

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.818 of 2014

In
Civil Writ Jurisdiction Case No. 11952 of 2012

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Navin Kumar S/o Sri Kapildeo Prasad resident of village - Rajauli Tola,
Rampur, P.O. + P.S. Rajauli, District - Nawada

.... Appellant

Versus

1. The State of Bihar
2. The Bihar Staff Selection Commissioner through its Secretary, Patna - 14
3. The Chairman, Bihar Staff Selection Commissioner, Patna - 14
4. The Director General of Police, Bihar, Patna
5. The Secretary (Home Police), Govt. of Bihar, Patna
6. The Deputy Inspector, General of Police (Personal & Administration), Bihar, Patna
7. The Superintendent of Police, Nawada

.... Respondents

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Appearance :

For the Appellant : Mr. Tej Bahadur Singh, Senior Advocate
Mr. Bhaskar Shankar, Advocate

For Resp. Nos. 4 to 7 : Mr. Abbas Haider, S. C. 16
Mr. Ravish Chandra, AC to SC 16
Ms. Archana Prasad, AC to SC 16

For Resp. Nos. 2 & 3 : Mr. S. S. Sunderam, Advocate
Mr. Piyush Lal, Advocate
Mr. Shankar Kumar Thakur, Advocate

MR. Y. V. GIRI, SENIOR ADVOCATE AND MR. JITENDRA SINGH, SENIOR ADVOCATE : AMICUS CURIAE

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE JUSTICE SMT. ANJANA MISHRA
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

7 -01-2015 The principal question, which this appeal, preferred against the order, dated 17.02.2014, passed in CWJC No. 11952 of 2012, has raised is: *whether a false declaration, made by an applicant to a process of public recruitment, disqualifies the applicant from being appointed even if the applicant, otherwise, gets selected on his own*

merit?

2. By the order under appeal, a learned single Judge of this Court has dismissed the writ petition made under Article 226 of the Constitution of India, which gave rise to CWJC No. 11952 of 2012, and thereby rejected the writ petitioner's prayer for setting aside the order, dated 07.12.2011, contained in Memo No. 1246/P-2, issued by the Deputy Inspector General (Personnel), Bihar, informing the writ petitioner that he had been found unfit for appointment to the post of Sub-Inspector of Police in Bihar Police Service.

3. The material facts, which have given rise to the present appeal, may, in brief, be set out as under:

(i) Pursuant to the Advertisement No. 704/2004 inviting applications for appointment to the posts of Sub-Inspector in Bihar Police Service, the appellant applied as a candidate of Scheduled Caste Category and was allotted Roll No. G-025511. The appellant appeared in physical test held in the year 2006 and was found fit. The physical test was followed by a written examination, which was also successfully cleared by the appellant on 30.05.2008. Following the result of the written examination, the petitioner-appellant appeared in Medical Test, wherein also he became successful.



(ii) However, on the result of the written test so published on 30.05.2008, a declaration/verification form was required to be filled up by the successful candidates. The said form was accordingly filled up by the petitioner-appellant in the month of July, 2008. The declaration form required a candidate to clearly state as to whether any case, either civil or criminal, was pending against him.

(iii) The said declaration form was filled up by the petitioner-appellant, wherein the petitioner-appellant mentioned, in the relevant column, the word '*nahi*' (i.e., 'no'), which meant that the appellant declared that he was not involved in any case, civil or criminal; but on 02.12.2008, the petitioner-appellant gave a representation, addressed to respondent No.6, namely, Deputy Inspector General of Police (Personnel & Administration), Bihar, Patna, stating therein that a criminal case, bearing Complaint Case No. 678 of 2005, was pending against the appellant. The final result of the entire recruitment process was published on 01.02.2009.

(iv) After the final result was so published, the appellant was acquitted, on 11.02.2009, on the basis of compromise and the appellant accordingly made a representation, on 18.02.2009, addressed to respondent No.6, namely, Deputy Inspector General of Police

(Personnel & Administration), Bihar, Patna, stating therein that he had been acquitted in the said complaint case on 11.02.2009.

(v) By his representation, dated 18.02.2009, aforementioned, the appellant stated to the effect that though the result had been declared as indicated hereinbefore and the appellant had been successful in clearing the selection process, the letter of appointment had not yet been issued to him on the ground that Complaint Case No. 678 of 2005 was pending against him, whereas the said case had already been compromised and pursuant to the compromise, the appellant had already been acquitted. The appellant, therefore, with the help of the representation, dated 18.02.2009, aforementioned, requested that the appointment letter be issued to him.

(vi) Pursuant to the appellant's representation, dated 18.02.2009, respondent No.6, by letter, dated 03.03.2009, addressed to the Superintendent of Police, Nawada, directed the latter to send him a report in the matter. An enquiry was accordingly made by the Officer-in-Charge, Rajauli Police Station, who sent his report contained in Letter No.301 of 2009, dated 04.03.2009, to the Superintendent of Police, Nawada.

(vii) Though the Superintendent of Police,



Nawada, vide his letter, dated 16.10.2009, requested that the case of the appellant be sympathetically considered on the ground that the candidate (i.e., the appellant) had been acquitted in the criminal case by order, dated 01.02.2009, the police Headquarter rejected the appellant's request for appointment to the post of Sub-Inspector of Police.

(viii) By order, dated 01.12.2009, aforementioned, the appellant was informed that while making the said declaration, the appellant had categorically stated, in his own writing, that he was not involved in any case, civil or criminal; whereas the verification, carried out by the police, revealed that during the period aforementioned, the appellant was an accused in Rajauli Police Station Case No. 103 of 2005, which arose out of Complaint Case No. 678 of 2005, and inasmuch as the appellant had furnished false information, he had been found unfit for appointment to the post of Sub-Inspector of Police.

