

**Ravindra Kumar
v.
State of U.P. & ORS.**

(Civil Appeal No. 5902 of 2012)

22 February 2024

[J.K. Maheshwari and K.V. Viswanathan,* JJ.]

Issue for Consideration

There was a non-disclosure of a criminal case (in which the candidate was acquitted) in the verification form of the employment. The State cancelled the selection of the appellant. Was the State justified in cancelling the selection of the appellant.

Headnotes

Service Law – Recruitment – Selection – Non-disclosure of a criminal case in verification – Appellant applied for the post of constable – After submitting application, he was embroiled in a criminal case – He cleared exam – In the criminal case, appellant was acquitted – After being selected, the appellant submitted affidavit that no criminal case was ever registered against him – His selection was cancelled vide letter dated 12.04.2005 as appellant had concealed the offence and filed false affidavit:

Held: On the date of the application, there was no criminal case pending and there was no suppression in the application form – The verification documents after noticing the criminal case and the subsequent acquittal stated that his character was good, that no complaints were found against him and that his general reputation was good – The SHO, who forwarded the report to the Superintendent of Police after reiterating the contents of the report observed that appellant was acquitted and no appeal was filed – The SHO certified the character of the candidate as excellent and that he was eligible to do Government Service under the State Government – The Superintendent of Police, in his letter to the Commandant, endorsed the report and reiterated that the character of the candidate was excellent – In the instant case, the Appointing Authority has mechanically held selection as irregular and illegal because the appellant had furnished an affidavit with incorrect facts – On applying the broad principles set out in para 93.7 of Satish

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Chandra Yadav, the order of cancellation dated 12.04.2005 is neither fair nor reasonable – Clause 9 (i.e. if any fact is concealed in the affidavit by the candidate, his candidature is liable for cancellation) of the recruitment notification has to be read in the context of the law laid down in the cases of the Supreme Court – Broad-brushing every non-disclosure as a disqualification, will be unjust and the same will tantamount to being completely oblivious to the ground realities – Each case will depend on the facts and circumstances that prevail thereon, and the court will have to take a holistic view, based on objective criteria, with the available precedents serving as a guide – Thus, the order dated 12.04.2005 is quashed and set aside – The respondents are directed to appoint the appellant in service on the post of Constable. [Paras 29 and 30]

Case Law Cited

Commissioner of Police and Others Vs. Sandeep Kumar, [2011] 3 SCR 964 : (2011) 4 SCC 644; Pawan Kumar vs. Union of India and Another, [2022] 7 SCR 928 : (2022) SCC OnLine SC 532; Mohammed Imran vs. State of Maharashtra and Others, (2019) 17 SCC 696; Satish Chandra Yadav vs. Union of India and Others, [2022] 10 SCR 537 : (2023) 7 SCC 530 – relied on.

Director General of Police, Tamilnadu, Mylapore vs. J. Raghunees, (2023) SCC OnLine SC 1379 – distinguished.

Avtar Singh Vs. Union of India and Others, [2016] 7 SCR 445 : (2016) 8 SCC 471 – referred to.

Ram Kumar vs. State of U.P. and Others, [2011] 10 SCR 506 : (2011) 14 SCC 709; Morris v. Crown Office, (1970) 2 QB 114 – referred to.

List of Keywords

Service Law; Recruitment; Selection; Employment; Non-disclosure of a criminal case; Verification in employment; Holistic view based on objective criteria.

Case Arising From

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5902 of 2012
From the Judgment and Order dated 29.10.2010 of the High Court of Judicature at Allahabad in SA No. 896 of 2005

Digital Supreme Court Reports**Appearances for Parties**

P. Choudhury, Saurabh Ajay Gupta, Nishant Bishnoi, Ms. Srishti Prabhakar, Ankit Choudhury, R. K. Singh, Nivedit Singh, Advs. for the Appellant.

Ms. Garima Prashad, A.A.G., Ms. Ruchira Goel, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment****K.V. Viswanathan, J.**

1. The vexed question is back again. Is it a hard and fast and a cut and dried rule that, in all circumstances, non-disclosure of a criminal case (in which the candidate is acquitted) in the verification form is fatal for the candidate's employment? We think not and it ought not to be so too. Fortunately, we have a judicial chorus supporting our view. Each case will turn on the special facts and circumstances. We have endeavoured to analyse the applicable precedents and have followed those line of cases, which have a striking similarity to the facts at hand.

