

IN THE HIGH COURT OF DELHI

Writ Petition (Civil) No.8507/2009

Date of decision: 23rd March, 2010

RAJESH KUMAR

..... Petitioner
Through Mr. R.K. Saini, Adv.

versus

UOI & ORS.

..... Respondent
Through Ms. Preeti Dalal and Ms. Jayshree Shukla,
Advs.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

GITA MITTAL, J(Oral)

1. Rule DB

2. Learned counsel for the respondents accepts notice and waives formal notice. It is contended by the parties that the matter involves a short issue and may be disposed of on the basis of the available material which has been placed on record alongwith the writ petition. Learned counsel for the respondents has also kept available the original record of the case which has been perused by us.

3. So far as the material facts leading to the filing of the present writ petition are concerned, there is no real dispute to the same and to the extent necessary, they are noticed hereafter. The petitioner has filed the present petition aggrieved by a notice of termination dated 29th July, 2007 and the termination order dated 19th August, 2007 based

thereon as per the counter affidavit at page 45 of the paper book.

4. The petitioner was born on 10th May, 1986. He had applied for appointment to the post of Constable with the Central Reserve Police Force (CRPF for brevity hereafter) sometime in 2006. The petitioner has submitted that by a communication dated 4th November, 2006 he was informed of his selection for the post of Constable with the CRPF. He was, therefore, required to fill in the verification roll (CRP Form No. 25) under Rule 14(b) of the CRPF Rules.

5. The copy of the verification roll which was filled up by the petitioner has been placed before us. Our attention has been drawn to several warnings which were informed to the candidate who was filling up the verification roll mentioned in the printed form. Warning no. 3 in this behalf which is relied upon by the respondents reads as follows :-

“3. If the fact that false information has been furnished or that there has been suppression of any factual information in the Verification Roll comes to notice at any time during the service of a person, his services would be liable to be terminated.”

The petitioner has landed in trouble for the reason that he answered column no. 12(a) of the form also relied upon by the respondents, in the negative. The said column reads as follows :-

“12(a) Have you ever been arrested prosecuted, kept under detention or bound down/fined convicted, by court of law for any offence or debarred/disqualified by any public Service Commission from appearing at its examination/selections, or debarred from taking any examination/rusticated by any university or any other education authority/Institution?”

6. On 2nd February, 2007, the respondents appear to have sent the

verification roll of the petitioner for verification to the District Mahendragarh, Haryana for verification of his character and antecedents in terms of Rule 14(a) of the CRPF Rules. In response thereto, the respondents received a communication dated 26th June, 2007 from the office of the Additional DIG, Police which reads as follows:-

"OFFICE OF THE ADDL DIGP, GC CRPF BANGRASIA, BHOPAL(MP)

NO. V.1.1/2007.EC.V

Dated, the 26 June 2007

To,

The Commandant
89 Bn, CRPF
At location.

Subject : REG ADVERSE REMARKS ON VERIFICATION REPORT OF CHARACTER AND ANTECEDENTS.

Verification Roll in respect No. 0608900099 Ct/Bug Rajesh Kumar S/o Shri Babu Lal was sent to Collector & District Magistrate, Distt. Mahendragarh, Haryana for verification of his character and antecedents vide this office letter of even number dated 2/1/2006. In reply, Collector & District Magistrate, Mahendragarh, Haryana has reported vide this letter no. 354/R/MA/Veri dated 12/6/2007 that he was involved in Case No.166 dated 18/6/1994 u/s 325 IPC at Police Station Nangal

Choudhary and the case under process in the court.

The verification Roll of individual alongwith Verification report received from above authority are enclosed herewith in original for further necessary action please.

Encl 05 leaves

For Addl. DIGP, GC CRPF
Bhopal"

7. On receipt of this adverse report against the petitioner from the authorities at Mahendragarh, Haryana, the respondents proceeded to take action in terms of Rule 5(1) of the CCS (Temporary Service) Rules, 1965. The petitioner was informed by a notice dated 29th July, 2007, that his services shall stand terminated with effect from the date of

expiry of a period of one month from the date on which the said notice was served or tendered upon him. This notice was followed up by an order of termination dated 29th August, 2007 which has now been placed before us.

