

Reserved**A.F.R.****Court No. - 49****Case :-** WRIT - A No. - 10287 of 2024**Petitioner :-** Saurabh Sahai**Respondent :-** State of U.P. and others**Counsel for Petitioner :-** Siddharth Khare, Sr. Advocate**Counsel for Respondent :-** Ashish Mishra, C.S.C., Rahul Agarwal**Hon'ble J.J. Munir, J.**

1. This writ petition is directed against an order of the District Judge, Saharanpur, acting as the Disciplinary Authority under the Service Rules, dated 01.07.2024, cancelling the petitioner's appointment as a Class-IV employee in the establishment of the District Court.

2. It is common ground between parties that the High Court of Judicature at Allahabad (for short, 'the High Court') advertised Group-D posts for recruitment in the District Judgeships through the Uttar Pradesh Civil Court Staff Centralized Recruitment, 2022-23. The petitioner was eligible and qualified. He applied for the post of a Class-IV employee. His application, being found in order, was allotted Roll No. 75393089. There is no quarrel that the petitioner cleared all stages of the recruitment process and declared a selected candidate. He was allotted the District Judgeship of Saharanpur for appointment. Acting upon the recommendation for selection, the District Judge, Saharanpur issued an appointment order dated 29.06.2023 in the petitioner's favour. He was appointed to a Group-D post, which includes a *Chowkidar*, Waterman, Sweeper, *Mali*, Porter, *Bhishti* and Lift Man. It carries the pay-

scale of Rs.5200-20200/- with a grade-pay of Rs.1800/- per month. The petitioner put in his joining report promptly and had been discharging his duties regularly. He drew his monthly salary up to the month of June, 2024.

3. On the 18th of October, 2023, the District Judge issued a show cause notice, based upon a circular of the High Court, bearing No. 4416/ 2023/ Recruitment Cell/ High Court, Allahabad dated 30.08.2023. The petitioner filed his reply to the show cause notice on 28.10.2023. The District Judge passed an order, cancelling the petitioner's appointment on the 1st of July, 2024. As it appears from the record, the petitioner's letter of appointment carried a condition to the effect that if in the police verification or the verification of educational testimonials and other documents, any inaccuracy was found, the appointment made would stand automatically cancelled. The recruitment test for the post that the petitioner sat was called the Uttar Pradesh Civil Court Staff Centralized Recruitment, 2022-23. The form, that he filled up online, carried two columns:

(a) Whether you have been tried, convicted or acquitted by Court of law?

(b) Whether any criminal complaint has ever been instituted against you?

The applicants were also required to disclose the marital status in the relevant column of the application form. While filling up the form online, the petitioner entered a 'No' against both columns, above detailed relating to criminal antecedents. Also, regarding his marital status, the petitioner declared that he was unmarried.

4. The petitioner was permitted to join service on 20.06.2023 pursuant to the appointment letter dated 19.06.2023. The petitioner also submitted an affidavit dated 22.05.2023 before

the District Judge, stating therein that neither any criminal case was ever registered against him to the best of his knowledge nor any police investigation of a criminal case was pending against him. He also said in the affidavit that he was never convicted by any competent Court of law in any criminal case. During the process of joining and verification of candidates selected under the Uttar Pradesh Civil Court Staff Centralized Recruitment, 2022-23, some directions were issued by the High Court on the administrative side, as it seems. Regarding those selected candidates, against whom any criminal case is pending, it was said *vide* letter dated 30.08.2023 issued by the High Court that the matter was placed before the Committee of Judges concerned and the Committee resolved:

"that in the event of any criminal case or proceeding is found pending against any candidate in any Court that was registered after the submission of his online application form and the candidate has furnished the details of the same in the affidavit, the joining may be offered to the candidate provided that the registered case is not of a heinous nature. Further, if any criminal case or proceeding is found pending against him or her in any Court that had not been declared/disclosed by a candidate in the application form, the candidature or appointment of such candidate shall be forfeited or cancelled by the appointing authority at their end, and the same shall be updated on the District Court Establishment Portal."