Facts of the case:

2. Ravindra Kumar (the appellant), on 12.02.2004, applied for the post of Constable. His record was unblemished. Five days after submitting the application, i.e. on 17.02.2004, he was embroiled in a criminal case for offences punishable under Sections 324, 352 and 504 Indian Penal Code, 1860 ("IPC"), which he claims was a false case. He cleared the written exam and the interview. Earlier he had cleared the physical efficiency test too.
3. In the meantime, the criminal case took an interesting turn as by the judgment dated 13.09.2004, the appellant was acquitted. At that criminal trial, the informant PW-1 Srikant, who according to the prosecution, was allegedly injured in the incident on account of injuries allegedly inflicted by the appellant and by Vijendra, Ishwar Dayal and Radhey Shyam, turned hostile. The son of the informant, PW-2 Ram Gulam with whom according to the prosecution, the accused party was quarreling, till PW-1 Srikant intervened and allegedly

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became subject to physical attack, also turned hostile. Ram Gulam clearly deposed that he could not identify any of the accused. The witnesses even stated that the Daroga Ji (Station House Officer) did not record their statement. In the cross-examination, they also stated that there was a big crowd at the occurrence and as such they could not identify the assailants. Insofar as Section 504 IPC was concerned which deals with intentional insult with the intent to provoke breach of peace, both the parties have filed a compromise memo, which was accepted by the Court. In view of the above, they were acquitted of all the charges.

4. The Appellant, after being selected, was required to submit an Affidavit disclosing criminal antecedents, if any. The Appellant submitted the affidavit on 30.10.2004, wherein, he *inter alia*, stated that no criminal case, cognizable or non-cognizable, has ever been registered against him.
5. Thereafter, he was asked to report for training and when he reported, he was not sent for training on the ground that there was a character verification pending. Subsequently, on 12.04.2005, he was given the following letter cancelling his selection:

“It is to inform that you have been selected on the post of Recruit Constable PAC by the Selection Committee, 8th Battalion PAC, Bareilly after the examination. After selection, you submitted affidavit dated 30.10.2004, in which, you have mentioned that no criminal case/case, cognizable or non cognizable, has never been registered against you and no challan and police investigations are pending against you. On getting made your character verification from the Superintendent of Police of your Home District Deoria, this fact has come in light that a Crime No.95/04 under Section 324/504 and 352 I.P.C. was registered against you at the Police Station - Gauri Bazar, District Deoria discharged you from the charge in question on 13.09.2004.

It is clear from the above that you have concealed the above offence and filed false affidavit. Therefore, due to producing false affidavit, your selection on the post of Recruit Constable in PAC is hereby cancelled.”

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6. The case of the Department was that, under Clause 9 of the recruitment notification dated 20.01.2004, if any fact is concealed in the affidavit by the candidate, his candidature is liable for cancellation. Clause 9, being relevant, is extracted herein below:

"9. Character Verification:

Character verification of all the candidates found eligible as above will be done as per the government rules prevailing at that time. In character verification, eligible candidates will have to furnish an affidavit in the prescribed format on a non-judicial stamp paper duly attested by a public notary. The format of the affidavit will be made available by the Selection Committee to the candidates finally selected in the interview. If it is found through the character verification or any other means that facts have been concealed in the affidavit by the candidate, not only will the selection of the candidate be cancelled but legal action can also be taken against him. No candidate/person/organization will have the right to protest in any court in case the selection is cancelled due to false facts being mentioned in the affidavit or not providing the prescribed required information."

7. The multiple Clauses of the Affidavit, verified on 30.10.2004, namely, Clause 4, 5, 6, 7 and 11 read as under:

"4. That to the best of my knowledge, no criminal case/matter (cognizable or non-cognizable) has ever been registered against me, nor has the police challaned me in any such criminal case, nor is any police investigation pending against me. NO

5. That I have never been arrested in any criminal case (cognizable or non-cognizable) nor have I ever surrendered in any such criminal case. NO

6. That the details of the criminal cases which have been registered against me or in which I have been challaned or which were/are pending against me in the court or under investigation by the police are as follows (if the information is nil then write 'zero')