8. The petitioner sent a representation dated 11th September, 2007 raising several objections to the action of the respondents however the same was of no avail. The petitioner appears to have assailed the order of termination by way of a statutory appeal to the Inspector General of Police, CRPF. This appeal was rejected by an order dated 14th October, 2007. The petitioner then preferred a revision assailing the two orders against him by way of a mercy petition which was again rejected by an order passed on 24th April, 2008.

9. The petitioner has assailed the action of the respondents by way of the present writ petition primarily on the ground that the same is arbitrary and is premised on no material at all. It has further been contended that the petitioner hails from a rural area and background belonging to the economically weaker and backward section of society who had been implicated in a false case registered by the police in Haryana in 1994 when he was barely eight years of age. The further submission is that the petitioner was tried by the juvenile court and honourably acquitted of the charge as back as on 24th December, 1994 when he was still barely about eight years of age. In view of his tender age at the time of registration of the FIR as well as his acquittal, the petitioner could not possibly have remembered the same at the time of filling up the enrollment form as well as the verification roll. The submission is that the petitioner was incapable of comprehending the proceedings which had been undertaken as a result of the registration

of the case. It is, therefore, submitted that no declaration, which was false to the knowledge of the petitioner, was made by the petitioner while filling up the verification form.

10. Mr. R.K. Saini, learned counsel for the petitioner has placed strong reliance on the provisions of the Juvenile Justice Act, 1986 which would impact the consideration of the conduct of the petitioner so far as the implication and acquittal in the criminal case is concerned. It has been pointed out that the said statute has been amended on two occasions, firstly in the year 2000 and thereafter in the year 2006 each time evidencing the legislative intent of ensuring that the rights of a child are staunchly protected and ensured. Reliance has been placed on Section 25 and 36 of the Juvenile Justice Act, 1986 to contend that the petitioner's implication in the criminal case as well as his trial are of no relevance or consequence so far as the consideration by the respondents is concerned as well as the confidentiality attached to the proceedings against a person covered by the definition of juvenile.

11. A further submission has been premised on the manner in which the query at column no. 12 has been worded by the respondents to contend that the respondents have not required a person to disclose if he was prosecuted and acquitted in any case to be disclosed thereunder.

12. On the other hand, Ms. Preeti Dalal, learned counsel appearing for the respondents has strongly contended that the petitioner has concealed material information and has failed to disclose the case in which he was implicated for which criminal proceedings were initiated against him which constituted information falling within the realm of information to be disclosed in the verification roll. It is contended that

as a result, the conduct of the petitioner falls squarely within the conduct against which the petitioner stood warned by the caution appearing at serial no. 3 on the front page of the verification roll. It has been urged at length that the petitioner had suppressed factual information in the verification roll and furnished false information which clearly falls within the purview of a notified disqualification rendering him unfit for employment with the government.

13. In support of her submissions, Ms. Dalal, learned counsel has strongly relied on a pronouncement of a Division Bench of this court dated 19th October, 2006 in **W.P.(C) No. 11460/2004** entitled **Yogesh Kumar Singh vs. UOI & Ors.**

14. Before dealing with the other contentions, it is essential to consider the requirements of column no. 12(a) of the verification roll which the petitioner was required to fill up. We find that a person filling up the column is required to disclose, inter alia, as to whether he had been “arrested, prosecuted, kept under detention or bound down/fined, convicted, by court or law for any offence”.

This query gives options to a person filling the form akin to a multiple choice question where the most appropriate answer which fits the available options is to be tick marked. It is evident that the draftsman has kept in mind that at the time of filling up the verification roll, even if a person has been implicated in a case, the same may be at any stage from registration to its final decision. Therefore, the column carefully provides for the various stages of a criminal trial, bearing in mind that only such conduct which could disqualify or debar a person from employment by the respondents is required to be disclosed. The stages which are required to be disclosed are clearly mentioned as

options to the candidate filling the form and not cumulatively. For instance, in respect of someone who has been convicted, it is obvious that he would have been prosecuted. However, in respect of a person who has been prosecuted and acquitted, what is of relevance is the acquittal and not the fact that he has been prosecuted; kept under detention; bound down etc. However, as we have already noticed above, there is no query in the form with regard to disclosure of a prosecution resulting in an acquittal. A bare examination of the query would disclose that the same also suffers from several printing mistakes inasmuch, as, the same is hopelessly and incorrectly punctuated. But the intent and purport thereof is clearly evident. The same is also, in fact, made clear by the same query in hindi. The requirement of column 12(a) would therefore be that in case a person who was, at the time of filling up the verification form, undergoing prosecution or had been arrested or had been kept under detention or stood bound down or fined or convicted by a court of law for any offences is required to disclose the same. So far as concluded cases are concerned, the respondents have asked for only details of the case if the candidate stood convicted by a court of law.

