

IN THE HIGH COURT OF JHARKHAND AT RANCHI
L.P.A. No. 22 of 2023

Janardhan Sah, aged about 55 years, son of Late Chhabilal Sah, resident of Village- Baskendri, P.O.- Maheshpur, P.S.- Maheshpur, District- Pakur (Jharkhand).

... .. **Appellant**

-Versus-

1. The State of Jharkhand through Director General of Police, Government of Jharkhand, Ranchi, P.O. & P.S. Dhurwa, District- Ranchi (Jharkhand).
2. The Superintendent of Police, Deoghar, P.O. & P.S. – Deoghar, District - Deoghar (Jharkhand).
3. The Superintendent of Police, Pakur, P.O. & P.S. – Pakur, District- Pakur (Jharkhand).

... .. **Respondents**

CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN KUMAR RAI

For the Appellant	: Mr. Rajeeva Sharma, Sr. Advocate
	: Ms. Rita Kumari, Advocate
	: Mr. Om Prakash, Advocate
For the Respondents	: Mr. Devesh Krishna, S.C Mines-III

Order No.14 : dated 24th July, 2024

Per Sujit Narayan Prasad, J:

I.A. No.2394 of 2024

1. This interlocutory application has been preferred under Section 5 of the Limitation Act for condoning the delay of 15 days in preferring this Letters Patent Appeal.
2. Heard the parties.
3. Having regard to the averments made in the application and submissions made on behalf of the appellant, we are of the view that the appellant was prevented from sufficient cause in filing the appeal within the period of limitation. As such, the delay of 15 days in preferring the appeal is hereby condoned.
4. I.A. No. 2394 of 2024 stands allowed.

L.P.A. No. 22 of 2023

5. The appeal under clause 10 of the letters patent is directed against the order/judgment dated 22.11.2022 passed by the learned Single Judge of this Court in W.P. (S) No. 510 of 2009, whereby and whereunder, while dismissing the writ petition, the order of termination of the writ petitioner has been refused to be interfered with.

6. The brief facts of the case, as per the pleading made in the writ petition, which is required to be enumerated which reads asunder:-

7. It is the case of the appellant/writ petitioner that by advertisement no. 1/2004, the respondents had invited applications from competent persons for making appointment on the post of constables.

8. The petitioner accordingly applied and participated in the selection process and was declared successful. Thereafter, the petitioner was appointed as constable no. 614 vide Deoghar District Order No. 1174/2005 on 16.9.2005.

9. In the year 1990, petitioner was falsely implicated in a criminal case being Maheshpur P.S. Case No. 81/1990 which was instituted against him under Section 354, 379 and 225 IPC (Indian Penal Code).

10. After submission of charge sheet, trial commenced and the learned court convicted the petitioner and sentenced him to undergo simple imprisonment of six months.

11. Aggrieved by the said judgment of conviction, the writ petitioner preferred criminal appeal no. 13/16 of 1994 before the court of Additional Sessions Judge, Pakur. However, the appeal of the petitioner was rejected vide judgment dated 16.08.2001 and the judgment of conviction and sentence passed by the trial court has been affirmed.

12. Thereafter, petitioner challenged the legality and validity of the said two judgments before this Court by filing criminal revision no. 484 of 2001.

13. The Hon'ble Court by its order dated 6.2.2007, after appreciating the evidence brought on record set aside the aforesaid two judgments passed by the courts below and acquitted the petitioner from all the charges levelled against him.

14. It is the case of the petitioner that after appointment, he was sent to Jharkhand Police Training Centre, Padma, Hazaribagh for obtaining basic police training and while he was obtaining training, he has been dismissed from service by Superintendent of Police, Deoghar vide memo no. 2468 dated 26.10.2006, on the ground that the petitioner was named accused in Maheshpur P.S. Case No. 81/1990 dated 24.10.1990 instituted under sections 354, 379 and 225 IPC wherein he was convicted and sentenced to undergo imprisonment for six months.