(ix) The order, dated 01.12.2009, aforementioned was put to test by means of a writ petition made under Article 226 of the Constitution of India, which gave rise to CWJC No. 4642 of 2010. The said writ petition was disposed of, on 12.09.2011, with direction to the appellant to file a representation before the concerned



authority. As a corollary to the liberty so granted to the appellant in CWJC No. 4642 of 2010, the appellant addressed a fresh representation to respondent No.6 seeking therein reconsideration of his case. By order, dated 07.12.2011, contained in Memo No. 1246/P-2, dated 08.12.2011, respondent No.6 disposed of the said representation informing the appellant that he had been found unfit for appointment to the post of Sub-Inspector of Police.

(x) Aggrieved by the order, dated 07.12.2011, contained in Memo No. 1246/P-2, dated 08.12.2011, rejecting the appellant's representation, the appellant, once again, came to this Court with a writ petition, which has given rise to this appeal.

(xi) A learned single Judge of this Court has, as already indicated above, dismissed the writ petition by order, dated 17.02.2014, making observation to the effect that the respondents had acted in a reasonable manner inasmuch as the instructions, issued in this regard, informed the candidates to the effect that the candidate must make truthful declaration and the said declaration ought to have, therefore, been truthfully made by the petitioner (i.e., appellant herein) and since the petitioner (i.e., appellant herein) had not done so and his declaration

suffered from suppression of facts, the petitioner (i.e., appellant herein) was rightly held to be unfit for appointment.

(xii) In the order, dated 17.02.2014, aforementioned, the learned single Judge has also observed to the effect that looking at the nature of the appointment, which the appellant herein was seeking, the Court is not inclined to exercise its discretion, under Article 226 of the Constitution of India, to interfere with the impugned order, dated 08.12.2011, because the reasons, assigned therein, do not suffer from any bias and since the conduct of the petitioner (i.e., the appellant herein) was not clean, his conduct does not enthruse the Court to exercise its discretion, under Article 226 of the Constitution of India, lest it becomes a reason for other candidates not to make declaration truthfully expecting that a Court of law would come to the rescue of such a candidate if the candidate was caught lying.

4. Aggrieved by the dismissal of his writ petition, the writ petitioner is, now, in appeal, before us.

5. We have heard Mr. Tej Bahadur Singh, learned Senior Counsel, appearing on behalf of the appellant, and Mr. Abbas Haider, learned Standing Counsel No.16, appearing on behalf of the State. We have heard

Mr. Y.V. Giri, learned Senior Counsel, and Mr. Jitendra Singh, learned Senior Counsel, appearing as *Amicus Curiae*.

6. While presenting the appeal, it has been submitted by Mr. Tej Bahadur Singh, learned Senior Counsel, that the list, declaring the result, was published on 30.05.2008, but the said list was *revised* due to certain litigations and the *revised list* was published on 01.02.2009 and that the respondents ought to have, therefore, given a fresh opportunity to the appellant to fill up his verification form after publication of the *revised result*. It is also submitted by the learned Senior counsel, appearing for the appellant, that the appellant had himself informed the respondents, on 02.12.2008, that is, before publication of the *revised result*, dated 01.02.2009, as regards the pendency of the criminal case, though he had made initial declaration, in the month of July, 2008, to the effect that he was not involved in any case, civil or criminal. It is further submitted by the learned counsel for the appellant that criminal case, in question, resulted into acquittal of the appellant on 11.02.2009 and though the acquittal was on compromise, the appellant ought to have been given an opportunity to make further declaration.

7. In support of the appellant's case, Mr. Tej Bahadur Singh, learned Senior Counsel, has relied upon the



decision in **Commissioner of Police and others V. Sandeep Kumar**, reported in **(2011) 4 SCC 644: 2011(2) PLJR (SC), 196**, wherein the Supreme Court has observed, according to the learned counsel for the appellant, in a similar case, that the lapse, if it were to be so considered, was not so severe as to visit the candidate with such a severe punishment as to totally deny him consideration for recruitment.

8. It is further submitted by the learned counsel for the appellant that the learned single Judge has failed to appreciate that non-disclosure of the criminal case was because of fear and when the appellant already stood acquitted in the year 2009, the respondent ought to have been lenient with the appellant.

9. Countering the submissions made on behalf of the appellant, Mr. Abbas Haider, learned Standing Counsel, has pointed out that the appellant made a categorical statement by writing the word '*nahin*' in the column, wherein he was called upon, as a candidate, to declare as to whether he was involved in any criminal case or not and it was because of the false declaration made by the appellant to the effect that he was not involved in a criminal case, which led to rejection of the appellant's candidature.

10. The present one is not a case, submits Mr. Abbas Haider, learned Counsel for the respondents, where the appellant was ignorant of the case, which had been filed in the year 2005 inasmuch as the appellant had applied for bail and had been granted bail before he made the said false declaration.

11. It is also pointed out by the learned counsel for the respondents that the advertisement, in question, was published in the year 2004 and the appellant appeared in the physical test and, on 13.10.2007, the appellant filled up OMR Form and, thereafter, the appellant appeared in the written examination on 19.04.2008, which was cleared by the appellant on 30.05.2008, but when the appellant was required to make the said declaration in the month of July, 2006, then, the appellant made the said false declaration and the final *revised list* of the written examination was published on 01.02.2009, whereas the appellant was acquitted in the criminal case on 11.02.2009, that is, after declaration of the final result. Consequently, the representation was made by the appellant, on 18.02.2009, requesting respondent No.6 to consider his case for appointment as he had been acquitted of the criminal charge.

