



2026:AHC:176813-DB

Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
SPECIAL APPEAL No. - 1992 of 2013

State of U.P. through Secretary and others

.....Appellants

Versus

Janmesh Kumar

.....Respondent

Counsel for the Appellants	: Bhola Nath Yadav
Counsel for the Respondent	: Saral Singh

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

(Delivered by Hon'ble J.J. Munir, J.)

1. This is a respondents' appeal from the judgment and order of the Hon'ble Mr. Justice Sabhajeet Yadav dated 10.05.2013, allowing Writ-A No. 3021 of 2001, quashing the orders dated 24.03.2001 and 31.01.1998 passed by the appellants, and reinstating the petitioner in service with continuity.

2. The petitioner was selected as a Constable in the Civil Police in a selection held at District Aligarh. After selection, he was appointed as a Constable also at Aligarh. Post appointment, he was transferred to Firozabad for the purpose of his training, along with the other selected candidates, *vide* an order of the Police Headquarters, Allahabad dated 08.08.1997. He joined at Firozabad on 08.10.1997 and was assigned Constable No. 759. Twenty days after joining his duties in the Police Lines, Firozabad, the petitioner was removed from service on ground that a criminal

case was pending against him before his selection and appointment, which he did not disclose. The petitioner said that after being selected, he went through the process of character verification by the Senior Superintendent of Police, Aligarh, who recommended him for appointment as he was not involved in any criminal case, that had elements of moral turpitude, as required by the Government Order dated 28.04.1958. The petitioner was involved in Case Crime No. 932 of 1995, State v. Rakesh and others, under Sections 147, 148, 149, 323, 325 I.P.C., Police Station Dibai, District Bulandshahr, where on the basis of a compromise between parties, the petitioner was acquitted by the Additional Chief Judicial Magistrate, Anupshahr, District Bulandshahr *vide* an order dated 19.09.1997. It is the petitioner's case that at the time of his implication in said criminal case, he was a minor and when the case was decided in terms of compromise on 19.09.1997, he had completed 21 years of age. The petitioner says that in view of the Government Order dated 12.10.1979, the pendency of the criminal case would entail no consequence for the petitioner, as he was a minor, when implicated. It has been pleaded in the rejoinder affidavit filed before the learned Single Judge that the petitioner had no knowledge about pendency of the criminal case while submitting his recruitment form for the purpose of selection to the Police. He acquired knowledge about the pendency of the criminal case 2-3 days prior to the date when parties entered into compromise, leading to his acquittal.

3. In the counter affidavit filed before the learned Single Judge, it is asserted on behalf of the appellants that on police verification, it came to light that the petitioner was involved in a criminal case. The affidavit, which the petitioner has filed at the time of applying for his selection, is false to the extent that it says that the petitioner was never involved in any criminal case. It is also said that upon police verification, the petitioner was found involved in

Crime No. 88 of 1994, under Sections 147, 148, 323, 504, 325 I.P.C., P.S. Dibai, District Bulandshahr, which was pending at the time when the petitioner applied for recruitment as well as the time of his selection. However, the factum of compromise and the petitioner's acquittal has not been denied.

4. The learned Single Judge took note of a Bench decision of this Court in **Awadhesh Kumar Sharma v. Union of India and others, 2000 (2) AWC 1073**, where it has been held that when the petitioner was acquitted in the criminal case, it has to be deemed under law that in fact he was never involved in any such case for reason that judgments of Courts are always retrospective in operation. The effect of the judgment and order passed by a Criminal Court, on the basis of compromise as well as on merits, is that the petitioner must be regarded as never involved in the criminal cases. The very foundation of his removal from service becomes non-existent. The Division Bench issued a *mandamus* to the respondents to appoint the petitioner in that case on the basis of his selection within a period of six weeks from the date of production of a certified copy of the order before concerned the employers. The case before the Division Bench in **Awadhesh Kumar Sharma** (*supra*) related to a *mazdoor* in the Central Ordinance Department after a selection in accordance with rules, who was not allowed to join duty on the ground that a criminal case was pending against him.