15. The aforesaid order of dismissal was challenged by the writ petitioner by filing writ petition being W.P.(S) No.510 of 2009 which has been dismissed vide order/judgment dated 22.11.2022 passed by the learned Single Judge of this Court whereby and whereunder, the order of termination of the writ petitioner has been refused to be interfered with, against which the present appeal has been filed.

16. It is evident from the factual aspect that in terms of the advertisement No. 1/2004, the appellant had applied and participated in the selection process for the post of Constable and was appointed vide order No.1174/2005 with effect from 16.09.2005.

17. The petitioner when was discharging his duty, one enquiry was conducted with respect to his conduct of discloser of the facts in the application form which he has submitted at the time of making application. In the said enquiry, it was found that one criminal case was instituted against the petitioner being Maheshpur P.S. Case No. 81 of 1990.

18. In the said case the writ petitioner was convicted by the learned trial court and sentenced to undergo imprisonment for six months. The writ petitioner preferred an appeal against the order of conviction and sentence but the same was dismissed vide judgment dated 16.08.2001 and the order of conviction passed by trial court has been affirmed.

19. The disciplinary authority based upon the aforesaid enquiry report and exercising the power conferred under Rule 673(c) of the Jharkhand Police Manual has taken decision of dismissal of the writ petitioner and in consequence upon the same and order was issued on 26.10.2006 dismissing the appellant/writ petitioner from service.

20. The appellant/writ petitioner had preferred appeal/revision, but said order of dismissal has been upheld by both the authorities.

21. The writ petitioner being aggrieved with the aforesaid decisions, has preferred a writ petition being W.P.(S) No.510 of 2009.

22. The learned Single Judge on consideration of the material facts along with the legal position, as has been settled by Hon'ble Apex Court, has refused to interfere with the order of dismissal by dismissing the writ petition, against which the present Letters Patent Appeal has been filed.

Argument on behalf of the learned counsel for the appellant

23. Mr. Rajiva Sharma, learned Senior Counsel appearing for the appellant/writ petitioner assisted by Ms. Rita Kumari, learned counsel has raised the following grounds:-

- I. The writ petitioner/appellant although was convicted the day when he had made an application for consideration of his candidature for appointment as Constable and after joining his service, there is no allegation of commission of any misconduct, but the aforesaid aspect of the matter has not been taken into consideration by the learned Single Judge.
- II. The ground has been taken that such non-disclosure cannot be said to be material one reason being that the criminal case which was instituted against the appellant was way back in 1990 and application since was filed after lapse of about 15 years and in the meanwhile, there was no any antecedents regarding the complicity of the appellant of his involvement in any criminal cases.
- III. The learned Senior Counsel, in order to strengthen his argument, has relied upon the judgment rendered by Hon'ble Apex Court in the case of *Ravindra Kumar v. State of Uttar Pradesh and others* reported in (2020) 4 SCC OnLine SC 180.
- IV. It has been contended that the aforesaid judgment has been passed by Hon'ble Apex Court by taking into consideration the judgment rendered by Hon'ble Apex Court in the case of *Avtar Singh versus State of Uttar Pradesh and others* reported in (2016) 8 SCC 471.

- V. The contention has been made that the case of the appellant is squarely covered with the ratio laid down by Hon'ble Apex Court either in the case of *Ravindra Kumar v. State of Uttar Pradesh and others* (Supra) or *Avtar Singh v. State of Uttar Pradesh* (Supra), but the aforesaid aspect of the matter has not been taken into consideration, rather, the learned Single Judge has distinguished the ratio laid down in these two judgments by distinguishing of facts.
- VI. The learned senior counsel based upon the aforesaid grounds and relying upon two judgments has submitted that the order passed by learned Single Judge, therefore, suffers from an error and hence, not sustainable in the eyes of law.
- VII. Learned Senior Counsel has also raised the issue that subsequent to the affirmation of the conviction by the Appellate Court, the writ petitioner has already been acquitted by the High Court vide order dated 06.02.2007 passed in Criminal Revision No. 484 of 2001.

