

**Reserved****Court No.-6****Case :-** WRIT - A No. - 7114 of 2020**Petitioner :-** *Sanny Kumar***Respondent :-** State Of U.P. And 4 Others**Counsel for Petitioner :-** Bhanu Pratap Singh, Rateesh Singh**Counsel for Respondent :-** Vikram Bahadur Yadav, S.C.**Hon'ble Ajay Bhanot,J.**

1. The petitioner has assailed the order dated 15.06.2020 passed by respondent no. 3- Superintendent of Police, Jalaun, cancelling his selection as Constable in the U.P. Police.

2. The judgment is being structured in the following conceptual framework to facilitate the discussion:

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## **I. Introduction:**

3. The recruitment process for various posts in the U.P. Police was initiated by notification dated 14.01.2018. The petitioner applied in response to the said notification. The petitioner was selected for appointment to the post of Constable in the UP Police.

4. The declaration made by the petitioner in the affidavit of verification on 22.04.2019 during the recruitment process disclosed following criminal cases:

“(1) NCR 131/2015 धारा 323, 504, 506 IPC, थाना हाथरस गेट में दोषमुक्त है

(2) FIR No. 0030/ 2018 महिला थाना हाथरस धारा 498, 323, 504, 506 IPC तथा दहेज़ अधिनियम 3, 4 में दोषमुक्त

(3) FIR No. 0760/2018 धारा 354(घ ) 120-B, 504, 506, 11, 22 67(a) I.P.C. में विचाराधीन विवेचनाधीन”

5. The petitioner was denied appointment as Constable. Being aggrieved the petitioner approached this Court by instituting a writ petition, registered as ***Writ A No. 3547 of 2020, Sanny Kumar Vs. State of U.P. and Others.*** The operative portion of the judgment in ***Sanny Kumar (supra)*** dated 04.03.2020 is extracted hereinunder:

“In view of the above, as no useful purpose would be served in keeping the matter pending, with the consent of parties the matter is being decided at this stage. It is directed that in case petitioner approaches the respondent no. 3 through a comprehensive representation along with certified copy of this order within fifteen days from today, the respondent no. 3 shall consider and decide the same, in accordance with law, keeping in mind the guidelines issued by Apex Court in case of Avtar Singh (Supra), and taking into account the result of the criminal cases lodged against the petitioner, preferably within a period of two months from the date of receipt of representation of petitioner.”

6. Pursuant to the said order passed by this Court, the

impugned order dated 15.06.2020 was passed.

**II. Submissions of learned counsels:**

7. Shri Bhanu Pratap Singh, learned counsel assisted by Shri Rateesh Singh, learned counsel for the petitioner contends that the petitioner had truthfully declared details of all the criminal cases pending against him in the affidavit of verification. The petitioner has not been chargesheeted in two cases. One of the cases is an offshoot of a matrimonial dispute of his brother. The impugned order has overlooked the acquittal of the petitioner by the court in one criminal case. The authority has not adopted any standard of evidence while considering the material against the petitioner. In absence of conviction by a court, appointment cannot be refused.

8. Per contra, Shri Vikram Bahadur Yadav, learned Standing Counsel for the State of U.P. submits that the petitioner was named in multiple criminal cases. The petitioner was not acquitted honourably by the trial court in the first case. The petitioner was named in the first information reports lodged in the other cases including one for an act of moral turpitude. The fact that the Investigation Officer did not chargesheet the petitioner does not exonerate the petitioner, particularly, when trials are on foot.

9. The competent authority gave full consideration to

all material facts in the right perspective. Persons with such criminal profiles are not fit for appointment in the police force.

10. Heard learned counsel for the parties.

***III. Facts of the case and the impugned order:***

11. The undisputed facts necessary for adjudication of this controversy can be prised out from the impugned order. The declaration made by the petitioner disclosing the criminal prosecutions faced by him was part of the recruitment process. Before approving the appointment the Superintendent of Police, Hathras, by communication dated 25.05.2019, sought an opinion of the District Magistrate, Hathras, in the matter.

12. According to the impugned order dated 15.06.2020, the District Magistrate, Hathras, constituted a committee to consider the suitability of the petitioner for appointment. The petitioner was given an opportunity to tender his defence before the committee.