12. It is contended by the learned counsel for



the respondents that as the appellant had given false declaration and the State Government, in its Circular, dated 08.07.2006, had made it clear to every candidate that if any candidate was found guilty of furnishing any false information or suppressing truth for the purpose of verification of his candidature, it would disqualify him. It is further contended by the learned counsel for the respondents that giving of false information and suppression of information, which led to the disqualification of the candidature of the appellant, was in tune with what the relevant Circular envisages and, hence, his writ petition has been rightly dismissed by the learned single Judge and this appeal has, therefore, no merit.

13. While it is the submission of Mr. Y.V. Giri, learned *Amicus Curiae*, that the decision, in **Sandeep Kumar** (supra), is a declaration of law under Article 142 of the Constitution of India and the same, therefore, covered the case of the appellant. Mr. Jitendra Singh, learned *Amicus Curiae*, has submitted that the decision, in **Sandeep Kumar** (supra) and also the decision in **Ram Kumar v. State of Uttar Pradesh and Others**, reported in **(2011)14 SCC 709**, are the two decisions, which have gone contrary to the consistent line of decisions starting from **Kendriya Vidyalaya Sangathan V. Ram Ratan**



Yadav reported in **(2003) 3 SCC 437**, and followed and crystallized up to the case of **Devendra Kumar v. State of Uttaranchal and Others**, reported in **(2013) 9 SCC 363**, that severe consequences shall ensue, when there is no declaration of correct facts, suppression of correct facts or false statement of the facts in a selection process regarding the question as to whether a candidate is involved in a criminal case or not, more so, when such a declaration is necessary for adjudging the suitability of a candidate in uniform force.

14. Continuing his submissions, Mr. Jitendra Singh, learned Amicus Curiae, points out that noticing that the decisions, in **Sandeep Kumar** (supra) and **Ram Kumar** (supra), run contrary to the decisions in **Kendriya Vidyalaya Sangathan** (supra), and series of other judgments, namely, **Delhi Administration though its Chief Secretary and Others v. Sushil Kumar**, reported in **(1996) 11 SCC 605 : 1997 SCC (L&S) 492**, **Union of India and Others v. M. Bhaskaran**, reported in **1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162**, **Regional Manager, Bank of Baroda v. Presiding Officer, Central Govt. Industrial Tribunal and Another**, reported in **(1999) 2 SCC 247 : 1999 SCC (L&S) 546**, **Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav**, reported in



(2003) 3 SCC 437, Secretary, Department of Home Secy., A.P. and Others v. B. Chinnam Naidu, reported in **(2005) 2 SCC 746 : 2005 SCC (L&S) 323, Union of India v. Bipad Bhanjan Gayen**, reported in **(2008) 11 SCC 314 : (2008) 2 SCC (L&S) 1034, R. Radhakrishnan v. DG of Police**, reported in **(2008) 1 SCC 660 : (2008) 1 SCC (L&S) 283, Daya Shankar Yadav v. Union of India and Others**, reported in **(2010) 14 SCC 103**, and **State of West Bengal and Others v. Sk. Nazrul Islam**, reported in **(2011) 10 SCC 184 : (2012) 1 SCC (L&S) 273**, the Supreme Court, in **Jainendra Singh v. State of U.P.**, reported in **(2012) 8 SCC 748**, has pointed out that in the face of the principles laid down in the majority of the decisions that a candidate's candidature deserves to be rejected if he deliberately suppressed information as regards his antecedents at the time of recruitment and whether there can be different yardsticks applied in the matter of grant of relief, has referred the issues to a larger Bench for an authoritative pronouncement so that there may not be conflict of views enabling the Courts to apply law uniformly, while dealing with such issues.

15. It is further submitted by Mr. Jitendra Singh, learned Senior Counsel, appearing as *Amicus Curiae*,



that the case of **Sandeep Kumar** (supra) and **Ram Kumar** (supra) were decided on the basis of the facts of the given cases and that while rendering the decisions in the case of **Sandeep Kumar** (supra) and **Ram Kumar** (supra), the Supreme Court has not taken note of its decisions in **Kendriya Vidyalaya Sangathan** (supra) and the chain of other decisions, which laid down the law to the contrary.

16. What surfaces from the respective cases of the parties, as placed before us, is that the appellant applied for appointment to the post of Sub Inspector of Police, in Bihar Police Services. He passed the physical test, written examination and also the medical test. However, following the publication of the result of the written test on 30.05.2008, the appellant was required to fill up a declaration/verification form indicating therein as to whether any case, either criminal or civil, was pending against him. The appellant made a categorical declaration, in the relevant form, that there was no case, either criminal or civil, pending against him; whereas the fact was that Rajauli Police Station Case No. 103 of 2005, which arose out of Complaint Case No. 678 of 2005, stood registered against the appellant and he was aware of the pendency of the said criminal case inasmuch as he had obtained bail in that case. It was, thus, according to the materials on

record, well within the knowledge of the appellant that he was an accused in the said criminal case.

17. Notwithstanding, therefore, the fact that the appellant knew very well that he was an accused in Rajauli Police Station Case No. 103 of 2005, the appellant made a declaration that there was no case, either criminal or civil, pending against him; whereas the Government Circular, dated 08.07.2006, had made it clear to every candidate that if any candidate was found guilty of furnishing any false information or suppressing truth for the purpose of verification of his candidature, it would disqualify him.

