THE HON'BLE THE ACTING CHIEF JUSTICE SRI DILIP B.BHOSALE,

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

WRIT PETITION No.3004 of 2005

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JUDGMENT: **(per the Hon'ble The Acting Chief Justice Sri Dilip B.Bhosale)**

In view of the divergence of opinion expressed by two Division Benches, another Division Bench requested constitution of a Larger Bench to have an authoritative pronouncement on the question "whether suppression of information by the candidate, applying for an employment, regarding his involvement in a criminal case, could be the ground for either rejecting his candidature or canceling his selection or terminating the service, if he has already been appointed?"

2. Reference order was passed on 23.2.2005 in W.P. No.3004 of 2005. The order dated 8.2.2005 passed in O.A.No.6240 of 2004 by the Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal') is the subject-matter of the writ petition. The petitioners were selected as Police Constables and their names figured in the provisional selection list. Their selection, however, was cancelled on the ground of suppression of information regarding their involvement in criminal cases while submitting applications for the post of Police Constables.

3. While dealing with the writ petition, the Division Bench noticed divergent opinions expressed by two Division Benches of this Court, one, in ***A. Sagar v. State Level Police Recruitment Board, Hyderabad and others***() and another

in ***K. Prasada Rao v. Sub-Divisional Inspector (Postal), Giddalur Sub-Division, Giddalur, Prakasam District and others***[()]. The Division Bench also noticed two judgments of the Supreme Court while making reference order, in ***Secretary, Department of Home, A.P., and others v. B.Chinnam Naidu***[()] and in ***Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav***[()]. In the concluding paragraph of the reference order, it was observed that "in the light of views expressed in the decisions referred (1) & (2) supra and especially in the backdrop of the decisions of the Apex Court referred (3) & (4) supra and also in the light of the difference of language in the respective columns, it would be appropriate to refer this matter to a Full Bench or a Larger Bench who have an authoritative pronouncement on this aspect." The reference order, however, did not frame any question as such for consideration. The question framed in opening paragraph of this judgment has been framed with the assistance of learned counsel for the parties. At the outset, we would like to look into all four judgments referred to by the Division Bench so as to settle the correct position of law on this aspect.

4. In ***A. Sagar*** (supra) the Division Bench considered the case of petitioner in the light of facts that the information sought in an application against Column Nos.16 & 17 was kept blank and in the attestation form against Column No.12, he had stated 'No'. In this case also, the petitioner had applied for the post of Police Constable. It is relevant to refer to the contents of Column Nos.16 & 17 in the application form and Column No.12 of the attestation form. Column No.16 had provided the applicant to furnish information about his involvement in any criminal case and arrest by the police. He was also required to furnish full details such as First Information Report number and name of the Police Station. In Column No.17, he was required to furnish information as to whether he had been prosecuted or convicted by the Court of Law in past or facing trial in any case at the relevant time. Column No.12 in the attestation form reads thus:

> "Have you ever been arrested by the police, convicted by a court or detained of any offence."

4.1 Column Nos.16 & 17 in the application form were left blank by the

petitioner. Insofar as Column No.12 in the attestation form is concerned, the petitioner had specifically stated 'No'. The Division Bench also noticed that the petitioner was acquitted on merits in the criminal cases registered against him for the offence punishable under Section 379 of the Indian Penal Code, by the time he was selected and appointed as Police Constable. In this backdrop, the Division Bench, after referring to the judgments of the Supreme Court in ***T.S.Vasudavan Nair v. Director of V.S.S.C.***() and ***Commissioner of Police, Delhi v. Dhaval Singh***() in paragraph-27 observed thus:

> "It is under those circumstances, the Supreme Court came to the conclusion that **there has been no deliberate and wilful suppression or concealment of any material fact**. In the instant case what is required to be noticed is that even as on the date of the petitioner submitting his application and attestation form, the criminal cases registered against the petitioner were ended in clean acquittal. **No case as on the date of issuance of notification by the respondents herein was pending against the petitioner, like facts in Commissioner of Police, Delhi v. Dhaval Singh (AIR 1999 SC 2326)**. Here also the petitioner voluntarily disclosed about the registration of the criminal cases against him and their ending in acquittal in the competent Court of criminal jurisdiction while the requisite information was being collected in order to verify the antecedents of the petitioner. The authority entrusted with the job of verification of antecedents, based upon the statement of the petitioner, submitted all the requisite particulars to the respondents herein. They were taken into consideration and only thereafter the petitioner was sent for undergoing training. It is not as if the respondents have found out something against the petitioner at the time when he was actually sent to undergo training. All these information was available with the respondents herein at every stage anterior to the decision of sending the petitioner to undergo training with the third respondent. The same material now cannot be used against the petitioner in order to deprive him of his legitimate right to appointment."
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> (emphasis supplied)