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7. That the details of the criminal cases pending against me in any court and in which I was punished or acquitted or discharged are as follows (if the information is nil then write 'zero') ZERO
11. That if anything mentioned in the application is found to be false or the facts are found to be concealed and if I am immediately unconditionally terminated from the Uttar Pradesh Police Service and also given statutory punishment, then it will be acceptable to me."
8. In the meantime, the police verification proceeded. On 09.12.2004, the report of Police Station, Gauri Bazar, District Deoria stated that while a case in crime no. 95 of 2004 under Sections 324, 352 and 504 IPC was registered against the candidate, the candidate was acquitted and there was no appeal filed against the acquittal order. Further, there was no other case pending in any court nor was any case registered against the candidate at the police station. The SHO further mentioned as follows:

"The character of the candidate is excellent. As per my consent the candidate is eligible to do government service under the State Government"

Moreover, the Gram Pradhan also seconded the "excellent" character of Appellant in the Character Certificate issued by him. The Character Certificate issued by the Gram Pradhan reads as under:-

"CHARACTER CERTIFICATE

It is certified that Ravindra Kumar s/o Late Pardesi Prasad, is a permanent resident of Village Bagapar, Post Katora, Police Station Gauri Bazar, District Deoria (Uttar Pradesh). I know and recognize him very well. His character is excellent. I wish him a bright future.

Signature and seal

Gram Pradhan"

9. Thereafter, on 10.12.2004, the Superintendent of Police, Deoria, whilst taking note of the report of Police Station, Gauri Bazar, District Deoria, informed the Commandant, 8th Battalion, PAC., Bareilly that, in his opinion, the candidate was eligible to do government service

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under the State Government. The relevant portion of the letter dated 10.12.2004 is reproduced as follows-

“....The character of the candidate is excellent. Therefore, the candidate Shri Ravindra Kumar s/o Shri Pardesi Ram r/o Bagapar, Post Kathaura, Police Station Gauri Bazar, District Deoria is eligible to do government service under the State government.”

10. The State of U.P., in support of the cancellation letter dated 12.04.2005, relies on a letter dated 31.12.2004 written on behalf of the Inspector General of Police, PAC to the Commandant, 8th Battalion, PAC wherein it was stated, that with regard to the cases of the appellant and two others, who were found to be acquitted in criminal cases during character verification and who had not mentioned the factum of those cases in the affidavit, it was to be ensured that action as per the rules regarding submission of false affidavit be taken against those candidates. The State has also placed on record a letter of 07.01.2005 by the Inspector General of Police to all the Commandants of PAC Battalion, U.P. stating that with regard to submission of false affidavit, action should be taken as per the instructions issued. In the cases of candidates who had mentioned the facts related to the charges registered against them in the affidavit, action should be taken as per their discretion and the Government orders.
11. The State has also placed on record the “Form of verification of character” setting out that it was necessary to verify the character and antecedents before appointment of any candidate. The Verifying Authority was to report directly if found eligible. If the candidate is ineligible according to report then the report was to be sent to the District Magistrate. The District Magistrate was to call the candidate and record his statement and write down his opinion as to what he considers about the candidate and also send the statement of the candidate. In the note appended, it was even set out that, even a conviction need not by itself involve the refusal of a certificate of good character. The circumstances of the conviction should be taken into account and if they involve no moral turpitude or association with crimes of violence or with a movement which has as its object, the overthrow by violent means of Government as by law established in Union of India then mere conviction need not be regarded as

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a disqualification. It is also mentioned in Clause 4 of the Form of Verification of Character as follows:-

“4. It is further requested that the following general rules regarding conduct of candidates for government jobs should also be kept in mind.

The character of a candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It would be the duty of the appointing authority to satisfy itself on this point.”