18. Thus, the declaration made by the appellant was clearly *false* to the knowledge of the appellant inasmuch as he was acquitted in the case only on 11.02.2009, i.e., after the result was already published on 01.02.2009. In other words, till the date of publication of the final result on 01.02.2009, the appellant had not been acquitted, his acquittal had been recorded only on 11.02.2009 and that too, on the basis of a compromise reached, in the case, by the parties concerned. The only redeeming feature, pointed out by learned counsel for the appellant, is that after making the false declaration in the month of July, 2008, which had, in the light of the



Government Circular, dated 08.07.2006, disqualified the appellant. The appellant made a representation, on 02.12.2008, addressed to the authority concerned, informing the latter that the criminal case aforementioned was pending against him.

19. What is, however, of immense importance to note with regard to the above is that before making of the representation, dated 02.12.2008, the verification by police had already commenced into the antecedents of the appellant. The appellant had not been able to offer any explanation, far less convincing and plausible, as to why he had made a false statement indicating as if he was not involved in any case, civil or criminal. There is no explanation discernable from the materials on record in this regard. The appellant has also not offered any explanation nor is there any explanation from the materials available on record as to why the appellant subsequently made a representation, on 02.12.2008, that he was involved in the said criminal case. The only reasonable explanation can be that the appellant had come to learn that his involvement, in the case, would be detected or would, in all likelihood, be detected.

20. In the circumstances as indicated above, whether the appellant was entitled to be appointed to the

post of as important as a Sub Inspector of Police? This is the moot question.

21. Mr. Jitendra Singh, learned Amicus Curiae, relied on a number of decisions, which have taken the view that a candidate, who makes a false declaration of the present nature, has no right to be appointed, more particularly, when appointment, sought for, is to a post in police officer inasmuch as a police force is expected to enforce law and a person, who himself is capable of making a false declaration, cannot be trusted to perform the duties of a police officer with honesty and high standard of integrity, which is of utmost importance, nor can he be expected to truthfully investigate a case or act in the maintenance of public order with such degree of responsibility as his post necessitates.

22. With regard to the above proposition, reference is made to the cases of **Delhi Administration though its Chief Secretary and Others v. Sushil Kumar**, reported in **(1996) 11 SCC 605 : 1997 SCC (L&S) 492**, **Union of India and Others v. M. Bhaskaran**, reported in **1995 Supp (4) SCC 100 : 1996 SCC (L&S) 162**, **Regional Manager, Bank of Baroda v. Presiding Officer, Central Govt. Industrial Tribunal and Another**, reported in **(1999) 2 SCC 247 : 1999 SCC**



(L&S) 546, Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav, reported in **(2003) 3 SCC 437, Secretary, Department of Home Secy., A.P. and Others v. B. Chinnam Naidu**, reported in **(2005) 2 SCC 746 : 2005 SCC (L&S) 323, Union of India v. Bipad Bhanjan Gayen**, reported in **(2008) 11 SCC 314 : (2008) 2 SCC (L&S) 1034, R. Radhakrishnan v. DG of Police**, reported in **(2008) 1 SCC 660 : (2008) 1 SCC (L&S) 283, Daya Shankar Yadav v. Union of India and Others**, reported in **(2010) 14 SCC 103**, and **State of West Bengal and Others v. Sk. Nazrul Islam**, reported in **(2011) 10 SCC 184 : (2012) 1 SCC (L&S) 273**.

23. We, first, come to the decision rendered in **Sushil Kumar** (supra), wherein the Court pointed out that verification of character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post of Constable under the State. Though a candidate may have been found physically fit, may have passed the written test and interview and was provisionally selected, yet on account of his antecedent, the authority concerned may find it not desirable to appoint a person of such record as a Constable to the disciplined force.

24. In the factual background of the case of **Sushil Kumar** (supra), where the candidate was allegedly



involved in a criminal case under Section 304 of the Indian Penal Code and Section 324 read with Section 34 of the Indian Penal Code, the Supreme Court pointed out that merely because such a candidate is discharged or acquitted, at a later stage, cannot be vested with the right to demand appointment.

25. Concluded the Supreme Court, in **Sushil Kumar** (supra), that the view taken by the appointing authority, in the background of the case, cannot be said to be unwarranted and the Tribunal was wholly unjustified in giving direction for reconsideration of the candidate's case. The Supreme Court also pointed out, in **Sushil Kumar** (supra), that though the candidate was discharged or acquitted of the criminal offences, the same had nothing to do with the issue. What was relevant was the conduct or character of the candidate to be appointed to a service and not the actual result thereof. If the actual result happened to be in a particular way, the law will take care of the consequences. The consideration relevant to the case is of the antecedents of the candidate and the Supreme Court, in **Sushil Kumar** (supra), held, therefore, that the appointing authority had rightly focussed on this aspect and found it not desirable to appoint the candidate to the service.

26. In the case of **M. Bhaskaran** (supra),



wherein the appointment was procured by a workman on the basis of bogus and forged casual labourer certificate card, it was held to amount to misrepresentation and fraud on the employer and, therefore, it created no equity in favour of the workman and the termination of service of such a workman was, held the Supreme Court, in **M. Bhaskaran** (supra), perfectly legal.

27. In Regional Manager, Bank of Baroda (supra), the candidate had obtained appointment by suppression of relevant facts that he was alleged to be involved in an offence under Section 307 of the Indian Penal Code. In the application form, though a query was required to be answered as to whether the applicant had ever been prosecuted at any time, the candidate replied the query in the negative. It subsequently transpired that an F.I.R. had already been lodged against him under Section 307 of the Indian Penal Code and *charge sheet* had been submitted. He was eventually convicted and sentence for rigorous imprisonment. It was in these circumstances that the Court held that since the candidate was found to have *suppressed the relevant information*, he was not entitled to be appointed. Reference, in this regard, was made to the case of **M. Bhaskaran** (supra).