15. As noticed above, the petitioner stood acquitted by the juvenile court. No column for informing the respondents in case of an acquittal has been stipulated in the form. This information was not sought, as the respondents did not consider it relevant for their purpose, to get information with regard to a criminal case in which the candidate had been acquitted.

16. This matter can be examined from yet another perspective. The petitioner has placed before us a copy of the judgment dated 24th

December, 1994 passed by the Juvenile Court, Bhiwani in the case against the petitioner arising out of the FIR No. 166 dated 18th June, 1994. Perusal thereof would show that the prosecution could not prove its version and the court found nothing incriminating against the petitioner. For this reason, the court even dispensed with recording of the statement under Section 313 of the Code of Criminal Procedure of juvenile i.e. the petitioner. A clear finding has been returned that no charge was proved against the juvenile and he stood acquitted of the charges levelled against him. The petitioner would have had hardly any role to play in the said proceedings. It is clear that there was no remarkable or memorable event which took place before the juvenile court, such as the examination or cross examination of the petitioner, which could have got embedded in his memory.

17. It has been argued before us that both on the date of his implication as well as on the date of the acquittal, the petitioner was of the tender age of eight years. We also find it difficult to expect that a child of eight years would comprehend the proceedings to which he was subjected to before the juvenile court. A reasonable view of normal human conduct would lead us to accept the submission on behalf of the petitioner that it is highly improbable for anyone to recollect an event which may have occurred twelve years prior, particularly when the event has occurred when the person was barely eight years of age.

18. Mr. Rakesh Saini, learned counsel for the petitioner has placed reliance on the provisions of Section 25 of the Juvenile Justice Act, 1986 which would apply to the facts of the present case inasmuch, as, we are concerned with a prosecution of a child in the year 1994. This statutory provision reads as follows :-

“25. Removal of disqualification attaching to conviction-Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this **Act shall not suffer disqualification**, if any, attaching to a conviction of an offence under such law.”

From a bare reading of this statutory provision, it is evident that the legislative intent was that even the conviction for an offence under any law cannot be treated as a disqualification which would attach to a person who is subject to the Juvenile Justice Act, 1986. The petitioner was acquitted of the offence with which he was charged. In view of the statutory provision, even if the petitioner had been convicted, the same could not have been treated as a disqualification for the purpose of employment by the respondents.

19. The Statement of Objects and Reasons for enacting the Juvenile Justice Act, 1986 would show that the same was enacted for the reason that justice system as available for adults was not considered suitable for application to the juveniles. So far as applicability is concerned, a juvenile has been defined under sub-section (h) of section 2 to mean a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years under the Act of 1986.

20. In view of the above, the petitioner's implication in the criminal case and his being subjected to trial are of no relevance or legal consequence for any purpose at all. The disclosure of the information with regard to the acquittal of the petitioner was, therefore, wholly irrelevant and its non-disclosure in the given circumstances cannot be said to be with a view or intent to suppress any incriminating fact or was calculated to deceive.

21. We also find that so far as the verification report received by

the respondents is concerned, in the communication dated 26th June, 2007 from the office of the Additional DIG, Police, it has been stated that the Collector & District Magistrate, Mahendragarh has reported that not only was the petitioner involved in Case No. 166 dated 18th June, 1994 but the case was still under process. This is clearly an incorrect report of the facts of the case. The verification report does not disclose the material fact that the petitioner was a juvenile on the date of his implication and that the case had been tried by the juvenile court. The report also does not disclose the fact that the petitioner stood acquitted long ago.

In this background the action which was premised on the report was obviously wrongly directed as the report itself was hopelessly incomplete and erroneous.