4.2 The observations made in paragraph-23 are also relevant, which read thus:

> "**In our considered opinion, the language employed in column No.12 is somewhat vague and indefinite. It appears to us that arrest by the police unless resulted in conviction is of no consequence. Precisely for the said reason, the petitioner stated 'no' since he has not been convicted by any criminal Court**."
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> (emphasis supplied)

5. In ***K. Prasada Rao*** (supra) another Division Bench considered the question "whether the petitioner had suppressed the material information when he applied for the job and whether he was duty-bound to disclose that he was involved in a criminal case when he applied for the job and if he was bound to disclose what will be the consequences if he had not disclosed this

information". In this case, the petitioner was appointed as EDMC/DA on 30.6.1998 and a notice was issued to him on 23.3.1999 asking him as to why his services be not terminated in view of the report of police regarding his antecedents. The petitioner in that case had filled in a form for seeking job and against Column No.12 (1) therein he stated 'No'. Column No.12 reads thus:

> "12. (1) (a) Have you ever been arrested?
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> (b) Have you ever been prosecuted?
>
> (c) Have you ever been kept under detention?
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> (d) Have you ever been bound down?
>
> (e) Have you ever been fined by a Court of law?
>
> (f) Have you ever been convicted by a Court of law
>
> for any offence?
>
> (g) … .. …. …. ….
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> (h) ….. …. …. ….
>
> (i) If any case pending against you in any Court of law
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> at the time of filling up this attestation form."

5.1 Admittedly the petitioner had not only suppressed the material information but had given wrong information. The Division Bench, in this backdrop, expressed the view that "it is not important whether the petitioner got acquitted or did not get acquit, in our view it is very important to know that the petitioner was not a truthful person." Then, the Division Bench proceeded to consider the judgments of the Supreme Court, relied upon by the learned counsel for the petitioner in ***Matadeen Garg v. State of Rajasthan*** (Civil Appeal No.15234 of 1988) and in ***Kendriya Vidyalaya Sangathan*** (supra), and dismissed the writ petition.

6. In ***Kendriya Vidyalaya Sangathan*** (supra) the respondent was selected for the post of a Physical Education Teacher in Kendriya Vidyalaya. In the attestation form, duly filled in by the respondent, against Column Nos.12 & 13 he had stated 'No'. Columns 12 & 13 read thus:

> "12. Have you ever been prosecuted/kept under detention

or bound down/fined, convicted by a court of law of any offence? – No.

13. Is any case pending against you in any court of law at the time of filling up this attestation form? – No."

6.1 The respondent also certified the information given in the said attestation form stating as under:

"I certify that the foregoing information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstances which might impair my fitness for employment under Government."

6.2. However, on the basis of the report from I.G., Police, that a criminal case registered under Section 223, 341, 294, 506-B read with Section 34 of I.P.C. was pending against the respondent on the date of his furnishing the attestation form, a memorandum was issued to him terminating his services on the ground of suppression of material information required under Column Nos.12 & 13 of the form and violation of Para-9 of the Offer of Appointment. Under the said circumstances, the Supreme Court in paragraph-12, observed thus:

"**12. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service.** The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. ***The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not.*** The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. **The character, conduct and antecedents of a teacher will have some impact on the minds of the students of impressionable age.** The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of columns 12 and 13, he could not certify so. Having certified that the information given

by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted.