28. In Regional Manager, Bank of Baroda

(supra), what was considered relevant, same as in the case of **Sushil Kumar** (supra) and **M. Bhaskaran** (supra), was the conduct of the applicant in suppressing the truth and making false declaration.

29. False declaration was, therefore, considered, in all the three cases, namely, **Regional Manager, Bank of Baroda** (supra), **Sushil Kumar** (supra) and **M. Bhaskaran** (supra), sufficient ground to reject the candidature of the candidate, who made false declaration.

30. Coming to the case of **Kendriya Vidyalaya Sangathan** (supra), it needs to be noted that this was a case, where a candidate was required to fill up an attestation form for the purpose of verification of his character and antecedent. It was categorically stated, in the form, that a candidate, who suppresses material information and/or gives false information, cannot claim right to continue in service. The purpose of seeking information was to find out the nature or gravity of the offence or the result of the criminal case. The candidate did not furnish all the information and merely because of the fact that criminal case had been subsequently withdrawn and that offences were not serious in nature, the Court directed him to be appointed. The Supreme Court, in



Kendriya Vidyalaya Sangathan (supra), pointed out that since the appointment was to the post of a Teacher, a candidate's character and antecedent for such an appointment will have a great bearing. The Supreme Court also pointed out, in this regard, that the High Court was not right in taking note of the fact that the case was withdrawn by the State Government and/or that the case was not of serious nature. The Supreme Court further pointed out in **Kendriya Vidyalaya Sangathan** (supra), that in the attestation form, the candidate had certified that the information, given by him was correct and complete to the best of his knowledge and belief, but the information furnished was false. In these facts situation, the Supreme Court, in **Kendriya Vidyalaya Sangathan** (supra), held that the false declaration, made by the candidate, was good enough ground to reject his candidature.

31. Similar is the situation in the present case, wherein the appellant does not contend that he had not understood the query. In fact, he understood the query very well and yet he made false declaration that he was not involved in any case, either civil or criminal.

32. In the light of the decision in **Kendriya Vidyalaya Sangathan** (supra) and others, one may conclude that the false declaration, made by the appellant,

in the present case, was a justifiable ground for the employer not to appoint the appellant to the post of a Police Officer, when a Police Officer has to be a person of absolute integrity so that the society can repose confidence in him.

33. More over, in **Kendriya Vidyalaya Sangathan** (supra), it was contended that the candidate had not clearly understood the query and there was, therefore, an error, which he made. In the case at hand, there is no such excuse for the appellant inasmuch as it is not his case that he had not understood the query.

34. In the case of **B. Chinnam Naidu** (supra), the Supreme Court has referred to the case of **Kendriya Vidyalaya Sangathan** (supra) for the purpose of pointing out that the object of requiring information in various columns of an attestation form and declaration therein made by the candidate are meant to ascertain and verify his character and antecedent in order to judge his suitability to enter into, or continue in, service. Held the Supreme Court, in **Kendriya Vidyalaya Sangathan** (supra), that *when a candidate suppresses material information and/or gives false information, he cannot claim any right to appointment or continuance in service.* Observed the Supreme Court, in **B. Chinnam Naidu** (supra), that there can be no dispute to this proposition of

law. However, in the facts of the case, the Supreme Court held, in **B. Chinnam Naidu** (supra), that it cannot be said that the candidate had made false declaration or had suppressed material information.

35. In **Bipad Bhanjan Gayen** (supra), the candidate was required to make a declaration in the requisite form as to whether he had ever been involved in a criminal case and his answer to the query was in the negative. Subsequent verification, however, revealed that he was involved in two criminal cases, one for an offence under Section 376 of the Indian Penal Code and the other under Section 417 of the Indian Penal Code. In these circumstances, the Supreme Court pointed out that it bears repetition that what had led to the termination of service of the respondent was 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 the relevant information, while filling up the attestation form.* The Supreme Court was of the opinion that an employment, as a police officer, presupposes a high level of integrity; and, hence, a person is expected to uphold the law and, on the contrary, such a service born in deceit and subterfuge cannot be tolerated.

36. From the decision in **Bipad Bhanjan**



Gayen (supra), apart from the fact that the candidate was found involved in a criminal case, what clearly surfaces, as relevant, is that the candidate had withheld information, while filling up the attestation form, and, therefore, he was not held fit for appointment as a Police Officer inasmuch as employment of a person, as a Police Officer, presupposes a high level of integrity and a person, who withholds information, when the information is required to be truthfully given, such a person cannot be tolerated as a member of police force inasmuch as a police officer is expected to uphold the law and a person, who seeks to be appointed by deceit, cannot be tolerated.

37. In **R. Radhakrishnan** (supra), the candidate was provisionally selected, whereafter he submitted a verification roll, wherein the queries were "*(i) if he had ever been concerned in any criminal case as an accused, (ii) has he ever been arrested or convicted and sentenced to undergo imprisonment or pay a fine in any criminal or other offence? If so, give details with CC No. and court and, (iii) were there any civil or criminal cases pending against him? If so, details.*"

38. From the queries made above, it is clear, as pointed out, in **R. Radhakrishnan** (supra), that the candidate knew and understood the implication of his



statement or omission to disclose a vital information. In the event such a disclosure had been made, the authority could have verified his character as also suitability of the appointment. To all these queries, the candidate replied in the negative meaning thereby that he denied that he was ever concerned in a criminal case or ever been arrested or convicted or there is any civil or criminal case pending against him; but it was subsequently found that he was alleged to be involved in an occurrence giving rise to the offence under Section 294 (b) of the Indian Penal Code, he had been arrested but released on bail and that he had been acquitted also. Thus, on account of the fact that he had made false statement, in his verification roll, with regard to the pendency of the case, he was not selected.