22. We may refer to the Division Bench decision of this court in ***Ex.(Recruit) Constable Nirbhai Singh v. UOI & Others 2007(94) DRJ 325 (DB)***. In this case, the petitioner was implicated in a criminal case on 27th December, 1997 after he had given the declaration that no criminal case was pending against him. The declaration was made on 6th October, 1997. It was also a stipulation in the application form that if after submission of the form the candidate is detained or deprived of any right or convicted by a Court of law then detailed information of the same must be furnished to the DCP, 3rd Battalion of Delhi Police immediately, failure to do so was deemed as suppression of information. The petitioner, however, failed to furnish the requisite information about the registration of a case vide FIR No.100 against him under Section 306/34 IPC. After his selection he joined the department on 27th March, 1998. Eventually vide judgment dated 01st

September, 1998 he was acquitted by the Additional Sessions Judge, Faridkot as no evidence was found against him. The show cause notice dated 28th September, 1998 was issued to him as to why his service should not be discontinued under Rule 5(1) of the CCS (Temporary Service) Rules, 1965 for concealment of the fact of his involvement in a criminal case. The petitioner submitted a reply to the show cause notice, stating that he was unaware of the procedure that he had to make a declaration in respect of a criminal proceeding launched against him after the submission of his application. However, the respondents held that the same was devoid of any weight and that ignorance of rules is no excuse. As a result the petitioner's services were terminated which action was the subject matter of challenge in the case.

23. The court was thus concerned with a question regarding enforcement of the clause in the application form providing for a deemed presumption of suppression and concealment, in case of non declaration of an event occurring in future.

24. It is noteworthy that the court appointed an amicus curiae who placed the entire conspectus of the law in issue. The attention of the court was drawn to the pronouncement of the Apex Court in **(1999) 1 SCC 246 Commissioner of Police Vs. Dhaval Singh** wherein it was held that a finding of intentional suppression was necessary and the same cannot be applied in every case where incorrect information is filled up in the form. The Supreme Court was of the view that the defence of the person ought to be considered and the authority should not proceed simply to cancel the candidature on the basis of incorrect

disclosure.

25. It is noteworthy that even in **Ex. (Recruit) Constable Nirbhai Singh Vs. UOI & Ors. (Supra)**, the court was of the view that the defence of the petitioner to the effect that he did not remember the stipulation in the application form which has been filled nearly a year back, requiring him to make disclosure with regard to pendency of a criminal case, is quite plausible. It was held that a person filling up a form may not even retain a copy or remember covenants contained therein so as to inform the authority at a later date of the happening of an eventuality.

In this case, the court was of the view that the authorities had acted on the presumption raised as per the clause in the form without considering the defence of the petitioner. The court further held that it had not been shown that the petitioner had the knowledge of the requirement to inform the authorities, or of its consequences, and that he deliberately hid the factum of his subsequent arrest in order to secure employment. Non-communication of the information of arrest, to be actionable, was held to be suppression of actual information.

26. Even in **(2003) 3 SCC 437 Kendriya Vidyalaya Vs. Ram Rathan Yadav**, the defence of the employee was considered but rejected as not plausible. After considering all these judicial pronouncements and the facts of the case, the court held as follows:-

“11. It is not in dispute that a criminal case registered under Sections [323](#), [341](#), [294](#), 506B read with Section [34](#) IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against column Nos. 12 and 13 as "No" is plainly suppression of material information and it is also a false statement. Admittedly, the respondent is holder of B.A., B.Ed. and M.Ed. degrees. Assuming even his medium of instruction was Hindi throughout, no prudent

man can accept that he did not study English language at all at any stage of his education. It is also not the case of the respondent that he did not study English at all. If he could understand column Nos. 1-11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of column Nos. 12 and 13. Even otherwise, if he could not correctly understand certain English Words, in the ordinary course he could have certainly taken hold of somebody. This being the position, the Tribunal was right in rejecting the contention of the respondent and the High Court committed a manifest error in accepting the contention that because the medium of instruction of respondent was Hindi, he could not understand the contents of column Nos. 12 and 13. It is not the case that column Nos. 12 and 13 are left blank. The respondent could not have said "no" as against column Nos. 12 and 13 without understanding the contents. Subsequent withdrawal of criminal case registered against the respondent of the nature of offences. If our opinion, were not material. The requirement of filling column Nos. 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.

12. 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 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 column Nos. 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.