(emphasis supplied)

7. Mr.Sanjay, learned Government Pleader invited our attention to some more judgments of the Supreme Court, in particular, in ***Jainendra Singh v. State of Uttar Pradesh***[()]. The judgment in ***Jainendra Singh*** *(supra)* in our opinion deserves detailed reference for the opinion that we propose to express. The appellant in this case had applied for the post of Police constable, who, after having cleared physical test, was permitted to appear in the written examination. Having come out successful in the written test as well, he participated in the interview held and after a subsequent medical examination declared fit and was sent for training. The appellant had also filed an affidavit in the form of declaration stating that he had not been convicted by any court; that no criminal case was registered against him; that no criminal case was pending against him in any Court; that no criminal case was under investigation against him; that he had never been arrested by Police in connection with any criminal case; that he was never charged in any criminal case and that his character was clean and bright. He had also declared the said information as true and correct and had further stated that if any information/averment was found to be false or incorrect after his selection on the said post, then his selection could be cancelled immediately without giving any notice and he could be removed from the training course. Subsequently, it came to light that the appellant was involved in a criminal case for an offence falling under Sections 147, 323 & 336 of IPC which was pending at the time of his selection though subsequently he was acquitted by the competent court on 4.1.2007. Since the appellant had concealed his involvement in a criminal case, the Senior Superintendent of Police ordered termination of his services on that ground. Being aggrieved by the termination order, the appellant had approached the High Court by way of a writ petition. The High Court declined to interfere with the order holding that the appellant had deliberately concealed vital information in order to secure employment and that subsequent acquittal would not enure benefit.

7.1 In that case, learned counsel appearing for the partied placed reliance upon several judgments. It would be relevant, at this stage, to reproduce paragraphs 9, 10 & 11 of the judgment, which read thus:

> "**9.** While appreciating the respective contentions of the learned counsel for the parties and on perusing the decisions relied upon by the learned counsel for the appellant as well as the decision in *Kendriya Vidyalaya Sangathan* v. *Ram Ratan Yadav [(2003) 3 SCC 437]*, we feel that a detailed analysis is required to be made in order to find out whether the issue calls for further deliberations so as to arrive at an authoritative pronouncement.
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> **10. We have come across the following decisions in which this Court has taken a similar view which has been propounded in *Kendriya Vidyalaya Sangathan*** v. *Ram Ratan Yadav [(2003) 3 SCC 437]*. The said decisions are in *Union of India* v. *M. Bhaskaran [1995 Supp (4) SCC 100]*, *Delhi Admn.* v. *Sushil Kumar [(1996) 11 SCC 605]*, *Bank of Baroda* v. *Central Govt. Industrial Tribunal [(1999) 2 SCC 247]*, *Deptt. of Home, A.P.* v. *B. Chinnam Naidu [(2005) 2 SCC 746]*, *R. Radhakrishnan* v. *DG of Police [(2008) 1 SCC 660]*, *Union of India* v. *Bipad Bhanjan Gayen [(2008) 11 SCC 314]*, *Daya Shankar Yadav* v. *Union of India [(2010) 14 SCC 103]*, *State of W.B.* v. *Sk. Nazrul Islam [(2011) 10 SCC 184]*.
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> **11. We also find that the following decisions have taken a DIFFERENT VIEW than what has been expressed in *Kendriya Vidyalaya Sangathan*** v. *Ram Ratan Yadav [(2003) 3 SCC 437]* i.e. *Commr. of Police* v. *Dhaval Singh [(1999) 1 SCC 246]*, *Kamal Nayan Mishra* v. *State of M.P. [(2010) 2 SCC 169]*, *Commr. of Police* v. *Sandeep Kumar [(2011) 4 SCC 644]* and the unreported judgment relied upon by the learned counsel for the appellant in *Ram Kumar* v. *State of U.P. [(2011) 14 SCC 709]."*
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> (emphasis supplied)

7.2 The judgments referred to in the above paragraphs 9 to 11 were rendered by the Division Benches consisting of two judges. In most of the judgments, referred to in the aforesaid paragraphs, the principle laid down in ***Kendriya Vidyalaya Sangathan*** *(supra)* was either followed or similar view was taken. The Supreme Court, in view thereof, observed as follows "we find a common thread in all those decisions in having laid down as a proposition of law that suppression of material information which a candidate was called upon to furnish and which he failed to do, such concealment would result in serious consequences and also not befitting the nature of service for which such recruitment was made, the State/Employer would be well within its powers to resort to cancellation of his appointment when the appointee was undergoing probation in order to ensure cleanliness in

the service."

