A.F.R.

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Court No. - 1

Case :- WRIT **-** A No. **-** 5709 of 2019
Petitioner :- Ashish Kumar Rajbhar
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Siddharth Khare
Counsel for Respondent :- C.S.C.

Hon'ble Salil Kumar Rai,J.

The issue in the present petition is as to whether the appointing authority can deny appointment to a selected candidate only on the ground of non-disclosure of a criminal case registered against him even though the candidate was not named as an accused in the charge sheet and was not put on trial in the said case.

The facts of the case are that the petitioner was selected for appointment as constable in the selections held in pursuance to the advertisement issued in 2015 by the Uttar Pradesh Police Recruitment and Promotion Board, Lucknow. The selected candidates were asked to file an affidavit disclosing whether any criminal case had been registered against them or was pending consideration in any court. The candidates were warned that in case any information given in the affidavit was found to be wrong, they would be liable to be dismissed or removed from service. The petitioner submitted his affidavit dated 11.06.2018 putting a cross against the column which required disclosure of criminal cases, representing that no criminal case was either registered or pending against the petitioner. It has been stated by the petitioner that subsequently he came to know that on 01.04.2017, a Criminal Case No. 0170 of 2017 under Sections 147/ 323/452/325 of the Indian Penal Code and Section 3(1)(x) SC/ST (Prevention of Atrocities) Act, 1989 had been registered against him but the petitioner was not named in the charge-sheet which was filed on 24.05.2017. The case of the petitioner is that he came to know about the criminal case registered against him after he had filed his affidavit, therefore, he filed another affidavit dated 26.07.2018 before the respondent authorities disclosing the details of the criminal case. The District Magistrate, in his report dated 28/31.07.2018, recommended that the petitioner was fit to be appointed as Constable after noting that the petitioner had been wrongly named in the First Information Report registering Criminal Case No. 0170 of 2017 and that no other criminal case was registered against the petitioner. The said report was made by the District Magistrate in discharge of his duties under the Office Memorandum dated 28.04.1958 issued by the Government of Uttar Pradesh regarding the verification of character and antecedents of applicants for government service before their first appointment. However, the Superintendent of Police, Ballia vide his order dated 04.11.2018 rejected the claim of the petitioner for appointment as Constable on the ground that the petitioner had, in his affidavit, concealed the criminal case registered against him. While passing the aforesaid order, the Superintendent of Police, Ballia relied on Clause 8 (Ja) of the Office Instructions dated 22.05.2018 which provides that a candidate would be declared unfit for appointment if he had concealed or made any misrepresentation regarding any criminal case registered against him or regarding any trial, acquittal or conviction in a criminal case or if the candidate had been convicted for any offence involving moral turpitude.

The order dated 04.11.2018 was challenged by the petitioner through Writ - A No. 24973 of 2018 which was disposed of by this Court vide its order dated 11.12.2018 noting the statement of the Standing Counsel that the Superintendent of Police, Ballia shall reconsider the claim of the petitioner for appointment in accordance with law. The Superintendent of Police, Ballia vide his order dated 04.03.2019 has again rejected the claim of the petitioner for being appointed as Constable in U.P. Police. The claim of the petitioner has been rejected on the ground that in his first affidavit the petitioner had knowingly concealed the criminal case registered against him. The explanation of the petitioner that he had no knowledge of the criminal case at the time of filing the first affidavit has been disbelieved on the ground that the Investigating Officer had recorded the statement of the petitioner on 26.04.2017, i.e., before the petitioner had filed his first affidavit. The order dated 04.03.2019 has been challenged in the present writ petition.

A counter affidavit has been filed by the State respondents which reiterates the facts recorded in the orders dated 04.11.2018 and 04.03.2019 passed by the Superintendent of Police, Ballia.