5. The learned Single Judge held that the Division Bench in **Awadhesh Kumar Sharma** is binding upon the Court and completely covers the petitioner's case. It was opined by the learned Judge that the impugned order dated 24.03.2001 passed by the Superintendent of Police, Firozabad, rejecting the petitioner's representation and the order dated 31.01.1998 passed by the Police Headquarters, Allahabad, rescinding the petitioner's appointment, cannot be sustained and are fit to be quashed. The

petitioner was directed to be reinstated in service with continuity, though without any back-wages.

6. Aggrieved, this special appeal has been filed by the State of U.P. and the other respondents to the writ petition.

7. Heard Mr. Sharad Chandra Upadhyay, learned Standing Counsel appearing on behalf of the appellants and Mr. Saral Singh, learned Counsel appearing on behalf of the writ petitioner/respondent.

8. Mr. Sharad Chandra Upadhyay, learned Standing Counsel for the appellants, has argued that non-disclosure of the pendency of a criminal case against him by the petitioner, and rather saying on affidavit that no case was pending against him, when he staked his claim for the post of a Police Constable, renders the writ petitioner *per se* unfit to be appointed to the service. The other submission is that the writ petitioner, being involved in a criminal case, his character is not free from blemish and even if the writ petitioner had disclosed the fact, he would have to be disqualified. The acquittal in the criminal case is on the basis of a compromise and does not wash out the stigma cast upon the writ petitioner's character and reputation. The learned Single Judge has erred in quashing the impugned orders passed by the appellants and directing the writ petitioner's reinstatement in service.

9. Mr. Saral Singh, learned Counsel for the writ petitioner/respondent, on the other hand, has supported the impugned judgment and supplemented it by added reasons. He says that the writ petitioner never knew about the criminal case when he applied for recruitment as a Police Constable, as the case relates to a time when the writ petitioner was still a minor. It is no doubt true that he had turned a major when he entered into the compromise, leading to the judgment of acquittal, a fact which he

came to know just 2-3 days before the proceedings of compromise took place.

10. Upon hearing learned Counsel for the parties, what we find is that the writ petitioner's date of birth, according to his High School mark-sheet, is 05.07.1976. Crime No. 88 of 1994, under Sections 147, 148, 323, 504, 325 I.P.C., P.S. Dibai, District Bulandshahr, was, therefore, a case registered against the petitioner in the 18th year of his life. Therefore, if the case was registered on 05.07.1994, the writ petitioner would have been a major, and if registered at any time prior to his 18th birthday, the petitioner would be a juvenile. It does not figure clearly from the record, on what date the FIR, giving rise to Crime No. 88 of 1994 was registered, and, therefore, it is difficult to say with certainty if indeed the petitioner was a minor on the date the case aforesaid was registered against him. However, what does appear from these facts is that when the petitioner applied for the post of a Constable and filed his affidavit of non-involvement in the criminal case on 24.07.1997, it is likely that he was not aware of the pendency of the case. Even if he was not a juvenile on the date of registration of the crime, he was a young boy, who could either have just turned a major or may be still a juvenile. The year 1994 was after all the 18th year of his life. The petitioner's categorical case is that he came to know about the pendency of the criminal case 2-3 days before the date when parties entered into a compromise, leading to the judgment of acquittal passed by the Additional Chief Judicial Magistrate, Anupshahr, Bulandshahr on 19.09.1997. Considering the petitioner's age at the time this case was registered and the time when he applied for the post of a Constable in the year 1997, still a young man of 21 years, what the petitioner says about his ignorance of the pending criminal case is quite likely. There is no reason to disbelieve the writ petitioner's version that he did not know of the criminal case at the time he applied for the post of a Constable in the Police.

11. In the face of all these assertions, it would be for the respondents to bring on record the fact that the petitioner had applied for and secured bail or participated in the investigation or trial of Crime No. 88 of 1994, much earlier in the day so as to attribute to him the knowledge of the pendency of this case at the time when he applied for recruitment. The respondents have raised no such plea in the counter affidavit filed in answer to the writ petition nor brought on record any material to that effect. For the said reason, the writ petitioner's case that he did not know about the pendency of the criminal case, considering the totality of the circumstances, including his age when the case was registered, it has to be accepted that he came to know of the case 2-3 days before the time when parties entered into a compromise, leading to the judgment of acquittal dated 19.09.1997. What is all the more noticeable is that the offences involved are all compoundable and it is for this reason that the learned Magistrate accepted the compromise and passed judgment of acquittal based thereon. We, therefore, hold that the petitioner did not deliberately suppress from the respondents the factum of the registration of a criminal case against him and he was unaware of its pendency at the time when he made his application for recruitment. We would later on see in this judgment that even if the petitioner were aware of the pendency of this solitary case, which does not involve moral turpitude, what would be the effect of a deliberate suppression.