(as quoted in paragraph No.11 of the counter affidavit filed on behalf of the High Court)

5. A letter dated 22.08.2023 was addressed by the In-charge, Nazarat, Saharanpur Judgeship to the S.S.P., Ghaziabad for doing a police verification of the petitioner. In the report submitted by the Police Station Vijay Nagar, Ghaziabad, it was found that the petitioner got married on 02.11.2019. A criminal case was registered against him *vide* Case Crime No.1616 of 2020, under Sections 498-A, 323, 504, 506 IPC and Section 3/4 of the Dowry Prohibition Act, P.S. Vijay Nagar, District Ghaziabad. The petitioner was acquitted in the said case after trial by the Additional Chief Judicial Magistrate, Court

No.2, Ghaziabad *vide* judgment and order dated 25.05.2023. The petitioner filed for divorce by mutual consent on 01.09.2022 before the Principal Judge, Family Court, Ghaziabad. The said petition was allowed by the Principal Judge, Family Court, Ghaziabad *vide* judgment and decree dated 31.05.2023. Upon receipt of the said police verification report, it was forwarded to the District Judge, Saharanpur by the In-charge, Nazarat of the Judgeship, apprising him of these facts. The District Judge proceeded to issue a show cause notice to the petitioner on 18.10.2023, as already said, to which the petitioner filed his reply dated 28.10.2023. It was after receipt of the petitioner's reply that the District Judge cancelled the petitioner's appointment by the order impugned, acting on the Recruitment Cell's circular dated 30.08.2023.

6. A notice of motion was issued in this case, when it came up for admission on 24.07.2024. A counter affidavit was filed on 27.08.2024. When the writ petition next came up on 04.09.2024, the parties having exchanged affidavits, it was admitted to hearing, which proceeded forthwith. Judgment was reserved.

7. Heard Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Parashar Pandey, learned Counsel for the petitioner and Mr. Rahul Agarwal, learned Special Counsel appearing for the High Court, representing respondent Nos.2 and 3.

8. The learned Senior Advocate for the petitioner has emphatically submitted that the order cancelling the petitioner's services is arbitrary and, therefore, vitiated. He submits that for appointment in any kind of offence, a candidate does not lose his entitlement to be appointed or forfeit his appointment that he

has secured in accordance with rules to a post under the State. The nature of the offence registered against the petitioner, the moral turpitude involved, the gravity of the offence and the likelihood of its impact on his duties, if appointed, the fact if the appointee knew when he made the declaration about the non-pendency of a criminal case, that in fact, a case was pending investigation etc., are all relevant. In substance, Mr. Khare's submission is that it is not a mechanical exercise where the moment an appointee in the establishment of the District Court is found involved ever in the past in a criminal case, may be not one involving much moral turpitude, his appointment is to be cancelled.

9. Mr. Rahul Agarwal, learned Special Counsel for the High Court, on the other hand, submits that the petitioner at the time he filled up his application form, was well aware about the fact that a criminal case was pending against him and yet gave a false declaration. It is emphasized that the petitioner not only suppressed the fact of pendency of a criminal case against him, but also the fact that he was married by declaring his marital status as 'unmarried'. The submission, therefore, is that the petitioner is a man of doubtful integrity, not fit to be retained in the service of the High Court. Learned Counsel for the respondents further submits that the mere fact of suppression of information regarding the pendency of a criminal case and his marital status would *ipso facto* afford good ground for cancelling the petitioner's appointment, quite apart from the nature of the case registered against him or the outcome thereof. According to Mr. Agarwal, it is apart from the disqualification automatically incurred on account of pendency of the criminal case, a case of betrayal of trust, that must lead to a cancellation of appointment, rightly ordered by the District

Judge. In support of his contention, Mr. Rahul Agarwal has placed reliance upon a Bench decision of this Court in **Ram Sewak v. Hon'ble High Court of Judicature at Allahabad, 2024(8) ADJ 85 (DB)**. It is in addition, it is pointed out that the petitioner was a probationer and not a confirmed employee. Therefore, there was no necessity to hold a disciplinary inquiry, as urged somewhere on behalf of the petitioner. A disciplinary proceeding or inquiry would be necessary if in similar circumstances, the petitioner has been confirmed in service and then the incriminating facts were discovered.

10. We have carefully considered the rival submissions advanced by parties.

11. The foremost to be considered is the petitioner's explanation that he gave for non-disclosure of the criminal case pending against him and the misrepresentation of his marital status. A perusal of the petitioner's reply dated 28.10.2023, in answer to the show cause notice issued by the District Judge, explains the petitioner's position in the following words:

"यह कि दिनांक 19.12. 2020 के उपरान्त ही प्रार्थी की पूर्व पत्नी द्वारा गलत फहमी व मनमुटाव के कारण जो मुकदमा लिखवाया गया था समाज के सम्मानित व्यक्तियों द्वारा तभी समझौता करा दिया था तथा विवाह आदि मे खार्च धनराशि आदि देने के वादे के अनुसार दिनांक 30.08.2022 को तयशुदा धनराशि के चैक देने के उपरान्त जब प्रार्थी व प्रार्थी के परिजन कचहरी के वकील के माध्यम से लिखा पढ़ी कर रहे थे तथा जब दिनांक 1.09.2023 से सहमति से तलाक का मुकदमा भी डाला गया था अधिवक्ता द्वारा ये बताया गया था कि आपका मुकदमा आपसी मनमुटाव का है तथा समझौता हो चुका है तथा अब दोनों पक्ष स्वतन्त्र है।

यह कि प्रार्थी व प्रार्थी के परिजन का किसी प्रकार का इससे पूर्व कभी आपराधिक कृत्य का अथवा कचहरी आदि में कोई मुकदमा आदि का कोई इस प्रकार का कोई कृत्य नहीं हुआ तथा जब अधिवक्ता द्वारा ये बताया गया कि दोनों पक्ष स्वतन्त्र है तथा आप दोनों पक्ष अपना अपना विवाह कर सकते हैं चूंकि न्यायालय में कार्यवाही हडताल आदि के कारण लम्बित हुई प्रार्थी को इस बात का ज्ञान नहीं था कि जब तक मुकदमा लिखित न हो जाये तब तक कार्यवाही को लम्बित माना जाता है। प्रार्थी इन्टरमीडियेट पास, बेरोजगार था तथा इस प्रकार से कि वकील साहब ने कहा है कि अब कार्यवाही निपट गई है फार्म भरते हुए दिनांक 2.11.2022 को कोई मुकदमा लम्बित न होने का तथा अविवाहित होने का शपथ पत्र प्रमाण पत्र सत्यापन प्रस्तुत किया गया प्रार्थी का इस सम्बन्ध से कोई दुराशय नहीं था प्रार्थी ने स्वच्छ मानसिकता

से दिनांक 7.11.2022 को कोई मुकदमा लम्बित होने का कथन फार्म भरते हुए तथा मूल कागजात के सत्यापन के समय अविवाहित होने का कथन प्रार्थी का विवाह सहमति से विच्छेद हो जाने के कारण अधिवक्तागण के बताये अनुसार मान लेने के कारण हुआ।"

12. It has to be understood that before an employee is attributed an act of suppression of truth about his criminal antecedents or his marital status, or for that matter, suppression as to any fact, what is of importance is the fact if the employee knew that he was making a false statement or suppressing truth. The act of suppressing any information at the time of filling up the recruitment form postulates knowledge as well as understanding of the facts, which the employee deliberately hides from the employer. If the employee sees or understands a set of facts, may be on account of illiteracy or scanty education or the absence of legal understanding, to be something different from what the law would regard it, he cannot be held accountable for an act of suppression.

13. Now, the question is that when the petitioner filled up his application form, which appears to have been done on 07.11.2022, was he aware that there was still a criminal case pending against him, or that even though not pending, he was obliged in law to declare his antecedents? He has said in his explanation that the case against him was the fallout of a misunderstanding and marital discord between him and his ex-wife. Some respectable persons of the society had intervened and the parties compromised. After the petitioner paid for the expenses incurred in the marriage through a cheque on 30.08.2022, the petitioner and his family went to Court, where they secured the counsel of an Advocate to do the necessary paper work, in order to give effect to their amicable settlement. On 01.09.2023, parties filed for divorce by mutual consent through learned Counsel. It is said that the learned Advocate

informed the petitioner that his case was the result of a misunderstanding and marital discord, where parties had compromised and that now both of them were free. It is also the petitioner's case that he and his family do not have any criminal background or antecedents. They have never committed any crime or litigated in Court. The Advocate having told him that both parties are free, and they could marry, considering the fact that there was a strike in Court, leading to procrastination of proceedings, the petitioner did not know that until the cases are brought to an end, 'in writing', as the petitioner has chosen to describe it, the proceedings are regarded pending. It is also said that the petitioner is the holder of an intermediate certificate and an unemployed man. Upon the learned Advocate telling him that the proceedings had come to an end, when he filled up the form on 02.11.2022, he indicated that no case was pending against him and said on affidavit that he was unmarried. There was no malice about it. He said it with a clean heart that on 07.11.2022, no case was pending against him and likewise stated on affidavit, during verification of documents, that he was unmarried, believing that to be the position in law once his marriage had been dissolved by mutual consent.