Argument on behalf of the learned counsel for the Respondent

24. Learned counsel appearing for the State has taken following grounds in by defending the impugned order:-

- (i) The contention which has been raised that the non-disclosure of the material facts which has been argued to be not material suppression is absolutely an incorrect argument reason being that the appellant was involved in criminal case by institution of the F.I.R. being Maheshpur P.S. Case No. 81 of 1990 way back in the year 1990.

- (ii) The appellant had faced the trial which culminated into the judgment of conviction in the year 1994 and the said judgment of conviction has also been upheld by the Appellate Court vide order dated 16.08.2001.
- (iii) The contention, therefore, has been raised that the day when the application was filed by the writ-petitioner/appellant for consideration of his candidature for the post of constable, the appellant was already convicted and the judgment of conviction had also been affirmed by the Appellate Court.
- (iv) Therefore, the argument of the non-disclosure of the pending criminal case is absolutely incorrect since at that time when the application was filed, it was not a pending criminal case, rather, the appellant was already declared to be guilty of an offence and consequent upon the same he has already been convicted.
- (v) The learned State counsel has submitted so far as the contention made on behalf of the learned senior counsel for the appellant/writ petitioner that subsequent to the conviction since the writ petitioner has been acquitted hence, it will be said that no case was pending against the petitioner and hence, it cannot be said to be the suppression of fact. The argument has been advanced in rebuttal that the question herein is not that the candidate is a convict rather, the question is the suppression of fact.
- (vi) The declaration which ought to have been given by one or the other candidate shows the conduct of a candidate for the

purpose of adjudging by the appointing authority as to whether a candidate is fit to be retained in the public service or not and in absence of any disclosure to that effect the appointing authority has been deprived from taking conscious decision. Therefore, the question of conviction or acquittal is immaterial, rather, the issue is the suppression of material facts which is the vital aspect for a public servant.

- (vii) So far as the applicability of the judgment rendered in the case of *Ravindra Kumar v. State of Uttar Pradesh and others* (Supra) or *Avtar Singh v. State of Uttar Pradesh* (Supra), the contention has been raised that the fact of these two cases are different to that on the present one while according to the learned State counsel, the judgment basis upon which the learned single judge has declined to interfere with the order of dismissal is applicable which was rendered in the case of *Rajasthan Rajya Vidyut Prasaran Nigam Limited and Another v. Anil Kanwariya* reported in (2021) 10 SCC 136.

25. Learned State counsel based upon the aforesaid grounds has submitted that the order passed by learned Single Judge, therefore, suffer from no error and, as such, the instant Letters Patent Appeal is fit to be dismissed.

Analysis and consideration

26. We have heard the learned counsel for the parties and gone across the factual aspect as also the finding recorded by the learned Single Judge in the impugned order.

27. The questions which require consideration are-

- (i) Whether the subsequent follow up action of a candidate, who, after institution of the F.I.R. culminated into judgment of conviction, but acquitted, and if such candidate has not given any declaration about the pending criminal cases can it be said to be proper conduct of the concerned employee/candidate for the purpose of his retention in the service.
- (ii) The judgment upon which reliance has been placed by learned senior counsel either in the case of *Avtar Singh versus State of Uttar Pradesh* (Supra) and *Ravindra Kumar versus State of Uttar Pradesh* (Supra) are applicable or the judgment rendered in the case of *Rajasthan Rajya Vidyut Prasaran Nigam Limited and Another* (Supra) is applicable.