12. We may now turn to the other limb of Mr. Upadhyay's submission that the mere fact that a criminal case was registered against the petitioner, he has become unfit to be retained in government service, and, more particularly, police service. Mr. Upadhyay advocates a mechanical approach of a guillotine exclusion of any candidate from consideration for appointment to government service, against whom a criminal case, except a petty offence, has been registered. We do not agree. What is required

for appointment to government service is the suitability of a candidate for appointment to the service based on all relevant facts. The issue is governed by Government Order dated 28.04.1958, upon which the writ petitioner has placed reliance. The relevant part of the Government Order dated 28.04.1958 reads:

"3. (a) Every direct recruit to any service under the Uttar Pradesh Government will be required to produce:

(i) A certificate of conduct and character from the head of the educational institution where he last studied (if he went to such an institution).

(ii) Certificates of character from two persons. The appointing authority will lay down requirements as to kind of persons from whom it desires these certificates.

(b) In cases of doubt, the appointing authority may either ask for further references, or may refer the case to the District Magistrate concerned. The District Magistrate may then make further enquiries as he considers necessary.

Note-(a) A conviction need not of itself involve the refusal of a certificate of good character. The circumstances of the conviction should be taken into account and if they involve on moral turpitude or association with crimes of violence or with a movement which has its object to overthrow by violent means of Government as by law now established in free India the mere conviction need not be regarded as disqualification. (Conviction of a person during his childhood should not necessarily operate as a bar to his entering Government service. The entire circumstances in which his conviction was recorded as well as the circumstances in which he is now placed should be taken into consideration. If he has completely reformed himself on attaining the age of understanding and discretion, mere conviction in childhood should not operate as a bar to his entering Government service).

(b) While no person should be considered unfit for appointment solely because of his political opinions, care should be taken not to employ persons who are likely to be disloyal and to abuse the confidence placed in them by virtue of their appointment. Ordinarily, persons who are actively engaged in subversive activities including members of any organization the avowed object of which is to change the existing order of society by violent means should be considered unfit for appointment under Government. Participation in such activities at any time after attaining the age of 21 years and within three years of the date of enquiry should be considered as evidence that the person is still actively engaged in such

activities unless in the interval there is positive evidence of change of attitude.

(c) Persons dismissed by the Central Government or by a State Government will also be deemed to be unfit for appointment to any service under this Government.

(d) In the case of direct recruits to the State Services under the Uttar Pradesh Government includes requiring the candidates to submit the certificates mentioned in paragraph 3 (a) above. The appointing authority shall refer all cases simultaneously to Deputy Inspector General of Police, intelligence and the District Magistrate (of the home district and of the district(s) where the candidate has resided for more than a year within five years of the date of the inquiry) giving full particulars about the candidate. The District Magistrate shall get the reports in respect of the candidates from the Superintendent of Police who will consult District Police Records and records of the Local Intelligence Unit. The District Police or the District Intelligence Unit shall not make any enquiries on the spot, but shall report from their records whether there is anything against the candidate, but if in any specific case the District Magistrate at the instance of the appointing authority ask for an enquiry on the spot the Local Police or the Local Intelligence Units will do so and report the result to him. The District Magistrate shall then reports his own views to the appointing authority. Where the District Police or the Local Intelligence Units report adversely about a candidate the District Magistrate may give the candidate a hearing before sending his report.