13. The impugned order considers the defence of the petitioner before the committee. The petitioner asserted that he was acquitted in the first case. His nomination in the criminal case registered by his sister-in-law was false. The mother-in-law of his brother also set up her younger daughter to falsely implicate the petitioner in another case. The findings of the committee are then

set out at length in the impugned order.

**14.** The criminal case registered as NCR No. 131 of 2015 under Sections 323, 504, 506 I.P.C. Police Station Hathras Gate, District Hathras was tried as Criminal Case No. 1924 of 2015, (State Vs. Raghuvir Singh and Others). The impugned order records that the committee found that the acquittal of the petitioner in the said case by the learned trial court was not honourable. The petitioner was acquitted by the learned trial court, solely on account of the prosecution witnesses turning hostile.

**15.** The committee referencing the Case Crime No. 760 of 2018, under Sections 354kha, 120-B, 504, 506 I.P.C. and Sections 11 and 22 of POCSO Act, 2012 read with Section 67A of IT Act, found that the petitioner had been accused of sending obscene messages, and outraging the modesty of a minor girl child. These offences are grave and come within the ambit of moral turpitude. The case has gone to trial. The defence of the petitioner was untenable.

**16.** The third case was registered by the wife of the petitioner's brother, as Case Crime No. 30 of 2018, under Sections 498-A, 323, 504, 506, 307 and 313 I.P.C. and 3/4 of Dowry Prohibition Act, at Police Station Mahila Thana, District Hathras.

**17.** The District Magistrate, based on the committee

report found against the suitability of the petitioner for appointment in the U.P. Police.

**18.** The Superintendent of Police, Hathras, agreed with the findings of the committee and recommendation of the District Magistrate, Hathras. The competent authority also recorded his conclusions independently. The acquittal of the petitioner was not honourable. The petitioner was involved in several serious criminal cases, including one of moral turpitude. The latter cases are pending before the trial court. The petitioner was not suitable for appointment in the police force. Accordingly, the candidature of the petitioner for appointment as a Constable in the U.P. Police was cancelled by the impugned order dated 15.06.2020.

**19.** The process of recruitment to public office envisages affirmation of an affidavit, or filling up an attestation form, or a declaration to be made by a candidate disclosing details of past and pending criminal prosecutions against him.

**20.** Cases broadly fall in two categories, namely, where the candidate has disclosed criminal cases, and when the candidate has concealed information pertaining to criminal prosecution.

**21.** The act of deliberate non disclosure or willful suppression of criminal cases by a candidate invites penalties. However, at times mere non disclosure may

not be grave enough to cause a dismissal from service. Equally in other cases, the fact of disclosure in itself may not prevent the invalidation of the appointment. Nature of criminal cases have a more decisive say in the matter.

22. As noticed earlier the petitioner had disclosed all the criminal cases against him in the declaration submitted during the recruitment.

#### **IV. Legal perspective:**

##### **IV.i. Examination of suitability of candidates for appointment : Role of Criminal Antecedents:**

23. The impact of criminal antecedents on the appointment of a selected candidate was crystallized in *Avtar Singh v. Union of India and Others*<sup>1</sup>. However, the submissions made at the bar expand the scope of the controversy and require consideration of the contours and nature of an enquiry by the competent authority into the criminal antecedents of the candidate and its bearing on appointment.

24. The purpose and subject matter of the proceeding, the rights engaged, material for consideration, and consequences of the decision, decide the nature of the enquiry and procedure to be adopted.

25. The purpose of the enquiry is to determine suitability of a candidate to hold office. The police is a

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<sup>1</sup> (2016) 8 SCC 471

disciplined force which is charged with the duty to uphold the law and order in the State. Personnel in uniform belonging to disciplined forces, are expected to bear impeccable character and possess unimpeachable integrity. Adherence to these standards is essential to enable them to discharge their duties effectively, and retain the confidence of the public at large.

**26.** The narrative will be fortified by reference to judicial authorities in point. The need for appointing persons of untarnished character in the police force was underscored in *Commissioner of Police, New Delhi and others Vs. Mehar Singh*<sup>2</sup>

“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 trust reposed in it and must treat all candidates with even hand.”

**27.** In *B. Ramakrishna Yadav and others Vs. The*

*Superintendent of Police and others*,<sup>3</sup> the Full Bench of Hon'ble High Court of Andhra Pradesh held:

“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.”