7.3 Then, the Supreme Court proceeded to consider each of the judgments referred to in paragraphs-9 to 11, taking a view consistent with the one taken in ***Kendriya Vidyalaya Sangathan*** *(supra)* and after noticing the differing view expressed in ***Dhaval Singh*** *(supra),* ***Kamal Nayan Mishra*** **v.** ***State of M.P.***[()], ***Commissioner of Police*** **v.** ***Sandeep Kumar***[()] and the unreported decision in ***Ram Kumar*** **v.** ***State of U.P.***[()] and in paragraph-29 observed thus:

> "**29. As noted by us, all the above decisions were rendered by a Division Bench of this Court consisting of two Judges and having bestowed our serious consideration to the issue, we consider that while dealing with such an issue, the Court will have to bear in mind the various cardinal principles before granting any relief to the aggrieved party, namely**:
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> **29.1.** Fraudulently obtained orders of appointment could 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 respondent 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.
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> **29.2.** Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if finds it not desirable to appoint a person to a disciplined force can it be said to be unwarranted.
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> **29.3.** When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.
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> **29.4.** A candidate having suppressed material information and/or giving 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.
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> **29.5.** The purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have a clear bearing on the character and antecedents of the candidate in relation to his continuity in service.
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> **29.6.** The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

29.7. 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.

29.8. An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

29.9. An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

29.10. The authorities entrusted with the responsibility of appointing constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of constable."

(emphasis supplied)

7.4 Then, the Supreme Court proceeded to observe in concluding paragraphs 30, 31 & 32 as under:

"**30.** When we consider the above principles laid down in the majority of the decisions, the question that looms large before us is when considering such claim by the candidates who deliberately suppressed information at the time of recruitment, can there be different yardsticks applied in the matter of grant of relief.

31. Though there are very many decisions in support of the various points culled out in the above paragraphs, inasmuch as we have noted certain other decisions taking different view of coordinate Benches, we feel it appropriate to refer the abovementioned issues to a larger Bench of this Court for an authoritative pronouncement so that there will be no conflict of views and which will enable the courts to apply the law uniformly while dealing with such issues.

32. With that view, **we feel it appropriate to refer this matter to be considered by a larger Bench of this Court**. The Registry is directed to place all the relevant documents before the Hon'ble the Chief Justice for constitution of a larger Bench."

(emphasis supplied)

7.5 Learned Government Pleader, who invited our attention to this judgment, submitted that the case in which (***Jainendra Singh***) reference was made by the Supreme Court to a larger bench was, however, withdrawn by the appellant,

and therefore, as of today reference is not pending consideration.

8. We would further like to refer to some more judgments of the Supreme Court which would help us to form an opinion on this aspect.

8.1 In ***Pawan Kumar v. State of Haryana***() the Supreme Court was considering the case of the appellant who was appointed in Class-IV category on *ad hoc* basis. While in service, the appellant came to be convicted in a summary trial case for an offence punishable under Section 294 of IPC and was ordered to pay a fine of Rs.20/-. The office of the Superintendent of Police was asked to verify about the character and antecedents of the appellant, who, in turn, confirmed the conviction of the appellant, but otherwise verified that the appellant was of good character. In this backdrop, services of the appellant were terminated as no longer required. The order of termination was challenged before the Civil Court. The trial Court decided the case against him. The Appellate Court and then the High Court in the second appeal affirmed the same. The Supreme Court allowed the appeal and set aside the judgment of the High Court so also of the Courts below and decreed the suit as prayed. The observations made by the Supreme Court in paragraph-14 are relevant for our purpose, which reads thus:

> "**14.** Before concluding this judgment **we hereby draw the attention of Parliament to step in and perceive the large many cases which per law and public policy are tried summarily, involving thousands and thousands of people throughout the country appearing before summary courts and paying small amounts of fine, more often than not, as a measure of plea-bargaining. Foremost among them being traffic, municipal and other petty offences under the Indian Penal Code, mostly committed by the young and/or the inexperienced. The cruel result of a conviction of that kind and a fine of payment of a paltry sum on plea-bargaining is the end of the career, future or present, as the case may be, of that young and/or inexperienced person, putting a blast to his life and his dreams**. Life is too precious to be staked over a petty incident like this. Immediate remedial measures are therefore necessary in raising the toleration limits with regard to petty offences especially when tried summarily. Provision need be made that punishment of fine up to a certain limit, say up to Rs.2000 or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose and all the more for entry into and retention in government service. This can brook no delay, whatsoever."
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> (emphasis supplied)