(e) In the case of direct recruits (who are lower in rank than that of a State Service Officer) of:

- (i) the police (including ministerial staff of Police Officers).
- (ii) the Secretariat.
- (iii) the staff employed in the government factories,
- (iv) power houses and dams.

besides requiring the candidates to submit the certificates mentioned in paragraph 3 (a) above, the appointing authorities shall refer all cases simultaneously to the Deputy Inspector General, C.I.D. and the District Superintendent of Police (of the home district and of the district(s) where the candidate has resided for more than a year within five year of the date of the inquiry) giving full particulars about the candidate. The Superintendents of Police will send his report direct to the appointing authority if there is nothing adverse against the candidate. In cases where the report is unfavourable the Superintendent of Police will forward it to the District Magistrate who will send for the candidate concerned, give him a hearing and then, form his own opinion. All the necessary papers (the Superintendent of Police's report the candidate's statement and the District Magistrate's

finding) will there after be sent to the appointing authority.

4. It will be seen that in cases of direct recruit to services other than those mentioned in paragraphs 3 (c) and 3 (d) above, verification shall not be necessary as a matter of routine except in cases of doubt when the procedure mentioned in paragraph 3 (b) shall be followed.

5. In the case of a candidate for services mentioned in paragraphs 3 (c) and 3 (d) above-

(i) if at the time of enquiry the candidate is residing in a locality situated outside Uttar Pradesh or if he has resided in such a locality at any time within five years of the date of enquiry for a period of one year or more it shall be the duty of the deputy Inspector General, C. I. D. to consult also the C. I. D. D. of the State concerned in which the locality is situated before making his verification report.

(ii) if the candidate was residing before partition in area now comprising Pakistan the Deputy Inspector General, C. I. D. shall also make a reference to the Director of Intelligence Bureau, Ministry of Home Affairs, Government of India, in addition to the usual enquires as indicated above.

6. It has also been observed that where the District Magistrates are required to send the attestation forms they sometimes do not sign the forms themselves, Government consider it very desirable that the attestation forms should invariably be signed by the District Magistrates themselves in all such cases."

13. We find, from a perusal of the Government Order dated 28.04.1958, that the District Magistrate has been entrusted with the process of character verification in order to secure a balanced opinion about the suitability of a candidate for appointment to government service, based on all relevant facts. The aforesaid Government Order embodies the State's policy regarding employment, *vis-a-vis* the suitability of a candidate. It does not show a policy of blanket ban from consideration for public employment of a person, against whom a crime had been registered. A heinous or serious offence, involving moral turpitude, would be disqualifying unless subsequent proceedings establish the candidate to be utterly innocent and not involved at all. So far as other offences, which are trivial or not so trivial, are concerned, or cases of utter false accusation, where nothing turned out against a person, would have to be gauged by the District Magistrate for

the purpose of verifying a candidate's character and suitability for employment under the State. If this were not the policy of the State, there would not be a provision of the kind carried in the Government Order of 1958, where the Collector, the Superintendent of Police, and in certain cases, the C.I.D., have to be involved before a conclusion was reached if a candidate is suitable for public employment, even if a crime is registered against him.

14. Reference in this connection may be made to **Commissioner of Police and others v. Sandeep Kumar, (2011) 4 SCC 644**. The facts in **Sandeep Kumar** (*supra*) may be best gathered from the report of their Lordships' judgment:

"2. The respondent herein, Sandeep Kumar applied for the post of Head Constable (Ministerial) in 1999. In the application form it was printed:

"12(a) Have you ever been arrested, prosecuted, kept under detention or bound down/fined, convicted by a court of law for any offence, debarred/disqualified by any Public Service Commission from appearing at its examination/selection or debarred from any examination, rusticated by any university or any other education authority/institution."

Against that column the respondent wrote: "No".

3. It is alleged that this is a false statement made by the respondent because he and some of his family members were involved in a criminal case being FIR No. 362 under Sections 325/34 IPC. This case was admittedly compromised on 18-1-1998 and the respondent and his family members were acquitted on 18-1-1998.

4. In response to the advertisement issued in January 1999 for filling up of certain posts of Head Constables (Ministerial), the respondent applied on 24-2-1999 but did not mention in his application form that he was involved in the aforesaid criminal case. The respondent qualified in all the tests for selection to the post of temporary Head Constable (Ministerial). On 3-4-2001 he filled the attestation form wherein for the first time he disclosed that he had been involved in a criminal case with his tenant which, later on, had been compromised in 1998 and he had been acquitted.