28. Both the issues are being taken separately:-

Issue No. 1:

29. This Court in order to answer the said issue, thinks fit to refer herein the factual aspect of the instant appeal. From the factual aspects it is evident that the appellant has made an application for consideration of his candidature for appointment as Constable in terms of the advertisement No. 1/2004, he was selected and appointed vide order dated 16.09.2005. But, on enquiry, it was found that writ petitioner when made application was already convicted in the criminal case by the trial court and the appeal against the said order of conviction has already been dismissed by upholding the judgment of conviction as passed by the trial court.

30. From the record it is evident that the aforesaid advertisement contains certain columns and one of the columns since pertains to giving declaration regarding the pending criminal cases or the declaration with respect to the conviction in any criminal cases of any nature. The admitted case herein is that the writ petitioner has not furnished the required declaration.

31. The further question herein is that when the column has been formulated by the appointing authority by making insertion in the condition of advertisement and if such column is left blank which in the present case will be said to be for purposeful reason, the reason being that the appellant was well aware with respect to the filing of the criminal case against him and also that he was already convicted in the said criminal case in the year 1994.

32. The declaration, since, has been sought for from one or the other candidate which means that the appointing authority, at the time of verification of the document, was considered itself to be satisfied regarding the conduct of one or the other candidates in order to adjudge as to whether such candidate is fit to be retained in the public service or not.

33. Therefore, according to the considered view of this Court, the said suppression is to be considered as the material suppression of fact.

34. The suppression can be categorized that into two parts, i.e., one suppression which is immaterial and another suppression which is material. If the suppression which is not going to the root of the issue then such suppression can be ignored but when suppression which is material and going to the root, if has been found to be there, then certainly, the decision is required to be taken by the appointing authority.

35. It is settled proposition of law that the verification of character and antecedents is one of the important criteria to test whether the selected candidate is suitable to a post under the State. Reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of *Delhi Administration, v. Sushil Kumar, (1996) 11 SCC 605*.

36. Further the Hon'ble Apex Court in *Kendriya Vidyalaya Sangathan and Others v. Ram Ratan Yadav, (2003) 3 SCC 437*, has observed that the purpose of requiring an employee to furnish information regarding prosecution/conviction, etc. in the verification Form was to assess his character and antecedents for the purpose of employment and continuation in service; that suppression of material information and making a false statement in reply to queries relating to prosecution and conviction had a clear bearing on the character, conduct and antecedents of the employee; and that where it is found that the employee had suppressed or given false information in regard to matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry.

37. In *R. Radhakrishnan v. Director General of Police and Others, (2008) 1 SCC 660*, the Hon'ble Apex Court considered the case of a candidate for appointment as a Fireman who had furnished wrong information about his involvement in a criminal case, though he was acquitted.

The Hon'ble Apex Court has held that the standards expected of a person intended to serve in such a service are different from the one of the persons who intended to serve in other services and the candidate knew and understood the implications of the omission in his statement to disclose

vital information. The candidate by not disclosing his involvement in a criminal case, prevented the Authority from verifying his character as a suitable appointment. Accordingly, the Hon'ble Apex Court declined to exercise its equitable jurisdiction in favour of a candidate who had suppressed such material facts.

38. Similarly, in the ***Union of India and Others v. Bipad Bhanjan Gayen, (2008) 11 SCC 314***, the Hon'ble Apex Court dealt with the validity of the termination of the candidate, who had been selected for training as a constable in the Railway Protection Force. The Hon'ble Apex Court held as under:

“10. It bears repetition that what has led to the termination of service of the respondent is not his involvement in the two cases which were then pending, and in which he had been discharged subsequently, but the fact that he had withheld relevant information while filling in the attestation form. We are further of the opinion that an employment as a police officer 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.” [Emphasis supplied]

39. Further the Hon'ble Apex Court in the case of ***Daya Shankar Yadav v. Union of India and Others, (2010) 14 SCC 103*** was faced with a similar issue wherein a CRPF officer upon suppression of material facts was terminated from the service. The Hon'ble Apex Court while referring to its previous decisions, summarised the position as follows:

“14. ... The purpose of seeking the said information is to ascertain the character and antecedents of the candidate so as to assess his suitability for the post. Therefore, the candidate will have to answer the questions in these columns truthfully and fully and any misrepresentation or suppression or false statement therein, by itself would demonstrate a conduct or character unbefitting for a uniformed security service.”