Proceedings in the High Court:-

12. Aggrieved by the letter dated 12.04.2005 of the cancellation of selection, the appellant filed a Civil Misc. Writ Petition No. 39418 of 2005 before the High Court of Judicature at Allahabad. The appellant argued that there was no deliberate or willful concealment on his part as he has been acquitted in the criminal case. The Ld. Single Judge, *vide* judgement dt. 16.05.2005, dismissed the Writ Petition holding that the petitioner has suppressed material information with regard to his involvement in a criminal case at the time of filling up the form. It was held that the subsequent acquittal of his involvement in the criminal case will not absolve him from the fact that he had suppressed material information.
13. The Appellant, being aggrieved by the Judgement of Ld. Single Judge, filed an appeal bearing Special Appeal No. 896/2005. The Division Bench, *vide* impugned judgment dated 29.10.2020, dismissed the Special Appeal holding that if a person swears a false affidavit at the time of enrollment, he is not fit to be enrolled in the disciplined service. It was further held that the act of swearing false affidavit on its own, is an act, which touches upon the conduct and character of the person. The suppression of the material information from the employer does not get vindicated by the subsequent acquittal in the case. Moreover, the appointing authority was not required to go into the details of the allegations in the criminal case, the evidence led in the trial and the reasons for which the criminal court had convicted or acquitted the candidate.
14. The Appellant, being aggrieved of the Judgment dated 29.10.2010, is before us in the instant appeal.

Digital Supreme Court Reports**Contentions:-**

15. Before us Mr. Premashis Choudhary, learned advocate for the appellant, contended that there was no willful concealment; that at the time of submitting of the application form on 12.02.2004, there was no criminal case pending against the appellant; and at that stage there was no requirement to furnish any affidavit. The appellant was acquitted in the criminal case on 13.09.2004 i.e. much prior to the filing of his affidavit on 30.10.2004. Since no criminal case was pending at the time of filing of affidavit, the appellant was under a bona fide belief that there was no requirement to disclose. It is further contended that as such there was no intention to deceive.
16. On the other hand, Ms. Garima Prashad, learned Additional Advocate General and Ms. Ruchira Goel, learned Standing Counsel for the State have contended that the appellant made a false representation in Clauses 4, 5, 6 and 7 of his Affidavit. Further, along with the appellant, two other persons, who were found to have been given false statements, have also been visited with the cancellation. Moreover, the present case is covered in favour of the State, by the judgment of this Court in case of *Avtar Singh Vs. Union of India and Others, (2016) 8 SCC 471*, particularly, para 38.1, 38.2, 38.3 and 38.11 thereof.

Questions for consideration:-

17. In the above background, the questions that arise for consideration are:-
 - i. Was the State justified in cancelling the selection of the appellant, vide its order of 12.04.2005?
 - ii. To what relief, if any, is the appellant entitled to?

Discussion and findings:

18. As the facts reveal, admittedly on 12.02.2004, when the appellant applied for the post of Constable, there was no criminal case registered or pending. Five days after submitting the application, no doubt, he was embroiled in a criminal case which has since resulted in an acquittal by the trial court, *vide* order dated 13.09.2004, and no appeal was filed against the same. There is no dispute that under Clause 9 of the recruitment notification dated 20.01.2004, he was

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required to furnish an Affidavit in the format given by the Selection Committee. It is also specifically mentioned in Clause 9 that if it is found that facts have been concealed in the Affidavit the selection of the candidate is liable for cancellation. As will be seen from paras 4, 5, 6 and 7 of the affidavit, information (though somewhat repetitive) was sought. It did obligate the candidate to disclose any criminal case which was registered against him; any arrest made in the past, the details of the cases which were pending and, most importantly, the details of acquittals were also called for. It is also an undisputed fact that the appellant said 'No' to each of these queries. The appellant's explanation is that since he was acquitted, he bona fide believed that he was only obliged to give details of any pending proceedings.

19. The State had taken the position that Clause 9 of the recruitment notification and the queries in the affidavit were quite clear and that there being suppression, the cancellation was perfectly justified.
20. The law on this issue is settled by a three-Judge Bench of this Court in *Avtar Singh (Supra)*. Paras 34, 35, 36 & 38, which sets out the conclusions, are extracted herein below:-

“34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all relevant aspects.

35. Suppression of “material” information presupposes that what is suppressed that “matters” not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.

36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more

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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.

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.

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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

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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 supplied)

21. As would be clear from ***Avtar Singh (Supra)***, it has been clearly laid down that though a person who has suppressed the material information cannot claim unfettered right for appointment, he or she has a right not to be dealt with arbitrarily. The exercise of power has to be in a reasonable manner with objectivity and having due regard to the facts. In short, the ultimate action should be based upon objective criteria after due consideration of all relevant aspects.
22. ***Avtar Singh (Supra)*** also noticed the judgment in ***Commissioner of Police and Others Vs. Sandeep Kumar, (2011) 4 SCC 644***. In ***Sandeep Kumar (supra)***, this Court set out the story of the character “Jean Valjean” in Victor Hugo’s novel *Les Miserables*, where the character was branded as a thief for stealing a loaf of bread for his hungry family. It also discussed the classic judgment of Lord Denning in ***Morris v. Crown Office, (1970) 2 QB 114*** and concluded as follows:-

“10... ...