It was argued by the counsel for the petitioner that while passing the order dated 04.03.2019, the Superintendent of Police has not considered the report of the District Magistrate recommending the petitioner to be fit for appointment as Constable after noting that the petitioner had been wrongly named in the First Information Report and had been excluded from the charge-sheet and that no other case had been registered against the petitioner. It was argued that in light of the Office Memorandum dated 28.04.1958, the recommendations of the District Magistrate had to be considered by the Superintendent of Police. It was argued that the failure of the petitioner to disclose the criminal case pending against him did not amount to active misrepresentation or an intention to deceive the authorities, therefore, the respondents could not have legally denied the petitioner’s appointment as Constable because of non-disclosure of the criminal case. It was further argued that, in any case, the criminal case registered against the petitioner was trivial in nature and did not disqualify the petitioner for appointment as constable especially because the petitioner was not named in the charge sheet, therefore, the alleged concealment by the petitioner was not a material suppression warranting denial of appointment to the petitioner. It was argued that the impugned order has been passed mechanically and without any application of mind by the Superintendent of Police and is arbitrary. It was argued that for the aforesaid reasons, the order dated 4.3 2019 passed by the Superintendent of Police, Ballia is contrary to law and is liable to be quashed. In support of his contention, the counsel for the petitioner has relied on the judgment and order dated 22.08.2023 passed by the Supreme Court in **Civil Appeal No. 8510 of 2011 (State of West Bengal and Ors. vs. Mitul Kumar Jana** and the judgments reported in **Commissioner of Police, Delhi & Anr. vs. Dhaval Singh 1999 (1) SCC 246; Joginder Singh vs. Union Territory of Chandigarh & Ors. 2015 (2) SCC 377; Avtar Singh vs. Union of India & Ors. 2016 (8) SCC 471; Pawan Kumar vs. Union of India & Anr. (2022) SCC OnLine SC 532; Ravindra Kumar vs. State of U.P. & Ors. (2024) SCC OnLine SC 180 and Vishal Kumar vs. State of U.P. & 4 Ors. (Special Appeal No. 532 of 2023)**.

Rebutting the contention of the counsel for the petitioner, the Standing Counsel has argued that the petitioner had knowingly made a false representation indicating that no criminal case was registered or pending against him. It was argued that the concealment and the misrepresentation by the petitioner were material suppression disqualifying him for appointment as Constable and there is no illegality in the order passed by the Superintendent of Police rejecting the claim of the petitioner. It was argued that for the aforesaid reasons, the writ petition is liable to be dismissed. In support of his contention, the Standing Counsel has relied on the judgments of this Court reported in **Satyendra Singh vs. State of U.P. & Ors. (Writ – A No. 16791 of 2023)** as well as the judgment of a Division Bench of this Court in **Chandrajeet Kumar Gond vs. High Court of Judicature at Allahabad 2024 SCC Online Allahabad 251** and of the Supreme Court reported in **The State of Madhya Pradesh & Ors. vs. Bhupendra Yadav (2023) LiveLaw (SC) 810 and Satish Chandra Yadav vs. Union of India & Ors. 2022 LiveLaw (SC) 798**.

I have considered the submissions of the counsel for the parties.

In **Avtar Singh (supra)**, the Supreme Court, after considering its previous judgements, observed that the 'whole idea of verification of character and antecedents is that the person suitable for the post in question is appointed' and that 'an incumbent should not have antecedents of such a nature which may adjudge him unsuitable for the post.' It was observed that mere involvement in some petty kind of case would not render a person unsuitable for the job. The Supreme Court further held that suppression of material information presupposes that suppression is of facts which matter and failure to disclose a trivial matter would not be relevant to refuse appointment or to cancel the selection. The Supreme Court observed that a person who had suppressed material information may not claim unfettered right of appointment or continuity in service but he had a right not to be dealt with arbitrarily and exercise of power had to be in a reasonable manner having due regard to the facts. The yardstick to be applied while taking a decision depended on the nature of the post and chance of reformation had to be afforded to young offenders in suitable cases. It was also held by the Court that the employer had to act on due consideration of rules / instructions. The Supreme Court summarized the law regarding appointment, offer of appointment, cancellation of offer or termination of appointment in cases where the applicant had either suppressed the facts regarding criminal cases registered against him or was acquitted / convicted in any criminal case. Paragraph nos. 35 to 38 of the judgment of the Supreme Court expounding the law on the aspect are reproduced below:-

> ***"35. Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases.***
>
> ***36. What yardstick is to be applied has to depend upon the nature of post, higher post would involve more rigorous criteria for all services, not only to uniformed service. For lower posts which are not***

sensitive, nature of duties, impact of suppression on suitability has to be considered by authorities concerned considering post/nature of duties/services and power has to be exercised on due consideration of various aspects.