39. In the factual background as mentioned above, the Supreme Court pointed out, in **R. Radhakrishnan** (supra), that indisputably, the appellant intended to obtain appointment in a uniformed service by suppressing the truth. The Supreme Court also pointed out, in **R. Radhakrishnan** (supra), the standard expected of a person intended to serve, in a police service, is different from a person, who intends to serve in any other service. The candidate knew and understood, observed the Supreme Court, the implication of his statement or

omission to disclose a vital information. In a case of this nature, according to the Supreme Court, the question of exercising equitable jurisdiction in favour of such a candidate would not arise.

40. In **Daya Shankar Yadav** (supra), the candidate was required to reveal if he had ever been arrested, prosecuted, kept under detention or bound down or fined, convicted, by a court of law, for any offence or debarred or disqualified by any Public Service Commission from appearing at its examination or selections, or debarred from taking any examination or restricted by any university or any other education authority or institution and is any case pending against him in any court of law. The answer of the candidate was, same as in the present case, '*nahin*' (i.e., 'no').

41. Referring to its decisions in **Kendriya Vidyalaya Sangathan** (supra), **R. Radhakrishnan** (supra), **Bipad Bhanjan Gayen** (supra), **B. Chinnam Naidu** (supra) and **State of Haryana v. Dinesh Kumar**, reported in **(2008) 3 SCC 222 : 2008) 1 SCC (Cri) 722**, the Court pointed out, in **Daya Shankar Yadav** (supra), thus,

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.

(Emphasis supplied)

(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.

(Emphasis added)

42. Thus, the Supreme Court, in **Daya Shankar Yadav** (supra), has observed that 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. The Supreme Court, therefore, further pointed out, in **Daya Shankar Yadav** (supra), that an employee on probation can be discharged from service *or a prospective employee may refuse employment 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, according to the Supreme Court, in Daya Shankar Yadav (supra), is distinct from the ground of previous antecedents and character inasmuch as making a false declaration or false statement shows a current dubious conduct and absence of character at the time of making the declaration thereby making the candidate unsuitable for the post.*

43. It is, therefore, clear from the decision, in **Daya Shankar Yadav** (supra), that a prospective employee may be refused employment for 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 and that this ground is distinct from the ground of previous antecedents and character inasmuch as it shows dubious conduct and absence of character at the time of making the declaration thereby rendering the candidate unsuitable for the post.

44. In **Sk. Nazrul Islam** (supra), the candidate made a declaration, in the verification roll, regarding his antecedents. However, the verification revealed that the candidate was involved in the criminal case and after investigation, charge sheet had already been submitted against him, whereupon he had surrendered in the Court and had been granted bail. These facts had been, however, concealed, while filling up the verification form by the candidate, wherein he was required to state whether he was ever arrested, detained or convicted. As the candidate had suppressed the information about his alleged involvement in the criminal case, he was not appointed as a Constable. The Supreme Court held, in **Sk. Nazrul Islam** (supra), that the authorities were under duty to verify the antecedents of the candidate to find out his suitability and so long he is not acquitted, he cannot be possibly held to be suitable for appointment to the post.



45. As against the catena of decisions, which we have referred to above, a contrary view has been taken by Supreme Court in ***Commissioner of Police v. Dhaval Singh***, reported in **(1999) 1 SCC 246 : 1998 SCC (L & S) 1740**, ***Kamal Nayan Mishra v. State of M.P.***, reported in **(2010) 2 SCC 169**, ***Sandeep Kumar*** (supra) and ***Ram Kumar*** (supra). Having noticed that some cases had taken a contrary view, the Supreme Court, in ***Jainendra Singh*** (supra), has referred the case to a larger Bench.

46. What is, however, important to note is that considering a series of cases, the Supreme Court, in ***Jainendra Singh*** (supra), has pointed out that when a candidate suppressed material facts and fraudulently obtains orders of appointment, his appoint can be legitimately treated as *voidable* at the option of the employer or could be recalled by the employer and, in such cases, merely because the employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer. It is also pointed out by the Supreme Court, in ***Jainendra Singh*** (supra), that a candidate, who suppressed material information and/or gave false information, cannot claim



right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services. Reiterated the Supreme Court, in **Jainendra Singh** (supra), that a person, who suppressed the material information and/or gave false information, cannot claim any right to appointment or be continued in service. Further, pointed out the Supreme Court, in **Jainendra Singh** (supra), that the standard, expected of a person intended to serve in uniformed service, is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted and that an employee, in the uniformed service, presupposes a higher level of integrity inasmuch 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.

47. Coming to the case at hand, it may be noted that the learned counsel for the appellant herein heavily relied on the judgment in **Sandeep Kumar's** case (supra), wherein the Supreme Court has observed that while dealing with the false declaration made by a person, who was seeking employment to the post of Head



Constable, it needs to be noted that when the incident took place, the respondent (i.e., Sandeep Kumar), must have been about 20 years of age and, at such a age, young people often commit indiscretions and such indiscretions can often be condoned inasmuch as youth will always be youth and they are not expected to behave in as mature a manner as older people and, hence, the approach should be to condone minor indiscretions made by young people rather than brand them as criminals for the rest of their lives.

48. While considering the case of **Sandeep Kumar** (supra), it needs to be noted, as pointed out by Mr. Jitendra Singh, learned Amicus Curiae, that the facts were that Sandeep Kumar was acquitted, on compromise, in a criminal case on 18.01.1998. The advertisement, for appointment on the post of Head Constable, was issued in January, 1999, and he applied on 24.02.1999; but he did not mention about the above criminal case. He qualified in all the tests and, thereafter, in his attestation form, submitted on 03.04.2001, he, for the first time, disclosed about the above criminal case, which had ended in acquittal on compromise in the year 1998.