In our opinion, we should display the same wisdom as displayed by Lord Denning.

11. As already observed above, youth often commits indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter.”

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Thereafter, in *Avtar Singh (supra)* dealing with *Sandeep Kumar (supra)*, this Court observed as under:

“24... ...

This Court has observed that suppression related to a case when the age of Sandeep Kumar was about 20 years. He was young and at such age people often commit indiscretions and such indiscretions may often be condoned. The modern approach should be to reform a person instead of branding him a criminal all his life. In [*Morris v. Crown Office*, (1970) 2 QB 114 : (1970) 2 WLR 792 (CA)] , the observations made were that young people are no ordinary criminals. There is no violence, dishonesty or vice in them. They were trying to preserve the Welsh language. Though they have done wrong but we must show mercy on them and they were permitted to go back to their studies, to their parents and continue the good course.”

23. In *Ram Kumar vs. State of U.P. and Others*, (2011) 14 SCC 709, another case noticed and discussed in *Avtar Singh (Supra)* arising out of near identical facts and construing a similar clause in the verification form, this Court, while granting relief, held as follows:-

“9. We have carefully read the Government Order dated 28-4-1958 on the subject “*Verification of the character and antecedents of government servants before their first appointment*” and it is stated in the government order that the Governor has been pleased to lay down the following instructions in supersession of all the previous orders:

“The rule regarding character of candidate for appointment under the State Government shall continue to be as follows:

The character of a candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It would be the duty of the appointing authority to satisfy itself on this point.

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12. On a reading of the order dated 18-7-2002 of the Additional Chief Judicial Magistrate it would show that the

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sole witness examined before the court, PW 1, Mr Akhilesh Kumar, had deposed before the court that on 2-12-2000 at 4.00 p.m. children were quarrelling and at that time the appellant, Shailendra and Ajay Kumar amongst other neighbours had reached there and someone from the crowd hurled abuses and in the scuffle Akhilesh Kumar got injured when he fell and his head hit a brick platform and that he was not beaten by the accused persons by any sharp weapon. In the absence of any other witness against the appellant, the Additional Chief Judicial Magistrate acquitted the appellant of the charges under Sections 323/34/504 IPC. On these facts, it was not at all possible for the appointing authority to take a view that the appellant was not suitable for appointment to the post of a police constable.

13. The order dated 18-7-2002 of the Additional Chief Judicial Magistrate had been sent along with the report dated 15-1-2007 of Jaswant Nagar Police Station to the Senior Superintendent of Police, Ghaziabad, but it appears from the order dated 8-8-2007 of the Senior Superintendent of Police, Ghaziabad, that he has not gone into the question as to whether the appellant was suitable for appointment to service or to the post of constable in which he was appointed and he has only held that the selection of the appellant was illegal and irregular because he did not furnish in his affidavit in the pro forma of verification roll that a criminal case has been registered against him.

14. As has been stated in the instructions in the Government Order dated 28-4-1958, it was the duty of the Senior Superintendent of Police, Ghaziabad, as the appointing authority, to satisfy himself on the point as to whether the appellant was suitable for appointment to the post of a constable, with reference to the nature of suppression and nature of the criminal case. Instead of considering whether the appellant was suitable for appointment to the post of male constable, the appointing authority has mechanically held that his selection was irregular and illegal because the appellant had furnished an affidavit stating the facts incorrectly at the time of recruitment.

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17. For the aforesaid reasons, we allow the appeal, set aside the order of the learned Single Judge and the impugned order of the Division Bench and allow the writ petition of the appellant and quash the order dated 8-8-2007 of the Senior Superintendent of Police, Ghaziabad. The appellant will be taken back in service within a period of two months from today but he will not be entitled to any back wages for the period he has remained out of service. There shall be no order as to costs.”

Ram Kumar (supra) was also a case of cancellation of selection to the post of Constable.