37. The "McCarthyism" is antithesis to constitutional goal, ***chance of reformation has to be afforded to young offenders in suitable cases****, interplay of reformative theory cannot be ruled out in toto nor can be generally applied but is one of the factors to be taken into consideration while exercising the power for cancelling candidature or discharging an employee from service.*

38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarize 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 suppressioveri or suggestio falsi, knowledge of the fact must be attributable to him.***”**

(emphasis supplied)

Subsequently, the Supreme Court in **Ravindra Kumar (supra)** held that there was no hard-and-fast or cut-and-dried rule that, in all circumstances, non disclosure of a criminal case would be fatal for a candidate’s employment even if the candidate was acquitted in the criminal case. The Court held that each case would turn on its special facts and circumstances. The court further observed that ***broad-brushing every non-disclosure as a disqualification, would be unjust and the same would tantamount to being completely oblivious to the ground realities*** obtaining in this great, vast and diverse country and the court will have to take a holistic view, based on objective criteria, with the available precedents serving as a guide and it can never be a one size fits all scenario. The Supreme Court after considering its previous judgment in **Satish Chandra Yadav (supra)** observed, in paragraph no. 31of the report, that the 'nature of the office, the timing and **nature of the criminal**

case; the overall consideration of the judgement of acquittal; the nature of the query in the application/verification form; the contents of the character verification reports; **the socio economic strata of the individual applying; the other antecedents of the candidate**; the nature of consideration and the contents of the cancellation/termination order' ***were some of the crucial aspects which should enter the judicial verdict in adjudging the suitability and in determining the nature of relief to be ordered***. It would be relevant to note that in ***Ravindra Kumar (Supra)***, the Supreme Court, while deciding in favour of the selected candidate, took note of the fact that the candidate hailed from a small village, there was no criminal case pending against him on the date of filing the application form, the criminal case was registered against the candidate when he was only 21 years of age, the verification report after noticing the criminal case and the subsequent acquittal stated that the character of the candidate was good and that no complaints were found against him. The general reputation of the candidate was good, the Station House Officer in his report had certified the character of the candidate as excellent and that the candidate was eligible to do Government Service under the State Government. The court also noticed that the report of the Station House Officer was endorsed by the Superintendent of Police who reiterated that the character of the candidate was excellent.

At this stage, it would be relevant to consider some of the judgments referred by the Standing Counsel to support the impugned order. In ***Bhupendra Yadav (supra)***, a criminal case under Sections 341/354 (D) of the Indian Penal Code read with Sections 11(D)/12 of the POCSO Act was registered against the applicant. During the trial of the case a compromise was arrived at between the applicant and the complainant. A compromise application was filed as a result of which the charge under Section 341 I.P.C. was compounded. So far as charges under Section 354(D) and Sections 11(D)/12 of the POCSO Act were concerned, the trial court acquitted the applicant because the prosecutrix and other prosecution witnesses had turned hostile and refused to support the case set up by the prosecution. Subsequently, the applicant was appointed on the post of constable after having qualified the selection test held for filling up vacancies on the post of constable. After his joining, the applicant was asked to furnish in the Verification form certain informations, including informations on criminal cases pending or registered against him. The applicant disclosed the details of the aforesaid criminal case indicating that he had been acquitted in the said case by the trial court. An order was passed by the appointing authority holding the applicant to be unfit for government service on the ground that offences under Section 354-D and Sections 11(D)/12 of the POCSO Act were offences of moral turpitude. It was argued before the Supreme Court that the order of the appointing authority was bad in law because the applicant, while filling the verification form, had furnished all the requisite informations and had truthfully disclosed the facts of the criminal case and its final outcome and that the applicant had been acquitted in the case. The Supreme Court after referring to to Paragraph nos. 38.4.3 and 38.5 of the judgment in ***Avtar Singh (Supra)*** held that even in cases of truthful disclosure the employer was well within its rights to examine the fitness of a candidate and in a concluded criminal case, the employer had to keep in mind the nature of the offence and verify whether the acquittal is honourable or benefit has been extended to the accused on technical grounds. It was held by the Supreme Court that the employer was empowered not to appoint a candidate or continue the incumbent on the post if the employer arrives at the conclusion that the candidate is a suspect character or unfit for the post. The Supreme Court noted that the charges against the applicant involved moral turpitude and that his acquittal was not a clean and honourable acquittal but the acquittal was because of the compromise between the complainant and the applicant and during trial the prosecutrix as well as other prosecution witness had refused to support the case of the prosecution.