28. Criminal antecedents are thus accepted in law as reliable guides for an employer to assess character traits and evaluate the suitability of a candidate for appointment.

#### **IV.i.-B. Nature of the proceeding/Scope of Enquiry into suitability for appointment:**

29. Determination of suitability of a candidate for appointment is an administrative decision which is part of the recruitment process. The process of evaluating suitability for appointment is not an adjudication of guilt or innocence as in a criminal case. Nor is it a quasi-judicial process or a civil law proceeding.

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<sup>3</sup> AIR 2016 AP 147

**IV.i-A. Material for consideration by the authority.**

30. In public employment diverse material for formation of opinion in regard to the suitability of a candidate is acquired from different sources.

31. The diversity of material available with the authority to form its opinion is inherent in the process of determining the suitability of the candidate. The material before the authority may be reliable and conclusive or credible but probative. Both kinds of material are liable to be considered. Material of probative value but credible worth is not to be discarded, and there is no impediment in its consideration.

32. One such source is the record of criminal proceedings against the candidate. The full inventory of material before the authority includes the F.I.R., the evidence collected during the criminal investigation, chargesheet submitted in court, evidence emerging during the trial, the judgment rendered by a court of law. On the foot of such material, the competent authority can make its decision on the fitness of the candidate for appointment.

**IV.i.-C. Method of Evaluation of Material/ applicability of Standards of evidence:**

33. The competent authority is not always bound by the findings of the court, nor is it invariably constrained

by the opinion of the investigation officer. The reasons are not far to seek.

**34.** The purposes of a criminal investigation, criminal trial, civil proceeding, departmental enquiry, are distinct from the rationale behind the exercise of verification of criminal antecedents of a candidate for appointment in a recruitment process. The nature of rights engaged in the respective proceedings are also different. The lattermost proceeding is an executive function, while former proceedings are judicial and quasi judicial in nature respectively.

**35.** Criminal prosecution of an individual before the court of law is to bring an offender of criminal laws to justice, and to punish the guilty. The object of the competent authority in a recruitment process is only to determine the suitability of a candidate to hold a public post.

**36.** Secondly, strict rules of evidence apply to criminal prosecution. The prosecution can succeed only when it attains the standard of evidence which proves the guilt of the accused beyond reasonable doubt. The competent authority on the contrary is not constrained by any such standard of evidence.

**37.** Acquittal by the criminal court happens when evidence is not sufficient to sustain a conviction. Failure to prove an offence before a court of law in a

criminal trial may not reduce the probative value of said evidence before the competent authority in a recruitment process. Such evidence when placed before the competent authority may constitute credible material of probative value to render a candidate unsuitable for appointment. The scope of discretion of the competent authority will also depend on the nature of findings of the court on the same evidence.

**38.** Weight is given by judicial authorities to the nature of acquittal over the mere fact of acquittal. Cases in point accordingly classify acquittals in different categories-honourable acquittal, acquittal as if the prosecution did not happen, acquittal on benefit of doubt, acquittal on account of witnesses turning hostile.

**39.** An acquittal in a criminal trial simplicitor will not lead to an automatic discharge in departmental proceedings. This proposition was enunciated in ***R.P. Kapur vs. Union of India (UOI)***<sup>4</sup> in the following terms:

“9... Take again the case where suspension is pending criminal proceedings. The usual ground for suspension pending a criminal proceeding is that the charge is connected with his position as a government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude. In such a case a public servant may be suspended pending investigation, enquiry or trial relating to a criminal charge. Such suspension also in our opinion is clearly related to disciplinary matters. ***If the trial of the criminal charge results in conviction, disciplinary proceedings are bound to follow against the public servant so convicted, even in case of acquittal proceedings may follow where the acquittal is other***

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4 AIR 1964 SC 787

*than honourable.* The usual practice is that where a public servant is being tried on a criminal charge, the Government postpones holding departmental enquiry and awaits the result of the criminal trial and departmental proceedings follow on the result of the criminal trial. Therefore, suspension during investigation, enquiry or trial relating to a criminal charge is also in our opinion intimately related to disciplinary matters. We cannot therefore accept the argument on behalf of the respondent that suspension pending a departmental enquiry or pending investigation, enquiry or trial relating to a criminal charge is not a disciplinary matter within the meaning of those words in Article 314.....