5. On 2-8-2001 a show-cause notice was issued to him asking the respondent to show cause why his candidature for the post should not be cancelled because he had concealed the fact of his involvement in the aforesaid criminal case and had made a wrong statement in his application form. The respondent submitted his reply on 17-8-2001 and an additional reply but the authorities were not satisfied with the same and on 29-5-2003 cancelled his candidature."

15. On the above facts, it was held by the Supreme Court:

"8. We respectfully agree with the Delhi High Court that the cancellation of his candidature was illegal, but we wish to give our own opinion in the matter. When the incident happened the respondent must have been about 20 years of age. At that age young people often commit indiscretions, and such indiscretions can often be condoned. After all, youth will be youth. They are not expected to behave in as mature a manner as older people. Hence, our approach should be to condone minor indiscretions made by young people rather than to brand them as criminals for the rest of their lives.

11. As already observed above, youth often commits indiscretions, which are often condoned.

12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter."

(emphasis by Court)

16. Also bearing on the point involved here is **Ram Kumar v. State of U.P. and others, (2011) 14 SCC 709**. The facts in **Ram Kumar** (*supra*), as these figure in the report, read:

"2. The facts very briefly are that pursuant to an advertisement issued by the State Government of U.P. on 19-11-2006, the appellant applied for the post of Constable and he submitted an affidavit dated 12-6-2006 to the recruiting authority in the pro forma of verification roll. In the affidavit dated 12-6-2006, he made various statements required for the purpose of recruitment and in Para 4 of the affidavit he stated that no criminal case was registered against him. He was selected and

appointed as a male constable and deputed for training.

3. Thereafter, Jaswant Nagar Police Station, District Etawah, submitted a report dated 15-1-2007 stating that Criminal Case No. 275 of 2001 under Sections 324/323/504 IPC was registered against the appellant and thereafter the criminal case was disposed of by the Additional Chief Judicial Magistrate, Etawah on 18-7-2002 and the appellant was acquitted by the court. Along with this report, a copy of the order dated 18-7-2002 of the Additional Chief Judicial Magistrate was also enclosed.

4. The report dated 15-1-2007 of Jaswant Nagar Police Station, District Etawah, was sent to the Senior Superintendent of Police, Ghaziabad. By order dated 8-8-2007, the Senior Superintendent of Police, Ghaziabad, cancelled the order of selection of the appellant on the ground that he had submitted an affidavit stating wrong facts and concealing correct facts and his selection was irregular and illegal.

5. Aggrieved, the appellant filed Writ Petition No. 40674 of 2007 under Article 226 of the Constitution before the Allahabad High Court but the learned Single Judge dismissed the writ petition by his order dated 30-8-2007 [WP (C) No. 40674 of 2007, order dated 30-8-2007 (All)]. The learned Single Judge held that since the appellant had furnished false information in his affidavit in the pro forma verification roll, his case is squarely covered by the judgment rendered by this Court in *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav* [(2003) 3 SCC 437 : 2003 SCC (L&S) 306] and that he was rightly terminated from service without any inquiry. The appellant challenged the order of the learned Single Judge in Special Appeal No. 924 of 2009 but the Division Bench of the High Court did not find any merit in the appeal and dismissed the same by the impugned order dated 31-8-2009 [Special Appeal (Defective) No. 924 of 2009, order dated 31-8-2009 (All)]."

17. In Ram Kumar, it was held by the Supreme Court:

"9. We have carefully read the Government Order dated 28-4-1958 on the subject *"Verification of the character and antecedents of government servants before their first appointment"* and it is stated in the government order that the Governor has been pleased to lay down the following instructions in supersession of all the previous orders:

"The rule regarding character of candidate for appointment under the State Government shall continue to be as follows:

The character of a candidate for direct appointment must be such as to render him suitable in all respects for employment in the service or post to which he is to be appointed. It would be the duty of the appointing authority to satisfy itself on this point."

10. It will be clear from the aforesaid instructions issued by the Governor that the object of the verification of the character and antecedents of government servants before their first appointment is to ensure that the character of a government servant for a direct recruitment is such as to render him suitable in all respects for employment in the service or post to which he is to be appointed and it would be a duty of the appointing authority to satisfy itself on this point.

