was facing a criminal case and consequently the services of the petitioner were terminated by the impugned order dated 12.8.2007 by the Superintendent of Police, Pratapgarh for filing false affidavit by concealment of material facts at the time of recruitment.
7. It appears that Senior Superintendent of Police, Varanasi submitted a report that against the petitioner a cross case as crime No. 172/A/04 under Sections 323/504/506(11) IPC was registered. It also appears that the petitioner was required to submit an affidavit as to whether any criminal case has been initiated against him or any case was pending at the time of recruitment or not.

8. The contention of the counsel for the petitioner is that in the aforesaid criminal case the petitioner has been acquitted on 6.1.2007, a copy of the judgment and order dated 6.1.2007 in Criminal Case No. 299 of 2006 passed by the Judicial Magistrate, Court No. 1 Varanasi is appended as Annexure-2 to the writ petition.

9. It is further urged by the counsel for the petitioner that by the order of acquittal the petitioner was not involved in any criminal case and this fact has not been taken into consideration by the Superintendent of Police, Pratapgarh while passing the impugned termination order dated 12.8.2007.

10. In support of the aforesaid submissions, the counsel for the petitioner has placed reliance upon the decisions rendered in *Bhikam Singh v. The Union of India* through the Secretary of Home Ministry Government of India, New Delhi and Anr. (2003) 1 UP LBEC-441 and *State of Gujarat v. Anand Acharya @ Bharat Kumar Sandhu* .

11. In the case of *Bhikam Singh* (supra) the petitioner who was appointed as police constable in Central Reserve Police Force had proceeded on leave. Proceedings were initiated against him under Sections 376/452 and 323 IPC for offence alleged to have been committed when he was on leave. Subsequently in that case the petitioner was acquitted by the Sessions Court which was not challenged by the State and the order of acquittal became final. However, the petitioner was charge sheeted by the department and was directed to show cause. The request of the petitioner for grant of short leave for giving reply to show cause was not allowed. This fact having not been denied in the counter affidavit the Court held that the order of dismissal in the circumstances was in violation of the principles of natural justice as the only charge against the petitioner was that he did not inform his superior about the incident while he was on leave. In the circumstances, the punishment of dismissal from service was highly disproportionate to the charges levelled against him. It was further held by the Court in the aforesaid case of *Bhikam Singh* that the petitioner has not committed any misconduct which was subversive to discipline of the force and in fact he had informed his superior about the incident as such in the facts and circumstances of that case, the Court directed the respondent to reinstate the petitioner in service with all consequential benefits and to pay arrears.

12. In the case of *State of Gujarat* (supra) the Court considered the misconduct in public employment as well as the circumstances, which would warrant dismissal from service. The charges in that case against an employee was that while in service he developed illicit relationship with his sister-in-law and also another lady and had not disclosed fact of criminal case pending against him. The name of the respondent employee was found entered as the father in the birth certificate of the daughter born to his sister-in-law. After disciplinary enquiry, services of respondent were dispensed with. The High Court modifying the punishment to one of withholding of two increments and directing his reinstatement held that respondent having divorced his first wife and there being nothing to show that he had married the sister of his first wife during the subsistence of his first marriage the mere non disclosure of criminal case in which he was ultimately acquitted would not warrant the extreme penalty of dismissal from service and therefore, the High Court was justified in modifying the punishment to one of withholding of two increments upon reinstatement in service.

13. I have given my anxious thought to the aforesaid two case laws one of which Bhikam Singh has been given by this Court. None of the aforesaid two cases was a case where the petitioner had entered into service by concealment of material facts, which were required to disclose at the time of recruitment. In the case of Bhikam Singh (supra) the Court had come to the conclusion that the petitioner had informed his superior about the incident which had occurred during the leave period and hence he had not committed any misconduct.

14. In so far as the case of State of Gujarat (supra) is concerned, the charge against the employee having illicit relationship with sister-in-law was not proved and non disclosure of criminal case which was initiated during his service period which was, as stated earlier, found to be based upon no evidence of having married the sister of his first wife before the divorce was granted, hence the aforesaid cases relied upon by the petitioner are not applicable in the facts and circumstances of this case.

15. In the instant case, the petitioner was required to give truthful information about pendency of any case before his entry in service but the petitioner has concealed this fact, which was on the investigation by the department revealed that the information supplied by the petitioner to the department for gaining employment was false and untrue. He has also given a false affidavit in this regard. In paragraph 8 of the writ petition it has been admitted that the petitioner was facing a criminal case but he concealed this fact.

16. A perusal of acquittal order dated 6.1.2007 (Annexure-2 to the writ petition) also shows that the witness had turned hostile and he wanted to withdraw the case. This is probably because the petitioner had in the past beaten him with lathis, which has resulted in criminal case against him but also because of the fact that if he has recruited in the police force the witnesses might have threatened, otherwise there was no occasion for the witnesses to have turned hostile. It appears that the terror of the petitioner was so much that no one-else in the village came forward to give evidence against the petitioner. This appears from the judgment/discussions of the Court at page 3 wherein the Court has given a finding that it appears that the petitioner has received injuries when he was pushed. Thus the tone of the order of the Court has been softened because no other witness was produced by the complainant who had received injuries and he did not pursue the case any further. The incident itself appears to have not denied in the judgment, rather it appears from the judgment that the petitioner had not at all controverted the case of the complainant by producing defence witnesses. Therefore, in my opinion, the case of the complainant who though has turned hostile was not at any stage denied by the petitioner.

17. For the reasons stated above, the writ petition is dismissed. No order as to costs.