49. So far as the case of **Ram Kumar** (supra), is concerned, it may be noted that a criminal case was



lodged against the candidate in the year 2001; whereas he was acquitted in the said criminal case on 18.07.2002. The advertisement for appointment of the post of Constable was issued on 19.11.2006 and pursuant thereto, he applied and in his affidavit, dated 12.06.2006, he stated that he had no criminal cases registered against him.

50. In the present case, the facts are that the advertisement was issued in the year 2004. On being successful in physical test, the appellant filled up the form for written test, which was held in April, 2008. The result of the written test was published on 30.05.2008, which indicated that the appellant was successful. In July, 2008, he filled up the verification form, wherein he made a categorical statement that he had no criminal case pending against him by writing "nahin" (i.e., 'No') against the column requiring him to disclose the information if there was a civil or criminal case pending against him. On 11.02.2009, the appellant was acquitted in the criminal case against him and, on 18.02.2009, he gave information to the respondents about his acquittal in the said criminal case. Thus, his statement, in the verification form filled up in July, 2008, that there was no criminal case pending against him, was belied by the fact that in the year 2007, he had applied and was granted bail in the said criminal

case.

51. In the cases of **Sandeep Kumar** (supra) and **Ram Kumar** (supra), the consequence of non-disclosure were not so vital inasmuch as the non-disclosure or suppression of truth was after the criminal cases had ended; whereas in the case at hand, the criminal case was still pending against the appellant, when he made the declaration that no case, civil or criminal, was pending against him. Thus, the appellant's declaration was wholly false and suffered from suppression of truth. His conduct cannot, but be regarded as an attempt to obtain employment to a post of Sub Inspector of Police by committing fraud.

52. In A. P. Public Service Commission v. Koneti Venkateswarulu and Others, reported in **(2005) 7 SCC 177**, a candidate had made a declaration that all statements, made in his application, were true and correct and he undertook to produce original documents at any moment of time, failing which his candidature could be cancelled. The candidate had further made a declaration, while filling up Annexure-III, that he was not working in any Government department/Quasi-Government/Public sector/Private sector and that his maximum age did not exceed 35 years as on 1-7-1999. The information, so

given, were found to be false. In such circumstances, it was contended, on behalf of the candidate, that it was due to inadvertence and not *mala fide* that the candidate had failed to disclose his employment status. Turning down this contention, the Supreme Court, in **Koneti Venkateswarulu** (supra), observed as under:

"7. We are unable to accept the contention of the learned counsel for the first respondent. As to the purpose for which the information is called for, the employer is the ultimate judge. It is not open to the candidate to sit in judgment about the relevance of the information called for and decide to supply it or not. There is no doubt that the application called for full employment particulars vide column 11. Similarly, Annexure III contained an express declaration of not working in any public or private employment. We are also unable to accept the contention that it was inadvertence which led the first respondent to leave the particulars in column 11 blank and

make the declaration of non-employment in Annexure III to the application. The application was filled on 24-7-1999, the examination was held on 24-10-1999, and the interview call was given on 31-1-2000. At no point of time did the first respondent inform the appellant Commission that there was a bona fide mistake by him in filling up the application form, or that there was inadvertence on his part in doing so. It is only when the appellant Commission discovered by itself that there was suppressio veri and suggestio falsi on the part of the first respondent in the application that the respondent came forward with an excuse that it was due to inadvertence. That there has been suppressio veri and suggestio falsi is incontrovertible. The explanation that it was irrelevant or emanated from inadvertence, is unacceptable. In our view, the appellant was justified in relying upon the ratio of Kendriya Vidyalaya

Sangathan¹ and contending that a person who indulges in such suppressio veri and suggestio falsi and obtains employment by false pretence does not deserve any public employment. We completely endorse this view."

(Emphasis is added)

53. From the case of **Koneti Venkateswarulu** (supra), it becomes further clear that any false statement or suppression of truth renders reasonable ground for discontinuance of appointment.

54. In **Devendra Kumar v. State of Uttaranchal**, reported in **(2013) 9 SCC 363**, an applicant, for the post of Constable, passed in physical test, written test and interview and was also found medically fit. When, however, he was required to make a declaration with regard to the question as to whether he had ever been involved in a criminal case, the appellant submitted an affidavit stating that he had never been involved in a criminal case. The appellant completed his training satisfactorily and it was at this time that the respondents authorities, in pursuance of the process of character verification, came to know that the appellant was, in fact, involved in a criminal case. The final report in



that case had been submitted by the prosecution and accepted by the Judicial Magistrate concerned. On the basis of the same, the appellant was discharged abruptly on the ground that since he was a temporary Government servant, he could be removed from service without holding any enquiry. The appellant challenged the said order by filing a writ petition, which was dismissed. In appeal, the Division Bench upheld the order. Thereafter, an appeal was carried to the Supreme Court.

55. In the case of **Devendra Kumar** (supra), the Supreme Court has observed that so far as the issue of obtaining appointment by misrepresentation is concerned, it is no more *res integra*. The question is not whether the applicant is suitable for the post or not. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude, but suppressing of this information itself amounts to moral turpitude. In fact, the information, sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated even if there had been no further trial or the person concerned stood acquitted/discharged. The relevant observations, appearing

in **Devendra Kumar** (supra), read as follows:

"12. So far as the issue of obtaining the appointment by misrepresentation is concerned, it is no more res integra. The question is not whether the applicant is suitable for the post. The pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but ***suppressing of this information itself amounts to moral turpitude.*** In fact, the information sought by the employer if not disclosed as required, would definitely amount to suppression of material information. In that eventuality, the service becomes liable to be terminated, even if there had been no further trial or the person concerned stood acquitted/ discharged."