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 character, 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.”

“24. We are satisfied that the appellant had knowingly made a false statement that he was not prosecuted in any criminal case. Therefore, the employer (CRPF) was justified in dispensing with his services for not being truthful in giving material information regarding his antecedents which were relevant for employment in a uniformed service, and that itself justified his discharge from service. Consequently, we dismiss this appeal as having no merit.”

40. In *Union Territory, Chandigarh Administration and Others v. Pradeep Kumar and Another*, (2018) 1 SCC 797 the issue of the respondent therein being honourably acquitted and entitled to being reinstated was raised, the Hon’ble Apex Court has held as under:

*“13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in *Mehar Singh* (2013) 7 SCC 685 and *Parvez Khan* (2015) 2 SCC 591 cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character.*

x x x x

15. From the above details, we find that the Screening Committee examined each and every case of the respondents and reasonings for their acquittal and taken the decision. While deciding whether a person involved in a criminal case has been acquitted or discharged should be appointed to a post in a police force, nature of offence in which he is involved, whether it was an honourable acquittal or only an extension of benefit of doubt because of witnesses turned hostile and flaws in the prosecution are all the aspects to be considered by the Screening Committee for taking the decision whether the candidate is suitable for the post.” [Emphasis supplied]

41. In the case of *State of Madhya Pradesh and Others v. Bunt*, (2020) 17 SCC 654, the candidate had not disclosed the fact that he had criminal proceedings pending against him at the time of verification. The criminal proceedings were based on the candidate impersonating a police officer and the candidate was granted benefit of doubt. The candidate had been acquitted on the technical ground of a witness being held hostile.

The Hon’ble Apex Court held that the perception formed by the Screening Committee, that he was unfit to be inducted in the disciplined police force, was appropriate. Further it was held that, the decision of the Scrutiny Committee could not be said to be such which warranted judicial interference unless there is a mala fide intent involved.

42. In the case of *Union of India (UOI) v. Dilip Kumar Mallick*, (2022) 6 Scale 108, a CRPF officer had suppressed the fact that the proceedings under the IPC were pending against him. The Hon’ble Apex Court, while referring to *Avtar Singh* (supra), held that the suppression can be a ground for an employer to cancel the candidature or to terminate the services. The respondent served in the organization since 2003 and continued to remain as an under trial accused without the knowledge of the

organisation. For ready reference the relevant paragraphs of the aforesaid judgment are being quoted as under:

“13. Thus, it remains beyond the pale of doubt that the cases of non-disclosure of material information and of submitting false information have been treated as being of equal gravity by this Court and it is laid down in no uncertain terms that non-disclosure by itself may be a ground for an employer to cancel the candidature or to terminate services. Even in the summation above- quoted, this Court has emphasized that information given to the employer by a candidate as to criminal case including the factors of arrest or pendency of the case, whether before or after entering into service, must be true and there should be no suppression or false mention of the required information.

14. In case of suppression, when the facts later come to the knowledge of employer, different courses of action may be adopted by the employer depending on the nature of fault as also the nature of default; and this Court has indicated that if the case is of trivial nature, like that of shouting slogans at a young age etc., the employer may ignore such suppression of fact or false information depending on the factors as to whether the information, if disclosed, would have rendered incumbent unfit for the post in question.

14.1. However, the aforesaid observations do not lead to the corollary that in a case of the present nature where a criminal case was indeed pending against the respondent and the facts were altogether omitted from being mentioned, the employer would be obliged to ignore such defaults and shortcomings.