*(emphasis supplied)*

**40.** The distinction between honourable acquittal and acquittal based on benefit of doubt was considered in relation to the right to reinstatement in service and other service benefits in *Management of Reserve Bank of India Vs. Bhopal Singh Panchal*<sup>5</sup>, by laying down the law as under:

“13.....When the High Court acquitted the respondent-employee by its order of November 21, 1977 giving the benefit of doubt, the Bank rightly refused to reinstate him in service on the ground that it was not an honourable acquittal as required by Regulation 46(4).

15.... It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period.”

**41.** *Commissioner of Police, New Delhi Vs. Mehar Singh*<sup>6</sup> attempted to define the expression “honourable acquittal” after acknowledging that the term often eludes precise definition. **Mehar Singh (supra)** after placing reliance on the law laid down in *Inspector*

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5 1994 (1) SCC 541

6 2013 (7) SCC 685

***General of Police Vs. S. Samuthiram***<sup>7</sup>, and ***RBI vs. Bhopal Singh Panchal***<sup>8</sup> held as under:

“25. The expression “honourable acquittal” was considered by this Court in ***S. Samuthiram [Inspector General of Police v. S. Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229]***. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 IPC and under Section 4 of the Eve-Teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in ***RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619]***, where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in the departmental proceedings. This Court observed that the expressions “honourable acquittal”, “acquitted of blame” and “fully exonerated” are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression “honourably acquitted”. This Court expressed that when the accused is acquitted after full consideration of the prosecution case and the prosecution miserably fails to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.”

42. More recently in line with the said authorities, in ***State of M.P. Vs. Bunty***<sup>9</sup> it was held:

“13. The law laid down in the aforesaid decisions makes it clear that in case of acquittal in a criminal case is based on the benefit of the doubt or any other technical reason. The employer can take into consideration all relevant facts to take an appropriate decision as to the fitness of an incumbent for appointment/continuance in service. The decision taken by the Screening Committee in the instant case could not have been faulted by the Division Bench.”

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7 (2013) 1 SCC 598

8 (1994) 1 SCC 541

9 2019 SCC OnLine SC 430

**43.** The value of a chargesheet submitted by an Investigation Officer in a court, for the authority considering the suitability of candidate for appointment would now merit consideration.

**44.** The chargesheet submitted before the court is the result of criminal investigation by the Investigation Officer. During investigation of a criminal case the Investigation Officer has to be responsive to the standard of evidence required in a criminal trial. For the competent authority nomination or omission to name a person in a chargesheet, is at best an opinion of the Investigation Officer. Absent nomination as an accused in a chargesheet, or even a clean chit by an Investigation Officer, ipso facto does not create an entitlement for appointment. The opinion of the Investigation Officer will deserve respect, but it does not foreclose the discretion of the authority. The competent authority may for good reason based on material in the record form a different opinion in the matter of fitness for appointment.

**45.** In civil proceedings and departmental enquiries, the standard of evidence employed to prove a fact is preponderance of probabilities. The rights of a government employee facing departmental proceedings are significantly different from a candidate who is participating in a selection process. The evidentiary standard of preponderance of probability is not

applicable to the proceedings which consider the suitability of a candidate before making the appointment.

**46.** The duty of an employer to evaluate the suitability of a candidate for appointment is paired with the right of the candidate for a fair consideration of his credentials.

**47.** Rights of selected candidates have been settled by good authority.

**48.** In *Shankarshan Das Vs. Union of India*<sup>10</sup>, the rights of candidates in a recruitment process were posited for determination. Selected candidates do not acquire an infeasible right to be appointed was the principle holding in *Shankarshan Das (supra)*, which is set out hereunder:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an infeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *State of Haryana v. Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR

165] , *Neelima Shangla v. State of Haryana* [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] , or *Jatinder Kumar v. State of Punjab* [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899].”

**49. *State of Bihar Vs. The Secretariat Assistant Successful Examinees Union***<sup>11</sup> reinforces the said proposition of law.