11. In the facts of the present case, we find that though Criminal Case No. 275 of 2001 under Sections 324/323/504 IPC had been registered against the appellant at Jaswant Nagar Police Station, District Etawah, admittedly the appellant had been acquitted by order dated 18-7-2002 by the Additional Chief Judicial Magistrate, Etawah.

12. On a reading of the order dated 18-7-2002 of the Additional Chief Judicial Magistrate it would show that the sole witness examined before the court, PW 1, Mr Akhilesh Kumar, had deposed before the court that on 2-12-2000 at 4.00 p.m. children were quarrelling and at that time the appellant, Shailendra and Ajay Kumar amongst other neighbours had reached there and someone from the crowd hurled abuses and in the scuffle Akhilesh Kumar got injured when he fell and his head hit a brick platform and that he was not beaten by the accused persons by any sharp weapon. In the absence of any other witness against the appellant, the Additional Chief Judicial Magistrate acquitted the appellant of the charges under Sections 323/34/504 IPC. On these facts, it was not at all possible for the appointing authority to take a view that the appellant was not suitable for appointment to the post of a police constable.

13. The order dated 18-7-2002 of the Additional Chief Judicial Magistrate had been sent along with the report dated 15-1-2007 of Jaswant Nagar Police Station to the Senior Superintendent of Police, Ghaziabad, but it appears from the order dated 8-8-2007 of the Senior Superintendent of Police, Ghaziabad, that he has not gone into the question as to whether the appellant was suitable for appointment to service or to the post of constable in which he was appointed and he has only held that the selection of the appellant was illegal and irregular because he did not furnish in his

affidavit in the pro forma of verification roll that a criminal case has been registered against him.

14. As has been stated in the instructions in the Government Order dated 28-4-1958, it was the duty of the Senior Superintendent of Police, Ghaziabad, as the appointing authority, to satisfy himself on the point as to whether the appellant was suitable for appointment to the post of a constable, with reference to the nature of suppression and nature of the criminal case. Instead of considering whether the appellant was suitable for appointment to the post of male constable, the appointing authority has mechanically held that his selection was irregular and illegal because the appellant had furnished an affidavit stating the facts incorrectly at the time of recruitment."

18. The law on the point has now been reviewed by the Supreme Court in **Avtar Singh v. Union of India and others, (2016) 8 SCC 471**. In **Avtar Singh (supra)**, far reaching principles have been laid down, which read:

"38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

38.4. In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:

38.4.1. In a case trivial in nature in which conviction had been recorded, such as shouting

slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

38.4.2. Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

38.4.3. If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

38.5. In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

38.6. In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.

38.7. In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

38.8. If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

38.9. In case the employee is confirmed in service, *holding* departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

38.10. For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in

such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of *suppressio veri or suggestio falsi*, knowledge of the fact must be attributable to him."

19. It is to be noticed that the principles adumbrated in **Avtar Singh** form the broad base, upon which a case of an employee, who has a criminal case registered against him, which he discloses or does not, is to be considered by the employer. It does not foreclose options of the employer or a government to issue their government orders, instructions or rules, applicable to the employee, when they decide about the course of action to be taken, when confronted with the situation of a crime registered against the employee, disclosed or not disclosed at the time of recruitment. This contingency is provided for by the guidelines in **Avtar Singh** *vide* paragraph no. 38.3 (*supra*). Here, it is beyond cavil that the guidelines applicable to the employees of the State Government, including police personnel, in the matter of the State's policy regarding employment, as regards the suitability of a candidate or a new recruit, is governed by the very detailed Government Order dated 28.04.1958. This Government Order, set forth hereinabove, makes elaborate provision for consideration of the employee's candidature, *vis-a-vis* his suitability to be retained in service. This Government Order clearly applies to the Police by virtue of paragraph 3(e)(i).