In ***Satish Chandra Yadav (supra)***, a charge sheet had been filed against the employee. The Supreme Court recognized that each case had to be scrutinized thoroughly by the employer concerned and the Court is obliged to examine whether the procedure of inquiry adopted by the authority concerned was fair and reasonable. Considering its own judgment in ***Satish Chandra Yadav (supra)***, the Supreme Court in ***Ravindra Kumar (Supra)*** held that mere non-disclosure of a criminal case by a candidate who had been acquitted in the said criminal case cannot be fatal for the candidate's employment and broad brushing every non-disclosure as a disqualification would be unjust.

In **Chandrajeet Kumar Gond (supra),** the Division Bench of this Court (of which I was a member) rejected the claim of the petitioner and affirmed the order passed by the employer terminating the services of the employee as the case registered against the petitioner was under Section 307 of IPC and was, therefore, serious in nature.

As noted above, in **Avtar Singh (Supra)**, the Supreme Court held that while deciding the suitability for appointment of a selected candidate against whom a criminal case had been registered, the employer had to take into consideration the Government orders/instructions/rules applicable at the time of taking the decision. Hence, at this stage it would be relevant to refer to the rules and instructions of the State Government regarding the verification of the character and antecedents of applicants for government service before their first appointment. The Office Memorandum dated 28.4.1958 prescribes the manner in which the appointing authority shall verify the character and antecedents of applicants for government service and also the factors which may be relevant for such verification. The Office Instructions dated 22.5.2018 issued by the Superintendent of Police (Personnel) also prescribes the procedure and factors to be taken into consideration while verifying the character of an applicant for appointment as Constable in U.P. Police.

Clause 3 (b) of the Office Memorandum dated 28.04.1958 provides that in cases of doubt regarding the conduct and character of the candidate, the appointing authority may either ask for further references or may refer the matter to the District Magistrate concerned who may then make such further inquiries as he considers necessary. A reading of Clause 3 (b) and the Note to Clause 3 shows that the report of the District Magistrate is a relevant and an important material to be taken into consideration while deciding the suitability of a candidate for appointment to any post under the State Government. The Note to Clause 3 provides that a mere conviction by itself would not be a cause to refuse a certificate of good character and would also not be a disqualification for appointment to government service. It is the entire circumstances in which the conviction was recorded and the circumstances in which the candidate is presently placed which should be considered while deciding the suitability of the candidate for appointment to government service. The Note also acknowledges that while deciding the suitability of the candidate for appointment to government service the fact that he had completely reformed himself would be relevant. Clause 3 of the Office Memorandum dated 28.04.1958 and the Note attached to the clause are reproduced below:-

> *"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 such further enquiries as he considers necessary.*
>
> *Notes.-(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 no moral turpitude or association with crimes of violence or with a movement which has as 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 a 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.

In the case of direct recruits to the State Services under the Uttar Pradesh Government besides requiring the candidates to submit the certificates mentioned in paragraph 3 (a) above the appointing authority shall refer all cases simultaneously to the 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 asks 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 report 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."