14. The petitioner does not appear to be a man of high educational qualification or accomplishments, though he is reasonably literate with an intermediate certificate to his credit. The case against the petitioner arose out of a matrimonial discord, which, though a criminal case by all means, is often regarded in society now-a-days, a fallout of failed matrimony. It is not disputed that the petitioner or his family do not have any criminal antecedents and are respectable persons. If after filing for divorce by mutual consent, the petitioner, who is neither acquainted much with the law nor otherwise has insight into it

due to a life enmeshed in litigation, might well have believed the words of his Counsel that the cases between parties, including the criminal case, have been effectively brought to an end. This was particularly so as parties filed for divorce by mutual consent after an amicable settlement, which included the remittance of moneys spent on marriage. The petitioner also does not appear to represent a high social strata of the society. He is an employment seeker, who staked his claim, according to his modest qualification, for a Group-D post, where he succeeded. Even if he thought, going by the second of the two columns that he should disclose the fact that a case was registered against him, that in his belief, had come to an end after the settlement of the matrimonial dispute with his wife, his anxiety of losing his job over nothing, might well have made him think that there was no use of disclosing a case, a matrimonial issue after all, which had already ended in all probability. The petitioner, indeed, thought that after the compromise and filing for divorce by mutual consent, all cases between parties had come to an end. In these state of things, the petitioner could very reasonably be understood to have believed that there was no criminal case pending against him.

15. So far as the fact that the petitioner declared himself to be unmarried, given the petitioner's social and educational background, the distinction between a divorcee and an unmarried man might well have escaped his appreciation. It need not be attributed to a deliberate intent to suppress the fact. These possibilities about the circumstances attending non-disclosure of the criminal case, pending against the petitioner and his marital status, have not at all been considered by the District Judge, who has passed an order, determining the petitioner's service with a cancellation of his appointment and

updating it on the District Court Establishment Portal. It is the result of a very mechanical and arbitrary act by the District Judge, without the slightest application of mind, that had to be very profound in a case like the present one. The law in this regard is fairly well settled. A very careful consideration of many factors as to the nature of the crime, the social background of the employee/ candidate, his reputation otherwise in society or his antecedents, all have to be taken into consideration before a decision is reached to determine a hard earned public employment. The legal position in this regard has been very recently considered and summarized by the Supreme Court in **Ravindra Kumar v. State of U.P. and others, (2024) 5 SCC 264**. In **Ravindra Kumar** (*supra*), it has been held:

“23. As would be clear from *Avtar Singh v. Union of India*, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425, 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.

24. *Avtar Singh* [*Avtar Singh v. Union of India*, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] also noticed the judgment in *Commr. of Police v. Sandeep Kumar* [*Commr. of Police v. Sandeep Kumar*, (2011) 4 SCC 644 : (2011) 2 SCC (Cri) 426 : (2011) 1 SCC (L&S) 734] . In *Sandeep Kumar* [*Commr. of Police v. Sandeep Kumar*, (2011) 4 SCC 644 : (2011) 2 SCC (Cri) 426 : (2011) 1 SCC (L&S) 734] , 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* [*Morris v. Crown Office*, (1970) 2 QB 114 : (1970) 2 WLR 792 (CA)] and concluded as follows : (*Sandeep Kumar case* [*Commr. of Police v. Sandeep Kumar*, (2011) 4 SCC 644 : (2011) 2 SCC (Cri) 426 : (2011) 1 SCC (L&S) 734] , SCC pp. 646-47, paras 10-12)

“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 325/34IPC. 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.”

25. Thereafter, in *Avtar Singh* [*Avtar Singh v. Union of India*, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] dealing with *Sandeep Kumar* [*Commr. of Police v. Sandeep Kumar*, (2011) 4 SCC 644 : (2011) 2 SCC (Cri) 426 :

(2011) 1 SCC (L&S) 734], this Court observed as under : (*Avtar Singh case* [*Avtar Singh v. Union of India*, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425], SCC p. 500, para 24)

“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* [*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.”

26. In *Ram Kumar v. State of U.P.* [*Ram Kumar v. State of U.P.*, (2011) 14 SCC 709 : (2013) 2 SCC (L&S) 773], another case noticed and discussed in *Avtar Singh* [*Avtar Singh v. Union of India*, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] arising out of near identical facts and construing a similar clause in the verification form, this Court, while granting relief, held as follows : (*Ram Kumar case* [*Ram Kumar v. State of U.P.*, (2011) 14 SCC 709 : (2013) 2 SCC (L&S) 773], SCC pp. 711-13, paras 9, 12-14 and 17)

“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.’