20. A perusal of paragraph 3(e), which is concerned with direct recruits, lower in rank than a State Service Officer, provides that apart from the requirement for the submission of a certificate of conduct and character and certificates of character envisaged under paragraph 3(a) (i) and (ii), the appointing authority is obliged to refer all cases simultaneously to the D.I.G.(C.I.D.) and the District Superintendent of Police of the candidate's home district, where he has resided for more than a year within the last five years, giving his complete particulars. The Superintendent of

Police is required to send his report direct to the appointing authority, if there is nothing against the candidate. In a case, where the report is unfavourable, the Superintendent of Police is required to forward his report to the District Magistrate. The District Magistrate is obliged to send for the candidate concerned, give him a hearing and then, form his opinion. There is, thus, no law that requires a candidate to be disqualified mechanically because a case was registered against him. The nature of the crime and the circumstances, all have to be taken into consideration, and offences, that are not grave, for the mere registration of them would not disqualify a person from employment to the police force, as in the present case. The FIR in the present case was registered under Sections 147, 148, 149, 323, 504, 325 I.P.C. On the terms of offences, it does not involve moral turpitude or a heinous crime, like, murder, dacoity or rape.

21. Sandeep Kumar is a case, which comes very close surprisingly on facts, but more importantly on principle. The facts there also show that the candidate had applied for the post of a Head Constable (Ministerial) and said in answer to a question in the form that he had not been arrested, prosecuted, kept under detention or bound down/ fined, convicted by a Court of law for any offence. This statement was found false as an FIR was registered against him under Sections 325/34 I.P.C. This case was compromised on 18.01.1998, in consequence of which the candidate and other members of his family were acquitted on 18.01.1998. While applying for the Head Constable's post in the year 1999, this information was withheld, almost like the case in hand. It was noticed by the Supreme Court that when the incident happened, Sandeep Kumar must have been about 20 years of age and indiscretions of this kind could be committed by young people. It was remarked that such indiscretions can be condoned because young people lack the maturity of older men. The most important remark of their Lordships in **Sandeep Kumar** is that

though it was true that in the application form, the candidate did not mention that he was involved in a criminal case under Section 325/34 I.P.C., the omission was opined to be one borne out of fear that if he disclosed, he would be disqualified. There is then a remark that in any event, it was not a serious offence, like murder, dacoity or rape, and, therefore, a lenient view should be taken in the matter. The principles in **Avtar Singh** that have been crystallized, though reduced to more firm and definitive guidelines, do not detract from the broad principles laid down in **Sandeep Kumar**, which, in our opinion, are squarely attracted to the facts of the present case.

22. A perusal of the order dated 24.03.2001 passed by the Superintendent of Police, Firozabad upon the petitioner's representation, which was directed to be decided by this Court, shows that the Superintendent of Police, Firozabad has adopted a very mechanical approach in the sense that he has said that the circumstances, which obtained when the Police Headquarters stopped the petitioner's recruitment and training, have not at all changed requiring a re-consideration of the matter. Reference to the Police Headquarters' orders, that find mention in the S.P.'s order show also a very mechanical reasoning adopted that for reason that the petitioner knowingly suppressed in his affidavit the fact of pendency of the criminal case against him, he was not to be sent for training. The approach, both of the Authorities in the Police Headquarters, Allahabad and the Superintendent of Police, Firozabad, who was asked to review the matter, is far from what the law would countenance in such a situation.

23. We have remarked earlier in the judgment that no material has been brought on record or circumstances suggested, that would show that at the time the petitioner filled up his recruitment form, he knew about the pendency of the case against him. In all likelihood, the petitioner was a juvenile or just turned a major,

when the case was registered and ended in compromise on 19.09.1997. We have opined that it was for the respondents to show that the petitioner knew about the pendency of the case when he applied for recruitment, a fact which they have not at all remotely established from the record. Now, by the subsequent reasoning, we have shown that even if the petitioner was aware, looking to the nature of the allegations and the charge against him and the totality of circumstances, it would still not be a case where his candidature ought be cancelled and the employment denied.

24. In the totality of circumstances, though for different and added reasons, we are in respectful agreement with the conclusions of the learned Single Judge and the order made by his Lordship.

25. In the result, this appeal fails and is **dismissed**.

26. There shall be no order as to costs.

(Indrajeet Shukla,J.) (J.J. Munir,J.)

August 21, 2026

Anoop