... x x x x

16. In the given set of facts and circumstances, where suppression of relevant information is not a matter of dispute, there cannot be any legal basis for the Court to interfere in the manner that the employer be directed to impose 'any lesser punishment', as directed by the Division Bench of the High Court. The submissions seeking to evoke sympathy and calling for leniency cannot lead to any relief in favour of the respondent.” [Emphasis supplied]

43. Thus, from aforesaid logical deduction it is apparently clear that the suppression of material information and making a false statement in the verification Form relating to arrest, prosecution, conviction etc., has a clear bearing on the character, conduct and antecedents of the employee. If it is

found that the employee had suppressed or given false information in regard to the matters having a bearing on his fitness or suitability to the post, he can be terminated from service.

44. This Court, based upon the aforesaid position of law as laid down by the Hon'ble Apex Court as referred hereinabove, has come to the conclusion that the suppression of the aforesaid fact is material one.

45. Further, it requires to refer herein that the appellant for the purposeful reason has not disclosed about his conviction in the said criminal case and when the same has come to the notice of the appointing authority, then the plea has been taken that he has already been acquitted in the said case.

46. The question herein is not of conviction and acquittal, rather, it is the question of giving true declaration so as to assess the conduct of one or the other employee who is to be inducted in the public service.

47. The acquittal is immaterial in the present facts of the case since the day when the application was filed by the appellant he was already convicted and sentenced by the trial court.

48. Therefore, the subsequent acquittal has got no meaning so far as the acceptance of the candidature of the writ petitioner, due to the reason that the day when he had made an application for the appointment on the post of Constable, he had already been convicted by the trial court and appeal against the said order of conviction has also been dismissed by the Appellate Court.

49. Thus, this Court is of the view that, it is the credibility/trustworthiness of a particular employee which matters the most when it comes to public employment and if a particular employee suppresses

something important or makes any false declaration with a view to secure public employment then such employee could be said to have exhibited a tendency which is likely to shake the confidence of the employer. In such circumstances, it would be within the discretion of the employer whether to continue or not to continue such an employee who has exhibited a tendency which reflects on his overall character or credibility.

50. In view of the aforesaid discussion, it is evident that the writ petitioner/appellant has suppressed the material fact of his conviction in criminal case, hence, the Issue No.1 has been answered accordingly.

Issue No.2:

51. The learned senior counsel has relied upon the judgment rendered in the case of *Ravindra Kumar v. State of Uttar Pradesh and others* (Supra) or *Avtar Singh v. State of Uttar Pradesh* (Supra), therefore, it needs to refer herein the factual background of both the cases.

52. The factual ground leading to the case of *Ravindra Kumar v. State of Uttar Pradesh and others*(supra) as would be evident from the said judgment that when the appellant had made an application, he was not involved in criminal case, rather, after five days of making an application, he was involved in the criminal case.

53. This is the basic difference in the factual aspect involved in the present case since herein the appellant was already convicted in the criminal case and further the order of conviction was also upheld by the Appellate Court in the year 2001.

54. It further needs to refer herein that even in the case of *Avtar Singh v. State of Uttar Pradesh* (Supra) the Hon'ble Apex Court has observed that the employer is given "discretion" to terminate or otherwise to condone the

omission. Even otherwise, once employer has the power to take a decision when at the time of filling verification form declarant has already been convicted/acquitted, in such a case, it becomes obvious that all the facts and attending circumstances, including impact of suppression or false information are taken into consideration while adjudging suitability of an incumbent for services in question.

55. This Court, on the basis of the aforesaid discussion, is of the view that the applicability of judgment is to be tested on the basis of the fact governing each and every case. Even the aforesaid stipulation has been made by Hon'ble Apex Court in the case of *Ravindra Kumar v. State of Uttar Pradesh and others*(Supra) at Para 34 wherein it has been observed that each case will depend on the facts and circumstances that prevail thereof, and the Court will have to take the holistic view, based on objective criteria, with the available precedents serving as a guide. It can never be one side fit scenario.