12. On a reading of the order dated 18-7-2002 of the Additional Chief Judicial Magistrate it would show that the 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 323/34/504IPC. 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.

17. For the aforesaid reasons, we allow the appeal, set aside the order [*Ram Kumar v. State of U.P.* Writ-A No. 40674 of 2007, order dated 30-8-2007 (All)] of the learned Single Judge and the impugned order [*Ram Kumar v. State of U.P.*, 2009 SCC OnLine All 2622] 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.”

(emphasis in original)

Ram Kumar [*Ram Kumar v. State of U.P.*, (2011) 14 SCC 709 : (2013) 2 SCC (L&S) 773] was also a case of cancellation of selection to the post of Constable.

27. More recently in *Pawan Kumar v. Union of India* [*Pawan Kumar v. Union of India*, (2023) 12 SCC 317], 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* [*Avtar Singh v. Union of India*, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] held as under : (*Pawan Kumar case* [*Pawan Kumar v. Union of India*, (2023) 12 SCC 317], SCC paras 11, 13 & 20)

“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/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 has been 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.

20. Consequently, the appeal succeeds and is allowed. The judgment of the Division Bench of the High Court dated 17-11-2015 [*Pawan Kumar v. Union of India*, 2015 SCC OnLine Del 14648] and the order of discharge dated 24-4-2015 and dated 23-12-2021 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 27-2-2011. 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.”

28. In *Mohd. Imran v. State of Maharashtra* [*Mohd. Imran v. State of Maharashtra*, (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 : (SCC p. 698, para 5)

“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, 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 simpliciter. 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.”

29. We have also kept in mind the recent judgment of this Court in *Satish Chandra Yadav v. Union of India* [*Satish Chandra Yadav v. Union of India*, (2023) 7 SCC 536 : (2023) 2 SCC (L&S) 43] and the broad principles set out by this Court in para 93, especially, paras 93.1, 93.3 and 93.7. Even the broad principles set out therein recognise that *each case* should be scrutinised 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* [*Avtar Singh v. Union of India*, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] 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* [*Avtar Singh v. Union of India*, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] 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.

30. We have read and understood the broad principles laid down in *Satish Chandra Yadav* [*Satish Chandra Yadav v. Union of India*, (2023) 7 SCC 536 : (2023) 2 SCC (L&S) 43] with the following crucial paragraph in *Avtar Singh* [*Avtar Singh v. Union of India*, (2016) 8 SCC 471 : (2016) 2 SCC (L&S) 425] : (SCC pp. 506-507, para 35)

“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.”

31. We have also examined the judgment in *State of T.N. v. J. Raghunees* [*State of T.N. v. J. Raghunees*, (2023) 16 SCC 647 : 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* [*Pawan Kumar v. Union of India*, (2023) 12 SCC 317] , *Sandeep Kumar* [*Commr. of Police v. Sandeep Kumar*, (2011) 4 SCC 644 : (2011) 2 SCC (Cri) 426 : (2011) 1 SCC (L&S) 734] and *Ram Kumar* [*Ram Kumar v. State of U.P.*, (2011) 14 SCC 709 : (2013) 2 SCC (L&S) 773] . Hence, we find that the judgment in *J. Raghunees* [*State of T.N. v. J. Raghunees*, (2023) 16 SCC 647 : 2023 SCC OnLine SC 1379] is clearly distinguishable.”

16. And, after noticing all these crucial authorities of the Supreme Court, their Lordships reached the following conclusions, analysing the relevant cases in **Ravindra Kumar**:

“32. The nature of the office, the timing and nature of the criminal case; the overall consideration of the judgment 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.

33. Having discussed the legal position above, it is necessary to set out certain special features that obtain in the case at hand.

33.1. The appellant hails from the small Village Bagapar, PO Kataura, Police Station Gauri Bazar, District Deoria, U.P.

33.2. On the date of the application, there was no criminal case pending and there was no suppression in the application form.

33.3. 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* [*Commr. of Police v. Sandeep Kumar*, (2011) 4 SCC 644 : (2011) 2 SCC (Cri) 426 : (2011) 1 SCC (L&S) 734] and even in the criminal case he was acquitted.

33.4. 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.

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

33.6. Not stopping there, the person who visited the spot even wished him a bright future in the report.

33.7. 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.

33.8. 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.

33.9. The Superintendent of Police, in his letter to the Commandant, endorsed the report and reiterated that the character of the candidate was excellent.