27. In ***Ex (Recruit) Constable Nirbhai Singh*** (supra), the court observed as follows :-

“11. We find merit in the submissions of the learned Amicus Curiae. We are of the view that while dealing with contractual relationship between a government authority and its employee engrafting the presumption of legal fiction as applicable in statutory law to the contractual relationship would not be prudent. There is also inherent distinction between the non-disclosure or concealment of a past event where the deeming provision could apply as the facts are within the knowledge of the person, and in respect of a future event, where the application of the

deeming

provision would entail attributing to the person concerned, his remembering the provision, which may or may not be true. As noted above, even in cases relating to the disclosure or non-disclosure of past event, the approach of the Supreme Court has been that the defense of the employee ought to be considered. The same would apply with greater force to a provision dealing with a future event. therefore, in our view, simply by invoking the deeming provision especially in respect of a future event, the authority cannot terminate the employment without considering the employee's defense.

12. In view of the foregoing discussion, we are of the view that even if there is incorrect disclosure in the application/attestation forms as to a past event, it is obligatory to consider the defense of the employee before coming to the conclusion of suppression. This should apply with greater force for non-compliance with disclosure of Future Events. Secondly, the meaning given to the word "deemed" depends upon the

context in which it is used. The ordinary meaning includes "generally regarded" or "prima facie regarded" and does not in every case mean "treated as". Thirdly, the statutory principles of deemed legal fiction should not be engrafted in the context of contractual relationship.

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15. Having heard learned Counsel for the parties and noted the legal position in the paras above, we find that there is no analogous provision relating to disclosures, as in the application form, in the Central Civil Services (Temporary Services) Rules, 1965. We find that in this case, the question which arises for determination is whether it can be attributed to the petitioner that he remembered the disclosure clause on the basis of the deemed presumption. It goes without saying that the petitioner could not have forgotten the period of his incarceration. The question is whether he remembered that the application form, that he had filled nearly a year back, contained a clause requiring him to make such a disclosure. Even if such a presumption was to be raised, it would be a rebuttable presumption where he has to be permitted to lead evidence in defense and the same being objectively considered rather than arriving at a finding of deemed suppression or fraudulent concealment.

16. In the instant case, there is no real consideration of the defense of the petitioner that he was not aware of the

instruction in the form which required him to inform the authorities as and when he was prosecuted or arrested in

future, after having filled up the form. In our view, in a mass recruitment drive as this, it is quite plausible that a person filling up the form may not even retain a copy or remember the covenant contained therein so as to inform the authorities at a later date on the happening of the eventuality. The authorities in the instant case have acted on the presumption raised as per the clause without considering the defense of the petitioner. It has not been shown that the petitioner having the knowledge of the requirement to inform the authorities and of its consequences, deliberately hid the factum of his subsequent arrest in order to secure the employment. The relevant portion of the order dated 12.1.1999 is reproduced for facility of reference:

It was obligatory on his (petitioner's) part to inform this department soon after his arrest in the said case in conformity with the clause mentioned in the application form prescribed for recruitment in Delhi Police as well as in the attestation form, which he filled during the course of his recruitment in Delhi Police. But he did not disclose the facts of his arrest in the said criminal case, which amounts to concealment of fact. His plea that he was unaware of the procedure is devoid of any weight being the plea to be an after thought . Besides this, ignorance of rules is no excuse. He intentionally concealed the facts. His next plea that he has been acquitted in the said criminal case is also not tenable since his acquittal is not honourable due to non-supporting the case by main PWs. Here it is also worth mentioning that this plea of the Rectt. Constable Nirbhai Singh, No. 2408/N does not require any consideration, as the issue is that he concealed the fact of his arrest in the said criminal case.

From the foregoing it would be seen that the respondent authority, on the basis of the clause in the Application Form has rejected the plea of the petitioner of not being aware of the same, as an after thought and treated the same as deliberate and intentional concealment. The authority in holding "ignorance of rules is no excuse" has treated it as a deeming provision akin to raising a statutory presumption."

28. The instant case can be distinguished on the factual aspects which have been noticed hereinabove. We have held that in the facts

of the case, there was no suppression of information or non-disclosure of material facts having regard to the nature of the form.

It is noteworthy that in ***Ex (Recruit) Constable Nirbhai Singh*** (supra) this Court required the respondent authority to reconsider the aspect whether there had been a willful suppression or concealment by the petitioner of the factum of his subsequent implication in a criminal case and detention. However, in the present case we do not consider it necessary to adopt the said course of action since the implication of the petitioner in the criminal case as well as his acquittal had taken place when he was merely 8 years of age; it had taken place nearly 12 years before the filling up of the verification roll by the petitioner; even if the petitioner had been convicted as a juvenile the same could not have been a disqualification for the petitioner and in the present case he had been given a clean acquittal; the query put in the form in Clause 12(a) did not require furnishing of any information with regard to acquittal of the candidate; the intention to suppress the information cannot be gathered in the facts of this case as the petitioner's implication could have had no adverse effect on his rights stemming out of his selection in the selection process in question as the said information, in any event, was immaterial and irrelevant.