56. The further reference is required to made of the judgment rendered by the Hon'ble Apex Court in the case of *Subramanian Swamy v. State of T.N. and Ors., (2014) 5 SCC 75* wherein it has been observed that it is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. For ready reference the relevant paragraph of the aforesaid judgment is being quoted as under:

“47. It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. “The court should not place reliance on decisions

without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.”

57. This Court, therefore, is of the view that in the facts and circumstances of the present case, the judgments as relied upon by the learned senior counsel rendered in the case of ***Ravindra Kumar v. State of Uttar Pradesh and others*** (Supra) or ***Avtar Singh v. State of Uttar Pradesh*** (Supra) are not applicable.

58. The learned counsel appearing for the State has relied upon the judgment rendered in the case of ***Rajasthan Rajya Vidyut Prasaran Nigam Limited and Another v. Anil Kanwariya*** (Supra). In the said judgment on the day when the application was made by the respondent, the judgment of conviction was already operating i.e. on 14.04.2015, for ready reference, relevant paragraph 2.3 is being referred herein which reads as under:

“2.3 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 14-4-2015 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 31-8-2015 to the respondent employee and granted him an opportunity of being heard on 15-3-2016 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.”

59. The said judgment has also been rendered by taking into consideration the judgment rendered in the case of ***Avtar Singh v. State of Uttar Pradesh*** (Supra) and in view thereof the consideration has been made by Hon’ble Apex Court at Para 10 wherein the suppression of the said facts has been considered to be a false declaration. The Hon’ble Apex Court in

the said judgment after taking the principle that the fraud vitiates or solemnity of act has declined to interfere with the order of dismissal, the relevant paragraph, i.e., 10 is being quoted hereunder as :-

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 1958 Act only, he did not disclose his conviction, but even at the time when he filed a declaration on 14-4-2015 he filed a false declaration that neither any criminal case is pending against him nor has he 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.

60. Now coming back to the facts of the present case wherein also the day when the application was made the appellant was already involved in the criminal case being Maheshpur P.S. Case No. 81 of 1990 in which he has already been convicted and the judgment of conviction was also upheld by the Appellate Court in year 2001.

Therefore, this Court is of the view that whatever has been argued by the learned senior counsel by putting reliance upon the judgment rendered either in the case of ***Ravindra Kumar v. State of Uttar Pradesh and others*** (Supra) or ***Avtar Singh v. State of Uttar Pradesh*** (Supra) are not applicable, rather, on the basis of the factual aspect herein since the appellant herein also was convicted at the time when the application was filed is almost similar to the fact of the case of ***Rajasthan Rajya Vidyut Prasaran Nigam Limited and Another versus Anil Kanwariya*** (Supra).

61. Now coming to the judgment passed by learned Single Judge wherein the learned Single Judge has taken into consideration the non-

applicability of the judgments either rendered in the case of *Ravindra Kumar v. State of Uttar Pradesh and others* (Supra) or *Avtar Singh v. State of Uttar Pradesh* (Supra) rather has found that the judgment rendered in the case of *Rajasthan Rajya Vidyut Prasaran Nigam Limited and Another versus Anil Kanwariya* (Supra) is applicable in the present facts and circumstances of the case, based upon that the order of dismissal has been declined to be interfered with by taking into consideration the fact that the non-disclosure of such information is a conduct which will be said to be a fraudulent act.

62. This Court, in view of the discussion made by learned Single Judge in the impugned order and based upon the discussion made as above, is of the view that the judgment passed by learned Single Judge needs no interference.

63. Accordingly, the instant appeal fails and is dismissed.

64. Pending Interlocutory Application, if any, also stands disposed of.

(Sujit Narayan Prasad, A.C.J.)

(Arun Kumar Rai, J.)

Suman/Abhishek/.**A.F.R.**