24. More recently in ***Pawan Kumar vs. Union of India and Another, (2022) SCC OnLine SC 532***, involving appointment to the post of Constable in Railway Protection Force and setting aside the order of discharge due to alleged suppression in the verification form, this Court, after noticing ***Avtar Singh (Supra)*** held as under:-

“11. This cannot be disputed that the candidate who intends to participate in the selection process is always required to furnish correct information relating to his character and antecedents in the verification/attestation form before and after induction into service. It is also equally true that the person who has suppressed the material information or has made false declaration indeed has no unfettered right of seeking appointment or continuity in service, but at least has a right not to be dealt with arbitrarily and power has to be judiciously exercised by the competent authority in a reasonable manner with objectivity having due regard to the facts of the case on hand. It goes without saying that the yardstick/standard which has to be applied with regard to adjudging suitability of the incumbent always depends upon the nature of post, nature of duties, effect of suppression over suitability to be considered by the authority on due diligence of various aspects but no hard and fast rule of thumb can be laid down in this regard.

13. What emerges from the exposition as laid down by this Court is that by mere suppression of material/false information regardless of the fact whether there is a conviction or acquittal has been recorded, the employee/

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recruit is not to be discharged/terminated axiomatically from service just by a stroke of pen. At the same time, the effect of suppression of material/false information involving in a criminal case, if any, is left for the employer to consider all the relevant facts and circumstances available as to antecedents and keeping in view the objective criteria and the relevant service rules into consideration, while taking appropriate decision regarding continuance/suitability of the employee into service. What being noticed by this Court is that mere suppression of material/false information in a given case does not mean that the employer can arbitrarily discharge/terminate the employee from service.

19. Consequently, the appeal succeeds and is allowed. The judgment of the Division Bench of the High Court dated 17th November, 2015 and the order of discharge dated 24th April, 2015 and dated 23rd December, 2021 are hereby quashed and set aside. The Respondents are directed to reinstate the appellant in service on the post of Constable on which he was selected pursuant to his participation in reference to employment notice no. 1/2011 dated 27th February, 2011. We make it clear that the appellant will not be entitled for the arrears of salary for the period during which he has not served the force and at the same time he will be entitled for all notional benefits, including pay, seniority and other consequential benefits, etc. Necessary orders shall be passed within a period of one month from today. No costs.”

25. In ***Mohammed Imran vs. State of Maharashtra and Others***, (2019) 17 SCC 696, no doubt, a case where a candidate made the disclosure of criminal case, this Court speaking through Navin Sinha, J. made the following telling observation which resonates with the hard realities of everyday existence :

“5. Employment opportunities are a scarce commodity in our country. Every advertisement invites a large number of aspirants for limited number of vacancies. But that may not suffice to invoke sympathy for grant of relief where the credentials of the candidate may raise serious questions regarding suitability, irrespective of eligibility. Undoubtedly,

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judicial service is very different from other services and the yardstick of suitability that may apply to other services, may not be the same for a judicial service. But there cannot be any mechanical or rhetorical incantation of moral turpitude, to deny appointment in judicial service simplicitor. Much will depend on the facts of a case. Every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement. To make past conduct, irrespective of all considerations, an albatross around the neck of the candidate, may not always constitute justice. Much will, however depend on the fact situation of a case."

26. We have also kept in mind the recent judgment of this Court in *Satish Chandra Yadav vs. Union of India and Others*, (2023) 7 SCC 530 and the broad principles set out by this Court in para 93, especially, paras 93.1, 93.3 & 93.7. Even the broad principles set out therein recognize that each case should be scrutinized thoroughly by the public employer concerned and the Court is obliged to examine whether the procedure of enquiry adopted by the authority concerned was fair and reasonable. *Avtar Singh (Supra)* in para 38.2 has held that while passing the order of cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information. Further, in para 38.4.3 of *Avtar Singh (Supra)* the principle that, in case of suppression or false information of involvement of criminal case, where acquittal has already been recorded, the employer can still consider all relevant facts available as to antecedents and may take appropriate decision as to the continuance of the employee. We have read and understood the broad principles laid down in *Satish Chandra Yadav (supra)* with the following crucial para in *Avtar Singh (Supra)*:

"35. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right

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not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.”