In these circumstances, there could be no deemed presumption of intentional or deliberate suppression. Even otherwise, the suppression of the information with regard to acquittal of the case would not have impacted appointment of the petitioner or his entitlement to remain in service.

29. The respondents have placed reliance on the provisions of Rule

5(1) of the CCS (Temporary Service) Rules for the purposes of their action. It has been contended that the petitioner's services have been terminated by an order of termination simplicitor without any stigma being attached thereto. However, it cannot be even suggested let alone held that the order does not have drastic consequences so far as the petitioner is concerned. He has been deprived of employment in a position to which he had been selected. The action against him is admittedly premised on the report and the finding that the petitioner stood implicated in a pending criminal case and that he had suppressed material facts and furnished false information in the verification roll.

30. It is well settled that termination simplicitor of a temporary employee by a termination order which may not disclose any reasons is legally permissible. However the same has to be based and premised on relevant material. Simplicitor termination of a temporary government servant cannot be arbitrary or whimsical. Though the order may not contain any stigmatic utterances, the authorities cannot dispense with the necessity to support the decision with germane reasons on the record.

31. The above narration would show that in the instant case, the action is premised on an incorrect verification in the report submitted by the police and an incorrect application and interpretation of clause 12(a) in the form. We have also found that the form which the petitioner was required to fill did not contain any column requiring him to disclose that he had been acquitted in a criminal case. Additionally, we have found substance in the petitioner's contention that on account of his age at the time of his implication and acquittal, keeping in view the normal course of human conduct and development, it would be

unreasonable to expect the petitioner to have recollection of events which had occurred when he was barely eight years of age. We have also found substance in the contention that it would be difficult for an eight year old to comprehend the proceedings which took place. The impugned orders in the present case also cannot stand for the reason that the respondents do not take into consideration the fact that the petitioner was protected by the provisions of the Juvenile Justice Act, 1986 or of his acquittal by the judgment dated 24th December, 1994.

32. So far as the reliance of the respondents on the decision dated 19th October, 2006 in **Yogesh Kr. Singh vs. UOI** (supra) is concerned, we find that this case was materially different so far as the facts in this case are concerned. Yogesh Kr. Singh was 14 years of age at the time of his implication in a criminal case in 1996. He was, however, acquitted only in 2003 by which time he was a major. Perusal of the judgment also shows that the petitioner had filled up the verification form only on 10th April, 2003. It is noteworthy also that the provisions of the Juvenile Justice Act, 1986 were not placed before the court while passing the said decision. So far as the present case is concerned, the trial of the petitioner by the juvenile court was also over in 1994 within a period of few months while he was still barely eight years of age. The verification roll was filled up by the petitioner more than 12 years thereafter.

33. As noticed above, the form does not contain any column which is required to be filled up in case of acquittal. Therefore, the acquittal by the petitioner would be a relevant factor which was required to be taken into consideration even for arriving at a conclusion as to whether the petitioner had suppressed any information or made a false

statement.

34. It is also required to be borne in mind that the recruitment process is undertaken by the respondents in remote villages. The petitioner was enrolled from a village in District Mahendragarh in Haryana. As per the verification form, he has only cleared twelve years of education. The level of comprehension entailed in filling up a form has to be considered from the view point of the petitioner who would be considered semi-literate with little, if any, experience of filling up forms who would obviously be strictly guided by the options given on the form by the respondents. Certainly, failure to disclose his acquittal in the given facts cannot be construed as a willful act of suppression of material information or giving false information.

35. In view of the above, we are of the view that the notice dated 29th July, 2007 and the termination order dated 29th August, 2007 are not based on any relevant material and are liable to be set aside and quashed. As a consequence, the petitioner is required to be reinstated in service with all consequential benefits within a period of six weeks from today.

This writ petition is allowed in the above terms.

Dasti.

GITA MITTAL,J

VIPIN SANGHI, J

MARCH 23, 2010

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