9. Next, we would like to consider the judgment of the Supreme Court in ***Devendra Kumar v. State of Uttaranchal***[()]. This case was decided on 29.7.2013 when, it appears, reference made in ***Jainendra Singh*** (supra) was pending consideration. The appeal in *Jainendra Singh* (supra) was, however, withdrawn, as stated earlier and hence reference remained unanswered. In *Devendra Kumar* the appellant had applied for the post of Constable and after complying with all formalities he was selected and after conducting all tests he was sent for training. He was also directed to file an affidavit giving certain information, in particular whether he had ever been involved in any criminal case. Affidavit was submitted stating that he had never been involved in a criminal case. Thereafter, he completed the training and at the time of character verification it came to light that he 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 thereof, the appellant was discharged on the ground that since he was admittedly a Government Servant he could be removed from service without holding any enquiry. The said order was challenged before the High Court in a writ petition. The Writ Petition was dismissed and the order of dismissal was confirmed in writ appeal. In this backdrop, the Supreme Court in paragraph-12 observed thus:

> "**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."
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> (emphasis supplied)

9.1 Then, the Supreme Court proceeded to consider the judgment in ***A.P. State Financial Corporation v. GAR Re-Rolling Mills***[()] and ***State of Maharashtra v. Prabhu***[()]**,** ***Shrisht Dhawan v. Shaw Bros.***[()], ***Ram Chandra Singh v. Savitri Devi***[()]. In paragraph-18 observed thus:

> "**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 (1995 Supp (4) SCC 100)* this Court, after placing reliance upon and approving its earlier judgment in *Vizianagaram Social Welfare Residential School Society* v. *M. Tripura Sundari Devi [(1990) 3 SCC 655]*, 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 supplied)

9.2 The Supreme Court also considered the judgments in ***Delhi Administration v. Sushil Kumar***[()], ***Kendriya Vidyalaya Sangathan*** (supra), ***State of Haryana v. Dinesh Kumar***[()], ***B.Chinnam Naidu*** (supra) and ***R.Radhakrishnan v. DG of Police***[()], in paragraphs 25 & 26, observed thus:

"**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 [(1996) 4 SCC 127]* and *Lily Thomas* v. *Union of India [(2000) 6 SCC 224*)] Nor can a person claim any right arising out of his own wrongdoing (*jus ex injuria non oritur*).

26. The courts below have recorded a finding of fact that the appellant suppressed material information sought by the employer as to whether he had ever been involved in a criminal case. **Suppression of material information sought by the employer or furnishing false information itself amounts to moral turpitude and is separate and distinct from the involvement in a criminal case. In view of the above, the appeal is devoid of any merit and is accordingly dismissed**."

(emphasis supplied)

10. Further, we would like to make a reference to the judgment of Supreme Court in ***Commissioner of Police, New Delhi v. Mehar Singh***[()]. This case was also decided on 2.7.2013 when the reference made in ***Jainendra Singh*** (supra) was pending. In this case, the appellant was selected as a constable. Admittedly, in the application for the post, he had mentioned about the criminal case that was registered against him. In this case, even before his selection he

was acquitted in the said case by giving him benefit of doubt. In this backdrop, the Supreme Court considered the question "whether the candidature of the respondents who had made a clean breast of their involvement in a criminal case by mentioning this fact in their application/attestation form while applying for a post of Constable in Delhi Police, who were provisionally selected subject to verification of their antecedents and who were subsequently acquitted/discharged in the criminal case, could be cancelled by the Screening Committee of the Delhi Police on the ground that they are not found suitable for appointment to the post of Constable."