13. It is a settled proposition of law that **where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an order cannot be sustained in the eye of the law. "Fraud avoids all judicial acts, ecclesiastical or temporal."** (Vide *S.P. Chengalvaraya Naidu v. Jagannath*¹.) In *Lazarus Estates Ltd. v. Beasley*² the Court observed without equivocation that: (QB p. 712)

"... No judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything."

(Emphasis is added)

56. Referring to the cases of **A.P. State Financial Corporation. v. GAR Re-Rolling Mills**, reported in **(1994) 2 SCC 647** and **State of Maharashtra v. Prabhu**, reported in **(1994) 2 SCC 481**, the Supreme Court has pointed out, in **Devendra Kumar** (supra), that a writ court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as courts are obliged to do justice by promotion of good faith. *"Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law."*

57. Referring to the case of **Shrisht Dhawan v. Shaw Bros.**, reported in **(1992) 1 SCC 534**, the Supreme Court, in **Devendra Kumar** (supra), has held as under:

"20. Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct."

58. Analyzing the case of **United India Insurance Co. Ltd. v. Rajendra Singh**, reported in

(2000) 3 SCC 581, the Supreme Court has reiterated, in **Devendra Kumar** (supra), that “*fraud and justice never dwell together*” (*fraus et jus nunquam cohabitant*) and it is a pristine maxim which has not lost temper over all these centuries. A similar view has been taken by the Supreme Court in **M.P. Mittal v. State of Haryana**, reported in **(1984) 4 SCC 371**.

59. The Supreme Court, in **Devendra Kumar** (supra), has also referred to the case of **Ram Chandra Singh v. Savitri Devi**, reported in **(2003) 8 SCC 319**, wherein the Supreme Court has held that “misrepresentation itself amounts to fraud” and further held thus,

“18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.”

60. Emphatically laid down the Supreme Court, in **Devendra Kumar** (supra), that dishonesty should not be permitted to bear the fruit and benefit those persons, who have defrauded or misrepresented

themselves and in the circumstances aforementioned, the court should not perpetuate the fraud by entertaining petitions on their behalf. The relevant observations, made in **Devendra Kumar** (supra), read as under:

"18. The ratio laid down by this Court in various cases is that **dishonesty should not be permitted to bear the fruit and benefit those persons who have frauded or misrepresented themselves. In such circumstances the court should not perpetuate the fraud by entertaining petitions on their behalf. In *Union of India v. M. Bhaskaran* this Court**, after placing reliance upon and approving its earlier judgment in *Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi*, observed as under: (*M. Bhaskaran case*, SCC p. 104, para 6).

If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by a court of law as the employment secured by fraud renders it voidable at the option of the employer."

(Emphasis is supplied)

61. In **Devendra Kumar** (supra), the Supreme Court categorically held as under:

"24. In the instant case, the



High Court has placed reliance on the Government Order dated 28-4-1958 relating to verification of the character of a government servant, upon first appointment, wherein the individual is **required to furnish information about criminal antecedents of the new appointees and if the *incumbent is found to have made a false statement in this regard***, he is liable to be discharged forthwith without prejudice to any other action as may be considered necessary by the competent authority. The purpose of seeking such information is not to find out the nature or gravity of the offence or the ultimate result of a criminal case, rather such information is sought with a view to judge the character and antecedents of the job seeker or suitability to continue in service. Withholding such material information or making false representation itself amounts to moral turpitude and is a separate and distinct matter altogether than what is involved in the criminal case."

(Emphasis is added)

62. The Supreme Court pointed out, in **Devendra Kumar** (supra), as follows:

"25. More so, if the initial action is not in consonance with law, the subsequent conduct of a party



cannot sanctify the same. *Sublato fundamento cadit opus* – a foundation being removed, the superstructure falls. A person having done wrong cannot take advantage of his own wrong and plead bar of any law to frustrate the lawful trial by a competent court. In such a case the legal maxim *nullus commodum capere potest de injuria sua propria* applies. The persons violating the law cannot be permitted to urge that their offence cannot be subjected to inquiry, trial or investigation. (Vide *Union of India v. Major General Madan Lal Yadav*¹⁸ and *Lily Thomas v. Union of India*¹⁹.) Nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*)."

(Emphasis is added)

63. The case at hand is precisely the same as the case of **Devendra Kumar** (supra) inasmuch as the appellant made a false declaration in the month of July, 2008, and it was only after the result of the written examination was declared on 30.05.2008, he, for the first time, declared, on 02.12.2008, that there was a case pending against him. Even at the time, when final result was published, on 01.02.2009, he was still an accused in the case aforementioned inasmuch as he came to be acquitted on 11.02.2009. Situated thus, it becomes

abundantly clear that while making a declaration in the month of July, 2008, the appellant had suppressed the truth and made false declaration.

64. Under the circumstances indicated above, the decision of the employer, as an administrator, not to appoint the appellant, cannot be said to be so irrational and unreasonable that no rational mind would accept the decision as correct. We are, therefore, clearly of the view that the learned single Judge has correctly upheld the impugned order, dated 07.12.2011, We do not find any infirmity, legal or factual, in the reasons assigned by the learned single Judge, and/or the conclusions and/or decisions reached by the learned single Judge.

65. In the result and for the reasons recorded above, this appeal fails and shall, accordingly, stand dismissed.

(I. A. Ansari, J.)

Anjana Mishra, J.: I agree.

(Anjana Mishra, J.)

Pawan/AFR

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