The importance of the Office Memorandum dated 28.04.1958 was noticed by the Supreme Court in ***Ram Kumar vs. State of U.P. & Others (2011) 14 SCC 709*** which was also considered by the Supreme Court in **Avtar Singh (Supra)**. In **Ram Kumar (supra)** the candidate had challenged the order of the appointing authority cancelling his selection after he was appointed on the post. The appointing authority had cancelled the selection only on the ground that in his affidavit the applicant had not disclosed that a criminal case under Sections 323/34/504 IPC had been registered against him in which he had been acquitted. The Supreme Court held that in view of the Office Memorandum dated 28.04.1958, it was the duty of the appointing authority to satisfy itself as to whether the applicant was suitable for appointment to the post of Constable with reference to nature of suppression and nature of the criminal case. The Supreme Court held that the appointing authority could not have found the applicant unsuitable for appointment to the post of Constable merely because the applicant had furnished an affidavit stating incorrectly the facts regarding registration of a criminal case against him even though he was acquitted in the criminal case. The Supreme Court consequently quashed the order of the appointing authority cancelling the selection and appointment of the applicant and directed that that the applicant be reinstated in service. However, the Supreme Court denied back-wages for the period the candidate remained out of service. The relevant observations of the Supreme Court in paragraph nos. 9 to 14 of the report are reproduced below:-

> *"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****.”*

So far as the Office Instructions dated 22.5.2018 is concerned, Clause 8(Ja) of the Office Instructions provides that an applicant for appointment in Police force in State of Uttar Pradesh shall be declared unfit for appointment if he had concealed the fact that a criminal case had been registered against him. However, Clause 8 (Ja) of the Government order also provides that where a candidate had been acquitted or convicted by a court in any criminal case, the matter shall be referred to the District Magistrate who shall submit his report/ recommendation regarding the fitness of the candidate for appointment and the Superintendent of Police shall take a decision ***in accordance with the recommendations of the District Magistrate***. The first part of the Government Order, i.e., the part which provides that a candidate shall, in accordance with law, be declared unfit for appointment in case of concealment or misrepresentation has to be read along with the principles laid down in ***Avtar Singh (Supra)*** and ***Ravindra Kumar (Supra)*** that even a candidate who has suppressed information has a right not to be dealt with arbitrarily and exercise of power has to be in a reasonable manner. Any other reading of Clause 8(Ja) would result in arbitrariness and would thus violate the constitutional principle of fairness and non-arbitrariness.

The principles deducible from the judicial precedents referred earlier and also the Office memorandum dated 28.4.1958 as well as the Office Instructions dated 22.5.2018, so far as they are relevant for a decision of the present writ petition, are that the purpose of seeking information from the candidate regarding any criminal case registered or pending against him is to verify the character and antecedents of the candidate. ***Verification of character and antecedents of a candidate is required to adjudge the suitability of the candidate for appointment***. A candidate who has suppressed material information cannot claim unfettered right for appointment but he has a right not to be dealt with arbitrarily and the decision of the competent authority has to be reasonable and objective having due regards to the facts of the case. ***Broad- brushing every non-disclosure as a disqualification would be unjust and it would be arbitrary and unreasonable to disqualify a candidate merely because of non-disclosure of a criminal case which was trivial in nature and related to a petty offence which if disclosed would not have rendered him unfit for post in question. Consequently, any statute/rules/instructions which empowers the employer to deny appointment to a candidate only because of non-disclosure of criminal cases*** would also be unjust and unreasonable and any decision by the employer denying appointment only because of such non-disclosure would also be contrary to the constitutional principle of fairness and non-arbitrariness in administrative actions. In cases where there is non-disclosure of criminal case by the candidate, the nature of the case and the seriousness of the offence with which the applicant is charged, the end result of the trial and if the applicant was acquitted the reasons for acquittal-whether the acquittal was a clean acquittal or the applicant has been acquitted on a technical ground and given benefit of doubt - as well as the socio-economic status of the candidate are some of the factors which are also to be considered while adjudging the suitability of a candidate for appointment. In a case trivial in nature or for a petty offence, the employer may ignore suppression of fact or false information by condoning the lapse if the applicant is not otherwise unfit for appointment. The report of the District Magistrate regarding the character and antecedents of the candidate and also the recommendations of the District Magistrate are relevant documents which have to be considered by the appointing authority while deciding the suitability of a candidate for appointment. The aforesaid factors are also to be considered by the courts while deciding the nature of relief to be given to a candidate.