**50.** Reception of evidence is invariably required when the fact finder is required to achieve the two standards of evidence discussed above. Insistence on the said standards of evidence would demand introduction of evidence in decisions made in the recruitment process. This is fraught with serious consequences. The recruitment process would be quagmired in legal adjudications and disputes. The nature of rights of selected candidates does not permit adoption of the aforesaid standards of evidence.

**51.** To sum up, the authority while determining the suitability of a candidate for public employment is not required to reach the level of evidentiary standards demanded of the prosecution in a criminal trial or asked of a party in a civil trial or required of a department in a disciplinary enquiry.

#### **IV.i.-D. Procedure for enquiry:**

**52.** The conclusion of the competent authority is an estimation at best. The decision made by inferences drawn from the material in the records, by its very

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<sup>11</sup> 1994 (1) SCC 126

nature can never be proved by mathematical accuracy. However, to obviate possibilities of miscarriage of justice, judicial safeguards have to be built into the decision making process.

53. The law has set its face against an arbitrary denial of appointment to selected candidates. In *Mohammed Imran Vs. State of Maharashtra*<sup>12</sup>, it was held:

“5. Employment opportunities are a scarce commodity in our country. Every advertisement invites a large number of aspirants for limited number of vacancies. But that may not suffice to invoke sympathy for grant of relief where the credentials of the candidate may raise serious questions regarding suitability, irrespective of eligibility. Undoubtedly, judicial service is very different from other services and the yardstick of suitability that may apply to other services, may not be the same for a judicial service. But there cannot be any mechanical or rhetorical incantation of moral turpitude, to deny appointment in judicial service simpliciter. Much will depend on the facts of a case. Every individual deserves an opportunity to improve, learn from the past and move ahead in life by self-improvement. To make past conduct, irrespective of all considerations, an albatross around the neck of the candidate, may not always constitute justice. Much will, however depend on the fact situation of a case.

9....If empanelment creates no right to appointment, equally there can be no arbitrary denial of appointment after empanelment.”

54. Emphasizing the need to exercise powers reasonably and objectivity in such matters, the Supreme Court in *Avtar Singh (supra)* held thus:

“35...Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.”

55. The procedural safeguards in an administrative

decision making process which has penal consequences shall apply to these proceedings.

56. The authority has to adopt a procedure which is consistent with principles of natural justice.

57. Adverse material has to be provided to the candidate. The candidate can tender his defence to refute the aforesaid material and point out mitigating circumstances in his favour in the proceeding. When need arises fair and an impartial opportunity of hearing may be given to such candidate.

#### **IV.ii. Line of Enquiry by the authorities**

58. With the nature of material, evidentiary requirements, and procedural details in place, the line of enquiry to be followed by the authority shall now receive consideration.

59. Consequences of a false declaration made in the course of verification at the time of his recruitment and invalidating effect of criminal cases on the prospects for appointment, were broadly settled in ***Avtar Singh (supra)***, in the following terms:

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

(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.

(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.

(3) The employer shall take into consideration the Government orders/instructions/rules, applicable to the employee, at the time of taking the decision.

(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 recourse appropriate to the case may be adopted: -

(a) 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.

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

(c) 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.

(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.

(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.

(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.

(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.

(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.

(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.

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

#### **IV.ii.-A. Line of Enquiry- Aggravating Factors**

**60.** Regard has to be paid by the competent authority to the gravity and heinous nature of offences or offences involving moral turpitude. Such cases may dissuade the competent from approving the candidate for appointment.

**61.** Multiplicity of criminal prosecutions is also a factor while considering the suitability of a candidate. Repetitive criminal acts may reinforce the inference of criminal traits or vice and violence in a candidate.

**62.** Material in the record should strongly support the inference of criminal traits, or a tendency of involvement in criminal offences, or to directly engage in criminal acts or vice and violence in the conduct. These qualities are not conducive to holding public office. On this foot the authority can justify denial of appointment.

#### **IV.ii.-B. Line of Enquiry – Mitigating Factors**

**63.** The line of enquiry shall extend to the consideration of mitigating factors in each case.

**64.** The authority has to make allowance for mitigating

factors in a case. Indiscretions of youth, and fallibility of human nature have to be accorded full weight. Fallibility of human nature is distinct from criminal traits in character. Depraved conduct is not youthful indiscretion. Trivial offences may often occur by human error and not perpetrated by a criminal mindset. Trivial offences may not invite invalidation of candidature. The competent authority has to determine where the threshold lies and draw the line in light of facts of each case.