10.1 The Supreme Court after considering its other judgments including the judgment in ***Sushil Kumar*** (supra), ***Ghurey Lal v. State of U.P.*** and ***Dhaval Singh*** (supra), in paragraph-35 observed thus:

> "**35. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force.** The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is mala fide. In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of the trust reposed in it and must treat all candidates with an even hand."
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> (emphasis supplied)

11. In this backdrop, we would now like to deal with the question that falls for our consideration. Suppression of information by the candidate regarding his involvement in a criminal case is one-thing and whether to appoint or to terminate such person after the information of his involvement in a criminal is surfaced is another. Similarly, whether to appoint such person, who has fairly disclosed the information of his involvement in a criminal case in the

application form, is also a question, which the appointing authority has to decide. In other words, it is for the employer/appointing authority to take a call and decide whether such person should be appointed having regard to various factors that could be taken into consideration.

11.1 In the present case, we are considering a situation where there was suppression of information relating to involvement in a criminal case by the candidate. Keeping that in view and having regard to the judgments of the Supreme Court and the principles culled out therein, we are of the opinion, if a candidate were to suppress the information relating to his involvement in a criminal case and if it is surfaced before appointment or at the stage of verification of antecedents, more particularly when such an information was specifically sought for, it is open to the appointing authority to deny appointment to or terminate such employee.

12. Verification of character and antecedents is one of the important features in service jurisprudence so as to find out whether a selected candidate is suitable to the post. Having regard to the antecedents of a candidate, if appointing authority finds that it is not desirable to appoint such person, in particular to a discipline force, it can deny employment or even terminate such person, if appointed, within the shortest possible time from the date of verification of character and antecedents. This has to be scrupulously followed in case of recruitment in police force, it being a disciplined force. As observed by the Supreme Court in ***Mehar Singh*** (supra), people repose great faith and confidence in the police force, and therefore, the selected candidate must be of confidence, impeccable character and integrity. A person having criminal antecedents is, undoubtedly, not fit in this category, more particularly when he has suppressed the information about his involvement in criminal case(s) irrespective of the fact whether the case was pending or he was acquitted.

13. It is common practice that in the application form, a specific information relating to involvement in a criminal case, conviction or detention, irrespective of acquittal, is sought for and if a candidate keeps relevant columns blank or

answer the columns in negative, when in fact he was involved in criminal case, that would undoubtedly amount to suppression of information relating to his involvement in criminal case. In a given case, if such a candidate was acquitted long back, for instance, more than 5 to 10 years before, and that too of a petty offence, it may be for the employer to decide whether to appoint him or to terminate his service having regard to his performance and other relevant factors. However, such a decision should be fair. In other words, such a decision should not be arbitrary and mala fide. As observed by the Supreme Court in ***Pawan Kumar*** (supra), if the conviction or involvement was in traffic, municipal and other petty offences under the Indian Penal Code, committed at an young age, such conviction or involvement could, in a given case, be ignored by an employer. The candidate, however, is expected to disclose all such information leaving it open to the appointing authority to decide whether to appoint such person having regard to gravity of the offence allegedly committed and proximity of time having regard to the nature of job for which he is being considered or to be appointed. While considering such candidate, who in all fairness has disclosed such information, the employer should not act mechanically to deny employment or reject application of such a candidate at threshold. In any case, a candidate having suppressed the information and/or giving false information in respect of his character and antecedents, cannot, as of right, seek an order of appointment contending that he has been acquitted of the case. If such a candidate is selected and appointed and if at the stage of verification of antecedents, any information is gathered or surfaced, which would amount to misrepresentation and fraud on the employer or suppression of information, it would not create equity in his favour or any estoppel against the employer while resorting to his termination. Such candidate cannot claim any right to continue in service and the employer, having regard to the nature of employment as well as other relevant factors, has a discretion to either reject his candidature or not to appoint such candidate or to terminate his services, if he was appointed, on the basis of the information received at that stage (i.e. verification of character and antecedents). In short, the candidate, who suppressed material information and/or given false information regarding his antecedents and character, cannot have any right of appointment or continuity in service. It is, however, always open to the employer/appointing authority to exercise its discretion in the facts and circumstances of each case keeping in

view the principles laid down by the Supreme Court.

14. The judgment of this Court in ***A.Sagar (supra)***, in our opinion, does not state the correct position of law. Thus, the question framed by us stands answered in terms of this judgment.

15. The writ petition is directed to be placed before appropriate Bench for its hearing on merits in the light of the observations made in this judgment.

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Dilip B.Bhosale, ACJ

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C.Praveen Kumar, J

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M.S.K. Jaiswal, J

27th November, 2015.

TSNR