In his impugned order dated 04.03.2019, the Superintendent of Police, relying on Clause 8 (Ja) of the Office Instructions dated 22.5.2018, has mechanically rejected the claim of the petitioner only on the ground of non-disclosure of the criminal case by the petitioner. While rejecting the claim of the petitioner, the Superintendent of Police has not considered the report of the District Magistrate which recommended the petitioner fit for appointment. While deciding the claim of the petitioner, the appointing authority has neither considered the nature of alleged suppression nor the nature of the case registered against the petitioner and has also not considered the fact that the petitioner was not even put on trial in the case. The socio-economic status of the petitioner has also not been considered by the Superintendent of Police and there is no consideration regarding the suitability of the petitioner for appointment. The order dated 4.3.2019 passed by the Superintendent of Police is contrary to law and is liable to be quashed.

So far as the relief to be granted to the petitioner is concerned, normally in cases where an authority has wrongly exercised its discretion while passing an order, the matter, after quashing the order is remitted back to the authority concerned to pass fresh orders. However, in the present case, the petitioner has been disqualified and has been refused appointment letter only on the ground of non-disclosure of a criminal case registered against him. In view of the reasons given above, mere non-disclosure of the criminal case could not be fatal for the appointment of the petitioner. Further, the matter is pending in this Court since 2019 and the petitioner was selected in the selections held in pursuance to the notification issued in 2015. In view of the aforesaid and also for reasons stated subsequently, no useful purpose would be served to remit back the matter to the Superintendent of Police, Ballia for a fresh decision.

The admitted facts in the present case are that only one criminal case had been registered against the petitioner. It is not the case of the State respondents that multiple criminal cases were registered against the petitioner. The case was registered under Sections 147/323/452/325 of the Indian Penal Code read with Section 3 (1) (x) Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989. The petitioner was not named in the charge-sheet and was not put on trial in the aforesaid case. It is also the admitted case of the State respondents that the District Magistrate, after noticing the criminal case and after recording his opinion that the petitioner was wrongly named in the First Information Report, certified the character of the petitioner and recommended him for appointment. The case registered against the petitioner was trivial in nature. The petitioner hails from a small town and there is nothing on record to show that the antecedents or character of the petitioner makes him unsuitable for appointment on the post. It is also not the case of the respondents that apart from the indiscretion of the petitioner regarding non-disclosure of the criminal case, the antecedents and character of the petitioner were such that he would otherwise be unsuitable for appointment on the post of constable. It is also noticed that the petitioner had submitted another affidavit disclosing the criminal case registered against him and the said affidavit was submitted before the report of the District Magistrate. The recommendations of the District Magistrate are dated 28/31.7.2018 and the second affidavit filed by the petitioner disclosing the criminal case was filed on 26.7.2018. No intention to deceive the employer can be imputed to the petitioner. In view of the aforesaid, the petitioner is entitled to a relief commanding the State respondents to issue an appointment letter to him for appointment to the post of Constable.

For the aforesaid reasons, the order dated 04.03.2019 passed by the Superintendent of Police, Ballia is hereby quashed.

The respondents - State authorities, i.e., the Secretary, Department of Home (Police Section), Government of Uttar Pradesh, Lucknow, the Secretary, U.P. Police Recruitment and Promotion Board, Lucknow, the Superintendent of Police (Personnel) Uttar Pradesh Police Headquarter, Allahabad/ Prayagraj and the Superintendent of Police, District Ballia are hereby directed to ensure that appropriate appointment letter is issued to the petitioner appointing him on the post of Constable in pursuance to the recruitment notified in 2015 and the petitioner shall be allowed to join as such. The appointment letter shall be issued to the petitioner by the competent authority within a period of one month from today, and in any case, by 15th December, 2024.

It is clarified that the petitioner shall be entitled to the service benefits, including his pay and other allowances as well as seniority, as a consequence of his appointment, only with effect from the date of his joining.

With the aforesaid directions and observations, the writ petition is ***allowed***.

A copy of this order be communicated to the Secretary, Department of Home (Police Section), Government of Uttar Pradesh, Lucknow, the Secretary, U.P. Police Recruitment and Promotion Board, Lucknow, the Superintendent of Police (Personnel) Uttar Pradesh Police Headquarter, Allahabad/ Prayagraj and the Superintendent of Police, District Ballia by the Registrar (Compliance) within ten days from today.

Order Date :- 05.11.2024
Vipasha