**65.** The judgment in *Commissioner of Police and Ors. Vs. Sandeep Kumar*<sup>13</sup>, cited with approval in *Avtar Singh (supra)*, turned on similar facts:

"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."

**66.** The authority also cannot neglect the realities of social life and pace of the judicial process and have to factor them in the decision.

**67.** The practice of falsely framing young members of a family in trivial offences especially in villages is not uncommon. Prosecution in these offences is easily initiated and cases remain pending indefinitely.

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13 2011 (4) SCC 644

68. Tendency to falsely implicate all family members and even distant relatives in many criminal cases arising out of matrimonial disputes has also been noticed by the courts.

69. The employer has to be alert to these realities and factor them in the decision in the facts of a case.

**IV (iii). Decision of the authority:-**

70. The authority while taking a decision in the matter has to consider relevant facts and material in the record and also the defence tendered by the candidate. The order should be supported by reasons which reflect due application of mind to relevant considerations. A perverse finding or a decision taken on no evidence or an order based on irrelevant considerations will vitiate the decision. Such decision would be vulnerable to judicial interdict.

**V. Analysis of Facts & Conclusions:**

71. The facts of the case and the impugned order shall now be analyzed in the legal perspective stated in the preceding paragraphs.

72. The procedure adopted by the competent authority while passing the impugned order is compliant with principles of natural justice.

73. The finding of the competent authority in Criminal Case No. 1924 of 2015, State Vs. Raghuvir Singh and

others, that the verdict of the learned trial court was not an honourable acquittal of the petitioner is correct on facts and in conformity with law. The competent authority was within its jurisdiction to give weight to the fact and circumstances of witnesses turning hostile in the trial, leading to the acquittal of the petitioner. The acquittal does not help the case of the petitioner.

74. Most importantly, the case was not an isolated one. The petitioner was an accused in the F.I.R. registered as Case Crime No. 760 of 2018, under Sections 354-Kha, 120-B, 504, 506 I.P.C. and Sections 11 and 22 of POCSO Act, and Section 67A of the I.T. (Amendment) Act, 2008, Police Station Hathras Gate, District Hathras. The competent authority had good justification to make a decision at variance with the opinion of the Investigation Officer who did not name the petitioner as an accused in the chargesheet. The fact remains that the petitioner was nominated as an accused in the FIR in a grave offence involving moral turpitude and the trial is underway. Allegations of sexual offences against children are most serious and cannot be lightly dismissed by any employer. These facts are liable to be factored in the decision and were legitimately considered in the impugned order.

75. Both the criminal cases were in no way connected with each other. Criminal cases were instituted by different parties for separate offences. Multiplicity of

cases manifested repetitive criminal conduct and thus assumed significance.

**76.** The competent authority cannot be faulted for finding that the aforesaid antecedents revealed traits which made the petitioner unsuitable for appointment.

**77.** True it is that Case Crime No. 30 of 2018, under Sections 498-A, 323, 504, 506, 307, 313 I.P.C. and 3/4 of Dowry Prohibition Act, at Police Station Mahila Thana, District Hathras, arose out of a matrimonial dispute between the petitioner's brother and his wife. However, it is of no avail to the petitioner, in the facts of this case. The multiplicity of criminal cases as seen earlier constitute aggravating circumstances which compelled the competent authority to find against the petitioner.

**78.** In the opinion of the competent authority the multiple criminal cases yielded material of credible nature with high probative value. The order of the competent authority based on the said material is supported by reasons. The impugned order factors relevant criteria and excludes irrelevant considerations. The inferences drawn by the authority are reasonable. The impugned order is in conformity with judicial authorities in point. There is no procedural impropriety committed by the authority while passing the impugned order.

**79.** The pleadings in the writ petition and the material in the record before this Court, do not establish any perversity in the findings. In these facts, disclosure of the criminal cases by the petitioner is not a defence against cancellation of his selection.

**80.** In wake of the preceding discussion, the impugned order dated 15.06.2020 passed by respondent no. 3- Superintendent of Police, Jalaun is not liable to be interfered with.

**81.** The writ petition is liable to be dismissed and is dismissed.

**Order Date :-**19.03.2021

Dhananjai Sharma