33.10. While examining whether the procedure adopted for enquiry by the authority was fair and reasonable, we find that the order of cancellation of 12-4-2005 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 (see para 13, above). Like it was found in *Ram Kumar* [*Ram Kumar v. State of U.P.*, (2011) 14 SCC 709 : (2013) 2 SCC (L&S) 773] 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* [*Satish Chandra Yadav v. Union of India*, (2023) 7 SCC 536 : (2023) 2 SCC (L&S) 43], we find that the order of cancellation dated 12-4-2005 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.

34. 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. 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.”

17. In the background of the above principles laid down by the Supreme Court in **Ravindra Kumar**, the holding of the Division Bench of this Court in **Ram Sewak** (*supra*) seems to have proceeded on its own facts, particularly so as **Ravindra Kumar** was not brought to their Lordships’ attention at all. It is no thumb rule to be followed in every case that where a candidate does not disclose information about a pending case, his employment is to be determined on the ground of *suppressio veri*. In fact, to do so requires the very attentive scrutiny of facts on the employer’s part, starting from the candidate’s understanding of the requirements of disclosure,

and if he deliberately suppressed the information or misunderstood the position factually due to inept education, lack of understanding of the niceties of procedural law etc. There has to be a very firm opinion after analysis of relevant facts that the candidate deliberately did suppress.

18. The other most important issue that must be addressed by the Appointing Authority or the employer, broadly said, is if the criminal case, seen in a holistic perspective that the employee does not disclose, indeed shows him to be a lurking criminal, trying to enter the employer's establishment through falsehood or subterfuge, or is he a respectable man, *bona fide* thinking that he need not disclose a trivial infraction or an unpleasant happening in his private life - not a heinous offence, which is, indeed, a closed chapter, or thought by him a case that is no longer there. These would be the issues that ought have been considered in this case by the District Judge before choosing to cancel the petitioner's appointment. Here, it does not much matter that the petitioner is a probationer. The law of probation would not come into play because it is not for unsuitability in the performance of his duties that the petitioner's employment has been terminated with a discharge from service during probation. It is a case of cancellation of appointment on account of allegations of suppression of facts at the time of securing employment. Nevertheless, Mr. Agarwal is right to the extent that in any case, it would not require a full-fledged disciplinary proceeding. This does not mean that for a careful scrutiny of all facets of the matter before a decision was reached, a formula judgment could be entered.

19. Though, with a very heavy heart, this Court must remark that the recommendations of the Committee of Hon'ble Judges, quoted in paragraph No.11 of the counter affidavit to guide the

discretion of the Disciplinary Authority in such matters, do not go in tune with the law very eloquently expressed by their Lordships of the Supreme Court in **Ravindra Kumar**. In fact, the words of the Committee are the antitheses of it. To say that the moment it is found that a candidate has not declared a pending case against him or her in any Court in the application form, the candidature or appointment shall be forfeited or cancelled by the Appointing Authority and updated on the District Court Establishment Portal, almost to employ the directions of the Committee, is the very opposite of the careful consideration of various facets regarding the candidate, his circumstances, the nature of the job, the nature of the crime spoken of by the Supreme Court in **Ravindra Kumar** as essentials to be considered before a decision to determine the employment can be reached.

20. In this case, it has to be noticed that whatever might have been the circumstances relating to the registration of a criminal case by the petitioner's wife alleging cruelty, she did not support the prosecution in the dock and a judgment of acquittal, albeit granting benefit of doubt, was passed by the learned Magistrate. The marriage between parties was dissolved in terms of a decree of divorce by mutual consent passed by the Principal Judge, Family Court, Ghaziabad in O.S. 2342 of 2022. The two facts taken together show a discernible background to the case registered against the petitioner, which is no more than a matter of matrimonial discord, that ended in the spouses ironing out their differences amicably; of course, deciding to part ways as friends. Should this kind of a mishapening in a person's life lead to the loss of public employment is a matter to be most seriously considered. It cannot be decided according to any pre-fixed formula.

21. In the result, this petition **succeeds** and is **allowed**. The impugned order dated 01.07.2024 passed by the District Judge, Saharanpur is hereby **quashed**. A *mandamus* is issued to the District Judge, Saharanpur to reconsider the petitioner's case, bearing in mind the guidance in this judgment and pass fresh orders within a month of receipt of a copy of this judgment.

22. Let a copy of this judgment be communicated to the learned District Judge, Saharanpur by the Registrar (Compliance).

Order Date :- 27.2.2025

Anoop

(J.J. Munir)
Judge