27. We have also examined the judgment in ***Director General of Police, Tamilnadu, Mylapore vs. J. Raghunees***, (2023) SCC OnLine SC 1379 and we find that the case of the appellant is more aligned with the facts in the judgment of this Court in ***Pawan Kumar (supra), Sandeep (supra)*** and ***Ram Kumar (supra)***. Hence, we find that the judgment in ***J. Raghunees (supra)*** is clearly distinguishable.
28. The nature of the office, the timing and nature of the criminal case; the overall consideration of the judgement of acquittal; the nature of the query in the application/verification form; the contents of the character verification reports; the socio economic strata of the individual applying; the other antecedents of the candidate; the nature of consideration and the contents of the cancellation/termination order are some of the crucial aspects which should enter the judicial verdict in adjudging suitability and in determining the nature of relief to be ordered.
29. Having discussed the legal position above, it is necessary to set out certain special features that obtain in the case at hand.
- i. The appellant hails from the small village Bagapar, P.O. Kataura, Police Station Gauri Bazar, District Deoria, U.P.
 - ii. On the date of the application, there was no criminal case pending and there was no suppression in the application form.
 - iii. The criminal case was registered when he was 21 years of age for the offences very similar to the one referred to in ***Sandeep Kumar (supra)*** and even in the criminal case he was acquitted.
 - iv. No doubt, the multiple columns in the verification affidavit, questions were asked from him in different permutations and combinations. He must have been in a deep dilemma as there was an imminent prospect of losing his employment.
 - v. Most importantly, we find from the verification documents fairly and candidly made available by the learned Additional Advocate General, that the verification report after noticing the criminal case and the subsequent acquittal stated that his character was

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good, that no complaints were found against him and that his general reputation was good.

- vi. Not stopping there, the person who visited the spot even wished him a bright future in the report.
 - vii. The SHO, Gauri Bazar Police Station, who forwarded the report to the Superintendent of Police after reiterating the contents of the report observed that he was acquitted and no appeal was filed. Further, there was no other case pending and nor was any case registered against the candidate.
 - viii. The SHO certified the character of the candidate as excellent and that he was eligible to do Government Service under the State Government. He annexed the report of the Police Station as well as the report of the Gram Pradhan and the Court documents.
 - ix. The Superintendent of Police, in his letter to the Commandant, endorsed the report and reiterated that the character of the candidate was excellent.
 - x. While examining whether the procedure adopted for enquiry by the authority was fair and reasonable, we find that the order of cancellation of 12.04.2005 does not even follow the mandate prescribed in Clause 4 of the Form of verification of character set out in the earlier part of this judgment. Like it was found in *Ram Kumar (supra)* instead of considering whether the appellant was suitable for appointment, the Appointing Authority has mechanically held his selection was irregular and illegal because the appellant had furnished an affidavit with incorrect facts. Hence, even applying the broad principles set out in para 93.7 of *Satish Chandra Yadav (supra)*, we find that the order of cancellation dated 12.04.2005 is neither fair nor reasonable. Clause 9 of the recruitment notification has to be read in the context of the law laid down in the cases set out hereinabove.
- 30.** On the facts of the case and in the backdrop of the special circumstances set out hereinabove, where does the non-disclosure of the unfortunate criminal case, (which too ended in acquittal), stand in the scheme of things? In our opinion on the peculiar facts of the case, we do not think it can be deemed fatal for the appellant.

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Broad-brushing every non-disclosure as a disqualification, will be unjust and the same will tantamount to being completely oblivious to the ground realities obtaining in this great, vast and diverse country. Each case will depend on the facts and circumstances that prevail thereon, and the court will have to take a holistic view, based on objective criteria, with the available precedents serving as a guide. It can never be a one size fits all scenario.

Relief:

31. For the reasons set out hereinabove, the appeal is allowed and the order of the learned Single Judge and the impugned order of the Division Bench dated 29.10.2010 in Special Appeal No. 896/2005 are set aside. The order of 12.04.2005 of the third respondent, Commandant 27th Battalion, PAC, Sitapur is quashed and set aside. The respondents are directed to appoint the appellant in service on the post of Constable for which he was selected, pursuant to his participation in reference to the Recruitment Notification dated 20.01.2004. We make it clear that the appellant will not be entitled for the arrears of salary for the period during which he has not served the force. At the same time, we direct that the appellant will be entitled for all notional benefits, including pay, seniority and other consequential benefits. Necessary orders shall be passed within a period of four weeks from today. There shall be no order as to costs.

Headnotes prepared by: Ankit Gyan

Result of the case:
Appeal allowed.